S. HRG. 113–895

THE STATE OF CIVIL AND HUMAN RIGHTS IN THE UNITED STATES

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

DECEMBER 9, 2014

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DECEMBER 9, 2014, 2:30 P.M.

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THE STATE OF CIVIL AND HUMAN RIGHTS IN THE UNITED STATES

TUESDAY, DECEMBER 9, 2014

UNITED STATES SENATE,
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in Room SH–216, Hart Senate Office Building, Hon. Dick Durbin, Chairman of the Subcommittee, presiding.

Present: Senators Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Cornyn, and Cruz.

OPENING STATEMENT OF HON. DICK DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman DURBIN. Today's hearing is going to deal with a serious issue. I trust that members of the public here will take them seriously as we all do.

I want to note at the outset that the rules of the Senate prohibit a showing of approbation or disapprobation, as they say—to put it in English, outbursts, clapping, and demonstrations. This includes blocking the view of people around you. Please be mindful of those rules as we conduct this hearing and I am thankful that the Capitol Police are here to ensure the safety and security of everyone present.

Our identity as Americans is based on ideas and values. Not ethnicity nor creed. This is what makes our Nation unique. But sense its founding, there has been a divide between the promise and reality of America.

The man who wrote in our Declaration of Independence that "All men are created equal" was a slaveholder. The Constitution, our founding charter, which those of us in Congress swear to uphold and defend, originally treated African Americans as property and women as second-class citizens.

The history of our country has been a long, slow, and painful march. Brave men and women have fought and sacrificed, sometimes even giving their lives in the struggle to create a "more perfect union" that our national charter promised.

Many of us think about the Greatest Generation, the men and women who served our Nation so valiantly in World War II. I recently read a story that is an illustration of what America was like in World War II.

Italians and Germans who were captured in combat fighting our soldiers were brought to the United States as prisoners of war. They were held in places like military forts, like Fort Benning, Georgia. At Fort Benning, Georgia, the Italian and German prisoners of war had access to make purchases in the base exchange. African-American soldiers did not have that opportunity or that access.

Some 2.3 million Americans are incarcerated. That is triple the amount of 30 years ago, 25 percent for drug offenses. Whites engage in drug offenses at a higher rate than African Americans, but African Americans are incarcerated at a rate 10 times greater than White Americans for these offenses.

America has changed. That same military that discriminated against African Americans back during the World War II era is now a Nation with an African-American Commander-in-Chief. The election of our first Black President shows we have come a long way as a Nation, but it is important to recognize and to say very clearly that there is still a challenge with racism in America and we still have more work to do.

This Subcommittee has tried to look intently not just to our past, but to our present and to our future to examine what more needs to be done to protect civil and human rights in America. We tried to understand in this Subcommittee the human impact of the issues we debate by hearing directly from those most affected. We have given a platform to voices that are not often heard in the halls of Congress.

I would like to show a brief video to remind us all what is at stake.

[Whereupon, the video was played.]

Chairman DURBIN. In 2001, Eugenia Jennings was sentenced to almost 22 years in prison for selling a small amount of crack cocaine. Her brother, Cedric Parker, testified at a 2009 hearing on the sentencing disparity between crack and powdered cocaine.

Mr. PARKER. Of course, you know my name is Cedric Parker. I am from Alton, Illinois, and I am here to tell you the things my sister, Eugenia, would say if she was here today. The severity of the mandatory minimums, and especially the sharp disparity between those for crack and powdered cocaine, have touched my family directly. Eugenia cannot be here because she is in Federal prison for selling crack cocaine.

Chairman DURBIN. In 2010, after 18 years in prison including 16 years in solitary confinement, Anthony Graves became the 12th death row inmate to be exonerated in Texas. In 2012, he testified before this Subcommittee at the first ever congressional hearing on solitary confinement.

Mr. GRAVES. I have been free for almost two years and I still cry at night because no one out here can relate to what I have gone through. I battle with these feelings of loneliness. I have tried therapy, but it didn't work.

Chairman DURBIN. In August 2012, a gunman killed 6 people at a Sikh temple in Oak Creek, including Harpreet Singh Saini's mother. One month after his mother died, Harpreet became the first Sikh ever to testify in Congress when he appeared at a Subcommittee hearing on hate crime.

Mr. SAINI. Senators, I came here today to ask the Government to give my mother the dignity of being a statistic. The FBI does not track hate crimes against Sikhs. My mother and those shot that day will not even count on a Federal form. We cannot solve a problem we refuse to recognize.

Chairman DURBIN. In 2013, Sybrina Fulton testified at a Subcommittee hearing on the impact of so-called Stand Your Ground Laws. Her 17-year-old son, Trayvon, was shot and killed while walking through a residential neighborhood in Sanford, Florida.

Ms. FULTON. It is unfortunate what has happened with Trayvon. That is why I feel like it is so important for me to be here so that you all can at least put a face with what has happened with this tragedy.

Chairman DURBIN. Lucia McBath also testified at the Subcommittee's hearing on Stand Your Ground Laws. Her 17-year-old son, Jordan Davis, was shot and killed while listening to music with his friends in a car outside a convenience store in Jacksonville, Florida.

Ms. MCBATH. But you can never really know my boy because an angry man who owned a gun, kept it close at hand and chose to demonstrate unbridled hatred one balmy evening for reasons I will never understand.

Chairman DURBIN. Damon Thibodeaux spent 15 years in solitary confinement at a Louisiana State penitentiary before he was exonerated in 2012. In 2013, Damon testified about his experience at the Subcommittee's second hearing on solitary confinement.

Mr. THIBODEAUX. I do not condone what those who have killed and committed other serious offenses have done, but I also do not condone what we do to them when we put them in solitary for years on end and treat them as subhuman. We are better than that. As a civilized society, we should be better than that.

Chairman DURBIN. Patti Saylor's son, Ethan, who had Down Syndrome, was killed when he was forcibly removed from a movie theater in Frederick, Maryland, by three off-duty Sheriff's deputies. Patti told Ethan's story at the Subcommittee's 2014 hearing on law enforcement responses to disabled Americans.

Ms. SAYLOR. They placed him on the ground, prone restraint, put handcuffs on, and my son died of asphyxiation on that floor of that movie theater for that $10 movie ticket. Ethan was not escalated. He was not threatening. He was not in crisis.

[Whereupon, the video ended.]

Chairman DURBIN. I have often said this Committee needs to focus on legislation, not lamentation. We have taken the words of our witnesses and translated them into action.

I worked with the first Ranking Subcommittee Member here, Tom Coburn of Oklahoma, who is retiring this year. Together we passed four laws that give the Government more power to prosecute human rights abusers. In 2012, the Obama administration, under this authority, deported Liberian Warlord George Boley for using child soldiers.

After we learned of the powerful testimony of Cedric Parker, I worked with Senator Jeff Sessions of Alabama and other Members of the Committee to pass the Fair Sentencing Act which significantly reduced the sentencing disparity between crack and powder cocaine and repealed a mandatory minimum sentence for the first time since the days of the Nixon administration.

After the Subcommittee held the first ever Congressional hearings on solitary confinement where we heard from Anthony Parker Graves and Damon Thibodeaux, the Federal Bureau of Prisons agreed to my request to submit to the first independent assessment of its solitary confinement policies and practices.

After we heard the brave testimony of Harpreet Singh Saini, I successfully pushed the Justice Department to begin tracking hate crimes against Sikh Americans, Arab Americans, and Hindu Americans. But we have been reminded in recent days that there is still much work to do.

When our Government still believes it is acceptable, in the name of security, to profile people based on race, national origin or religion, there is still more work to do. When Muslim Americans are the targets of violent crime simply because of their religion, there is still more work to do.

When States around the country draw up laws that make it harder for minority communities to vote, there is still more work

to do. When unarmed African Americans, men and boys, are killed—names like Trayvon Martin, Jordan Davis, Michael Brown, Eric Garner—bring tears to our eyes, there is still more work to do.

When protestors take to the streets to shout out "Hands up. Don't shoot. I can't breathe. Black lives matter." There is still more work to do.

When a significant part of the American family is disenfranchised and does not trust politics or criminal justice, there is still more work to do. Congress must accept its responsibility. We need to start with bipartisan efforts to protect civil and human rights.

We should pass the Smarter Sentencing Act which I introduced with Senator Mike Lee; cosponsored by Senator Leahy, the Chairman of our full Committee; Senator Ted Cruz, my Ranking Member on this Subcommittee; and Senator Rand Paul of Kentucky. That is quite a broad spectrum of political belief and we all support this bill.

We should restore Federal voting rights for ex-offenders, a cause which has been championed by Senators Ben Cardin and Rand Paul. There are some 5.8 million Americans who after paying their debt to society, still are denied a right to vote. And this type of disenfranchisement has a disproportionate impact on people of color. We need to pass the Voting Rights Amendment Act which was authored by Chairman Leahy and Republican Congressman Jim Sensenbrenner. This bipartisan legislation is a response to the Supreme Court's 2013 *Shelby County* decision.

This will be my last hearing as Chairman of the Subcommittee before I turn over the gavel to Senator Cruz, the incoming Chairman. Clearly there is much work to do and I look forward to working with Senator Cruz in the 114th Congress as we continue to struggle to create a more perfect union.

Senator Cruz.

OPENING STATEMENT OF HON. TED CRUZ, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CRUZ. Thank you, Mr. Chairman. I thank the Member witnesses who are here today. There is no more important role for the United States Senate than to carefully guard and protect the civil rights of every American. We take an oath to uphold the Constitution and that is a promise every American rightly should hold us accountable to honor.

The Chairman and I agree on a number of matters concerning civil rights. We, as he mentioned, both cosponsored the Smarter Sentencing Act which would reduce mandatory minimums for nonviolent drug offenders and help restore the proper balance of federalism, deterrence, and proportionality to these laws.

We are also both cosponsors of the USA Freedom Act which I believe strikes a better balance between the need to combat terrorism through effective intelligence and at the same time protecting the privacy rights of every day Americans. I would note additionally, that the hearing this Committee held on solitary confinement policy earlier this year was, I think, a positive and productive hearing that shed light on a practice of law enforcement at the Federal level and State level that needs to change.

All of those are positive. Yet, at the same time, civil rights remains a challenging topic in this country, a topic that is perceived differently by people of different racial backgrounds, ethnic backgrounds, socioeconomic backgrounds. We see the unfortunate reality in the last 6 years. Income and equality has increased, that in the last 6 years the rich have gotten richer. The top 1 percent today earn a higher share of our income than any year since 1928 and yet people who are struggling—young people, Hispanics, African Americans, single moms—are finding their lives harder and harder and harder.

When it comes to civil rights, I think there is no civil right more important than the right of every child to access a quality education and in my view the most compelling civil rights issue of the 21st century is the need to expand school choice and educational options so that every child, regardless of race, regardless of ethnicity, regardless of zip code, regardless of wealth, has a fair opportunity to receive an excellent education.

Unfortunately, that has not been a focus of this Committee for the past 2 years. I am hopeful it will become a focus of the Committee in the coming years.

I would note, as well, that a disturbing pattern has been demonstrated over the last several years of the Federal Government violating the constitutional rights of the citizenry, whether it is the IRS disregarding the First Amendment rights of citizens, asking individual citizens, tell us what books you are reading, tell us the content of your prayers. Whether it is a consistent disregard for the Second Amendment, whether it is a disregard for religious freedom including, unfortunately, the Federal Government right now litigating against the Little Sisters of the Poor, a Catholic convent of nuns who have taken vows of poverty, who devote their lives to caring for the poor and elderly and yet they are in court, with the Federal Government trying to impose millions of dollars of fines on them in order to force the nuns to pay for abortion-inducing drugs, contrary to the religious faith.

Beyond that, we have seen a pattern of lawlessness from the Federal Government that should trouble anyone concerned about civil liberties, concerned about the Bill of Rights. In my capacity as the Ranking Member on this Committee, we have issued a series of five reports cataloging the disregard of the Federal Constitution, the disregard of the Bill of Rights, from the administration. Indeed, we cataloged 22 cases where the Federal Government has gone before the U.S. Supreme Court defending expanded Federal power and has been rejected unanimously 9–to–nothing.

In one of those cases, the Department of Justice went before the U.S. Supreme Court and said the Bill of Rights says nothing about whether the Federal Government can put a GPS locator on any citizen's car. The position of the Department of Justice was that that does not require probable cause, it does not require articulable suspicion. Indeed under DOJ's position, every witness who attended this hearing today, every individual citizen who came, the Federal Government could go and place a GPS on your automobile outside without raising any Fourth Amendment concerns whatsoever.

That was an extraordinary position. Thankfully, the U.S. Supreme Court rejected the Department of Justice's views 9–to–nothing.

We need to be vigilant defending the civil rights of every American and I look forward to this Committee, the larger Judiciary Committee, and to the Senate continuing to do so and we need to have a particular responsibility to safeguard the Bill of Rights.

I would note the saddest moment during my time in the Senate was when 54 Senate Democrats cast a vote for a Constitutional Amendment to repeal free speech protections of the First Amendment. That was not consistent with our obligations to protect civil liberties and I am hopeful going forward we will be vigilant protecting the civil liberties of every American.

Thank you.

Chairman DURBIN. Thank you, Senator Cruz.

We are going to turn to our first witness panel. I want to welcome our colleague, Senator Cory Booker, Congressman Luis Gutiérrez, and Congressman Keith Ellison.

We are going to give Senator Klobuchar an opportunity to introduce Congressman Ellison. I want to note that Congressman Judy Chu, Chair of the Congressional Asian Pacific American Caucus, had a schedule conflict and could not join us.

Each of our witnesses are going to have 5 minutes to make a statement and answer questions that may come up afterwards. I will acknowledge two Members and then turn to Senator Klobuchar to acknowledge the presence of Congressman Ellison.

First to testify today will be Senator Cory Booker of New Jersey. Last month he was re-elected to serve in the Senate, 1 year after winning a special election.

Senator Booker serves on the Committees of Commerce, Science and Transportation; Small Business; and Environment. He is currently the only Senate Member of the Congressional Black Caucus.

Following him will be Congressman Luis Gutiérrez from my State of Illinois, last month re-elected to serve his 12th term representing the 4th District. He is a Member of the Congressional Hispanic Caucus, and serves on the House Judiciary Committee and the House Permanent Select Committee on Intelligence. He previously testified before this Subcommittee at our hearing on racial profiling in 2012 and our hearing on Stand Your Ground Laws in 2013. Congressman Gutiérrez will follow Senator Booker.

Senator Klobuchar.

INTRODUCTION OF HON. KEITH ELLISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA, BY HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. Thank you very much. It is great to be here with Senator Booker and Congressman Gutiérrez. Thank you so much for being here.

I am really here to recognize my friend, Keith Ellison. Keith and I go way back to when I was a prosecutor, the chief prosecutor in Hennepin County and he was a criminal defense lawyer, but somehow we have remained friends through it all. I think it is a testament to everything that he has stood for.

Before he came to Congress, again, he also did a lot of civil rights work and so it prepared him for the work that he has done in Congress. He was the first Muslim in Congress and we are very proud of that in Minnesota. He is a strong voice for justice and civil rights.

We have worked on several bills together, environmental bills and other things, but I think the thing that is most appropriate for this discussion today is the Same Day Registration Act, a bill that I am carrying and working with Senator Tester on in the Senate and he has it in the House and it would reduce barriers to voting.

When we think about the grand jury issues and who serves on grand juries, this is actually relevant, Chairman Durbin. It is relevant because the list for the grand jury comes from voter roles. They also come from other places, especially in Hennepin County, where we work to make sure other lists were included for who serves on grand juries.

So when you limit who can vote, you actually also limit who can serve on grand juries because that is where you get your source for people that serve on grand juries if you want to have grand juries that reflect our community as well as law enforcement that reflect our community.

We have done a lot of great work in Hennepin County with DNA and with other things, videotaping interrogations that we are proud of, but I think that this is important to think about with the voter issues. There is a connection.

Thank you very much and we are glad to have you here, Congressman Ellison.

Senator CORNYN. Mr. Chairman.

Chairman DURBIN. Just one second, please. Twin Cities, twin introductions. Senator Franken would like to say a word.

INTRODUCTION OF HON. KEITH ELLISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA, BY HON. AL FRANKEN, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator FRANKEN. Well first, I just want to associate myself with Senator Klobuchar's remarks, mainly about Keith, less about the grand jury, but that is important too.

Keith has been someone who has been talking about this, these encounters between members of the minority community and law enforcement long before we have gotten to the recent challenges that we are talking about today and that people have been talking about. I am very proud of Congressman Ellison.

Chairman DURBIN. Senator Cornyn.

Senator CORNYN. Mr. Chairman, I just wanted to know if it would be in order to make a brief statement.

Chairman DURBIN. Without objection, please.

OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. I appreciate that. I just want to add a couple of words by way of thanks to you for convening this hearing to talk about a very important issue to all Americans and that is the state of civil and human rights in this country of ours.

I know your focus is primarily going to be on the criminal justice system and I would say that I hope that this hearing will take a long view and not just a short-term view. Obviously on our minds, the recent tragedies of what have occurred are fresh, but I think caution would tell us that we ought to wait until there has been a thorough investigation and all of the facts revealed before we draw any conclusions.

But I also worry that just the recent tragedies will somehow distract us in some ways from the great successes that law enforcement has had since the crime waves of the 1980s and 1990s. Since 1993, violent crime rates are down 48 percent in this country. Law enforcement officer death rates are down 37 percent. Homicide rates are down 50 percent. Robbery rates are down 56 percent and property crime rates are down 40 percent. So while we know that there are incidents that deserve and must be investigated and follow the facts where ever they must lead, I hope we keep that success in mind as well as part of the overall context.

I would just finally say that we have tried to get Senator Reid to take up some bipartisan legislation, part of what you mentioned earlier, the Sentencing Act that you and Senator Cruz and others are working on, but also I want to mention the Recidivism Reduction and Public Safety Act that Senator Whitehouse and I cosponsored here in the Committee that got—if I am not mistaken—unanimous support in the Committee, but we have just been unable—well, we have got two people that did not agree with us yet. We hope to convince them.

We were not able to get time on the floor to be able to take that up. My hope is after the new year, that we will be able to get both of these bills up on the floor and thoroughly debate these issues because I think we have seen that this is not an area where partisanship has any role to play, that working together we can come up with some better solutions on our criminal justice system even as we insist that tragedies like the ones that are fresh in our minds are thoroughly investigated and that we leave no stone unturned.

Thank you, Mr. Chairman.

Chairman DURBIN. Thank you, Senator Cornyn. Let us get together, all of us interested in those two bills, and make sure it is a priority in our new Congress.

Now let me recognize our colleague, Senator Cory Booker.

STATEMENT OF HON. CORY A. BOOKER, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator BOOKER. I want to thank the Chairman and the Ranking Member for having this hearing and I want to thank all of my colleagues who are before me, each and every one of you I have had discussions with, very encouraging discussions, around these issues.

You said very specifically, and I want to honor that, that the time for lamentations has passed. The time for legislation is upon us. I want to apologize if it seems that I am going off of that directive, but I will end up right there.

This is a very, very personal issue for me, this evolution of the United States toward its ideals. Children from Newark, New Jer-

sey, to Oakland, California, stand up every day and say the pledge of allegiance that we are a Nation with liberty and justice for all.

But these last few weeks, we have seen tens of thousands of Americans taking to the streets in anguish and rage and frustration. I agree with Senator Cornyn that it is too early in many ways to draw conclusions when there are Federal investigations still going on on many of those issues.

I appreciate the sensibility of his remarks, but please understand that the anguish that folks are feeling on the streets, the anguish that has penetrated this body and has had me pulled aside by Senate pages, and many people we walk by, in this body who do the dignified important work, yet menial work, who have asked me, please do something about this.

What is that "this" they are talking about? I, as many of you know, was raised in a community which my family, in 1969, the year of my birth, was the first Black family to integrate this area. My classmates and teammates were all White, growing up. My dearest and closest friends now, I feel blessed and privileged that I have people who are like blood to me of all different backgrounds.

But I know growing up our experiences as our parents talked to us about police officers, talked to us about behavior, there was dramatic differences between the exhortations of Black parents, Latino parents, and White parents. I remember, distinctly, my parents lecturing me with anger in their voice that I did not have the margin of error when it comes to experimenting with drugs or other behaviors that others have.

What I want to do right now is put this in context of what you called us to talk about, which is legislation. And put it to a context to a horrible history in our country, that history of bias that we are desperately trying to work our way out of.

In my lifetime, we have seen something happen that is remarkable on the planet Earth, which is the explosion of the American prison system to the point now where America has 5 percent of the globe's population, but 25 percent of the world's—of humanity's imprisoned people. And by God, we do not have a country that has more criminals, more criminality, more crime intent people than China or Russia or India.

That explosion of criminality has made us see in the last 30 years an 800 percent increase in the Federal prison population. Half of those prisoners at the Federal level and the overwhelming majority on the national level are nonviolent offenders—nonviolent, not picking up guns, not beating people in the streets, not assault.

We as Americans, unlike any other country, bear the burden of spending a quarter of a trillion dollars carrying this system. The point that is felt in the anguish of staff I talk to here in the Senate and people protesting is not the specifics, necessarily of cases, but of the knowledge that we all have, that none of my colleagues, Republican or Democrats, have denied to me that this system is woefully biased against minorities in our country.

The data screams that we all have access to and that we all know—that there is no difference—no difference, for example, in marijuana usage between Blacks and Whites in this country, none whatsoever. The last three Presidents of the United States admit-

ted to using marijuana—and I say for the record, one said he did not inhale.

[Laughter.]

Senator BOOKER. But yet, an African American is about 3.7 times more likely to be arrested for marijuana usage than someone that is White. That is a fact.

We know we have a criminal justice system that has uncontainable outcomes that do not reflect the highest values that children of every ilk pledge allegiance to, values that we swear oaths to, that we should have what that building across the way says, powerfully written in stone "equal justice under the law."

And what do I mean by some of these things that jump up and call to the conscience of this country? We have a Nation where African Americans make up 13 percent of the U.S. population, but 40 percent of the imprisoned population. In my State, it is 13 percent and 60-plus percent of the prison population.

Nonviolent offenses—that according to the 2012 report for the U.S. Sentencing Commission, between 2007 and 2009, drug sentences for African-American men were 13.1 percent longer. We know that Latino youth today—by the age of 23, 44 percent of Latino youth will be arrested—44 percent, most of them for nonviolent offenses.

We know the sad reality for African-American men, one in three African-American males born today can expect to be incarcerated at some point unless we make a change. When you hear about police violence, trust me, I was a mayor of a great American city. It was challenging and complicated in the constant battle against crime to keep my community safe. These are nuanced issues. We struggle with them in Newark.

But we know that right now there are 6.5 million Whites arrested against about 2.6 million African Americans arrested in a year. But ProPublica—and that means Blacks and Whites, violent crime, nonviolent crime, 6.5 versus 2.6, White to Black. But now someone who is African-American, according to data quoted by my Republican colleague, Rand Paul, in Time Magazine, are 21 times more likely to be shot dead by a police officer—African Americans, 21 times more likely to be shot dead by a police officer than someone White.

So I anguish over this fact that my country has been evolving through the dedicated determinate acts of Black and White through slavery, through Jim Crow, but I find myself a Senator at a time that we have this ironic reality, there are more African Americans now in prison under criminal supervision, prison, jail, probation, parole than all the slaves in 1850. So this is what sears into me as a painful reality because we, as a body, Congress has the power to change this.

And the elected leadership is showing this most clearly is not coming from the Federal level, it is actually coming from the States. Remarkably, refreshingly, it is coming from red States. Red State Governors with their legislatures are passing legislation that this body should be passing that is showing clearly that you can deal with this over-incarceration problem through commonsense bipartisan legislation.

The one example I will give as I lead to my close is Georgia. Governor Nathan Deal, he has cut spending on prisons, reduced penalties for nonviolent offenses. The result of his commonsense reforms has been a dramatic reduction in prison population and guess what—a 20-percent reduction over 5 years in the number of incarcerated African-American men in their State, a 20-percent reduction.

So we can say what we want about the details of Staten Island or Ferguson, but there is a larger issue going on that is anguishing their heart, from young people working in this institution to cities and neighborhoods and towns all over our country. The question is, enough of the lamentation, when will there be legislation?

So I conclude with that call. It is a call that has rang through the ages of our Nation, that we have something so precious. This week Jews all across our country will be reading a portion of the Torah that has a section with these words that are written and inscribed from the Torah on the very site that Martin Luther King was killed.

I had the privilege recently of watching the movie, "Selma," and seeing Blacks and Whites joining hand-in-hand, Latinos and other Americans in this ideal of America that these issues are not Black or White. They are about justice. They are about America, that people of good conscience when there is clear and patent treatment being given to one body of Americans and not to another, that there is a call to act.

It is this idea and this dream and written on that place in Memphis, Tennessee, of the site that one of our great Americans—not great Black American—one of our great Americans died, it is the words from the Torah that call upon us now. Simply these, "Here cometh the dreamer. Let us slay him and see what becomes of his dreams."

There has been enough death in this country. There has been enough over-incarceration. It is time now that we make the dream real. We, through our legislative efforts, as illustrated by State after State, can now follow suit, reduce our prison populations, lower crime, save taxpayers money, and more effectively herald the highest ideals of our country.

Thank you.

Chairman DURBIN. Thank you, Senator Booker.

Congressman Luis Gutiérrez of Chicago.

STATEMENT OF HON. LUIS GUTIÉRREZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Representative GUTIÉRREZ. Thank you, Chairman Durbin and Ranking Member Cruz for inviting me to testify at this hearing regarding the current state of civil and human rights in the United States. Thank you, Senator Durbin for advocating for justice and equality.

I have always valued your advice and counsel. Your leadership on the Judiciary Committee and as Chairman of the Subcommittee has contributed greatly to our Nation and to protecting the civil rights of all of us. I came here to say thank you.

Before I begin, I want to extend my heartfelt condolences to the families and friends of Michael Brown and Eric Garner. I think we

can all agree that the loss of life is a great tragedy. As a parent, I especially want to say to the parents that I am so sorry for your loss.

In the wake of the grand jury decisions to not indict the officers involved in the deaths of Michael Brown and Eric Garner, communities throughout the country have taken to the streets to protest. Many are deeply dissatisfied with decisions not to prosecute the police officers in Ferguson and Staten Island and transparently examine their actions and the circumstances that led to the deaths of two unarmed Black men.

The protests also expose an equally disturbing issue, that the killings of Brown and Garner are not isolated issues. I believe the visceral reaction around the country is because these cases represent the countless young men who are treated unjustly by the police and many question their ability to receive justice through the current court system.

These deaths expose gaps in our criminal justice system. In particular, the grand jury process and the inherent conflict and bringing charges against law enforcement. Clearly we have more work to do to build trust between communities and law enforcement in our system of justice.

African Americans and Latinos are disproportionately impacted by the criminal justice system over all. Racial profiling condoned officially or unofficially by some in law enforcement forces Blacks and Latinos to contend with the criminal justice system more frequently in a completely different way than many others in our society. Minority communities have a higher prosecution rate and at the post-conviction stage, sentencing orders tend to be harsher among minority defendants.

All too often, Latinos and Blacks are victims of excessive use of force at the hands of rogue police officers. The issue is only exacerbated when local and State police departments are equipped with military equipment, as was the case in Ferguson, Missouri, this past summer.

The cycle continues as we saw just last week when grand juries guided by prosecutors who work on a daily basis with the police failed to even call for a trial in open court. It is not surprising that the system breeds mistrust. This vicious cycle not only affects individuals, but also affects our African-American and Latino communities as a whole.

When we see children like Michael Brown and Eric Garner and Trayvon Martin, we see our own families in our own loved ones. Ask any Latino or African-American parent whether they live in a suburb or in a housing project and they will tell you they fear for their children's safety every time they leave the house.

Rather than thinking of the police as a public servant who will protect the safety of their children, too often they think of local police as one of the harshest their children have to face. I think only of my daughter, Jessica, who was stopped because she was driving in too nice of a car. She was with her friends in her own neighborhood. Her mom and dad apparently made the mistake of living in a neighborhood they could afford to live in, not one the police officer thought she should be living in.

Or when I was stopped and refused admission to this very Capitol complex early in my year because as the Capitol Hill police officer said, I did not look like a Congressman. Too many have face profiling, subtle and explicit, annoying and yes, potentially dangerous when the profiler has a badge or has a gun.

I respect and appreciate the hard work that law enforcement officers do to keep our communities safe. We have worked to get more cops on the street to invest in violence reduction programs to reduce the number of guns in our communities that often target police officers, and to make sure we honor and pay police officers for the dangerous and often thankless work police officers do.

I am also proud to be an original cosponsor of the End Racial Profiling Act which I think is clearly and sorely needed.

With regard to the revised profiling guidelines issued yesterday by the Department of Justice, I am deeply disappointed that they did not close significant loopholes, especially as they pertain to the Department of Homeland Security which will allow whole sections of America's largest law enforcement entities, including Customs, Border Patrol, and Transportation Security Administration, to continue to profile many innocent Americans. I am also perplexed and disheartened that the new guidance applies only to Federal agents, but exempts local, county, and State law enforcement.

Civil and human rights today in America continues to be a work in process thanks to the leadership of Chairman Durbin and many of my colleagues including those seated with me today. We are able to celebrate the strides we have made to create a more equal and just Nation for all and chart the course of continued progress in the future, but it is tempered by knowing that we cannot rest in the pursuit of justice and fairness, especially in the face of tragic and needless cost of life.

We have come a long way. Senator Booker is a testament to that. My buddy, Keith, is a testament to that. I hope to be a testament to that. Let us continue to do the good work. I thank you for your wonderful leadership, Senator Durbin.

Chairman DURBIN. Thanks, Congressman Gutiérrez.

Congressman Ellison of Minnesota.

STATEMENT OF HON. KEITH ELLISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Representative ELLISON. Mr. Chairman, thank you very much and also thank you to the Ranking Member, also a special thanks to my fellow Minnesotans, Senator Klobuchar and Senator Franken, and the entire panel.

Of course, I was very moved by the words of my fellow panelists. They were amazing and I want to say "ditto" on everything they said.

Last week, 15-year-old Abdisamad Sheikh-Hussein was run over by a man in an SUV and the bumper sticker on his car said, "Islam is worse than Ebola." But today I am not here to talk and focus on private hate crimes and discrimination, although that deserves all of the attention that we can muster.

Today I would like to talk about the discrimination that happens at the hands of state actors. I think we should shine a light on all forms of discrimination, but I think that the events that we have

seen over the last few weeks demonstrate how very important it is for the state, and people who act on behalf of the state, to get it right.

People have a legitimate higher expectation of people who operate on behalf of the state. Our Government is a democratic government and it is undergirded by a Constitution and the people have every right to believe that the Government is there to protect the general welfare.

And that makes it all the more disappointing when people who operate on behalf of the state fail to live up to that expectation. People have a right to believe that they will be dealt with justly and fairly by the state, but when the state violates people's rights, it is fair for people to wonder who is going to protect my rights if the state will not? And that is why people are particularly incensed by encounters between citizens and law enforcement.

People are grateful for law enforcement. We believe in law enforcement. I am grateful for law enforcement and I know people who are in law enforcement. Most of them go into it because they want to help people, but when they fail and when excessive force is employed, it is incredibly disappointing and it shakes people's confidence in what the state is supposed to do for them, which is to protect them and promote their welfare.

You know, the injustices we have seen over the past week is not new. It is not the first time the police have been videotaped using excessive force. None of us can ever forget Rodney King. It is not the first time people have died in police custody and it is not the first time that a grand jury has vetoed justice.

Why are people walking around with their hands up saying, "I cannot breathe"? Why are people saying, "Don't shoot"? Why are they proclaiming these things all over cities in America? It is because of a long train of abuses, not one particular case. People who want to argue over the nuance of one recent case in the news or another are free to do so, but no one can deny the unmistakable pattern between police and community, particularly Black community, and men in the community.

We could talk about Eric Garner and Michael Brown, but what about Tamir Rice, 12 years old? What about Darren Hunt who had a toy? What about Rodney King?

And by the way, not only is this a long train of abuses, it goes back further even than the Kerner Commission Report which said our Nation is moving toward two societies, one Black, one White, separate and unequal. Fifty years ago we were dealing with this same issue and it is on us today and we must make a call to action to reverse this trend so that every American, all Americans, can feel that the Government really is liberty and justice for all.

So instead of a system of justice that works for some and does not work for all, this injustice takes place within a social and economic context. I have to say, that when Officer Wilson confronted Michael Brown on Canfield Drive in Ferguson, the interaction did not take place in a vacuum.

Ferguson, Missouri's unemployment rate is 13 percent, over double the national average. The number of poor people in Ferguson doubled over the last 10 years. In 2012, almost all of Ferguson's neighborhoods had a poverty rate of over 20 percent. The fact is if

we respond by ordering body cameras, ordering police cameras, these will be good steps. If we have grand jury reform, if we require that there are preliminary hearings in these officer-involved shootings so we can have more transparency, these will all be good things, but they will not stop the pattern unless we deal with the structural economic abandonment of cities like Ferguson.

We cannot continue to solve our economic and social problems with criminal justice solutions. The fact that our low-income and minority communities are over-policed and under-protected is the spark, but poverty and economic deprivation is the kindling and that is what lights the flame.

I say "yes," again, to body cameras and all types of reforms, but please let us not forget that investing in infrastructure, education, public job programs, and providing for social supports which help people stay away from the hardest aspects of an unfair economy, are essential. You do not sell "loosies" on the streets of Staten Island if you are making a livable wage.

We know that we have an inequality problem when the CEO of Walmart makes over $12,000 an hour and the average Walmart worker makes $8.48. The CEO of McDonald's makes $9,200 an hour and the cashier makes $8.25. So please do not forget that dealing with the economic deprivation that kindles these situations is incredibly important. It is important in the recent cases. It will be important in the future.

I would now like to turn my attention, just for a moment, to talk about the problems that affect the Muslim community in particular. Societal discrimination is real. I have been the direct victim of it myself. In my own State only a few days ago, a county party chairman called Muslims parasites and said they should be fragged. That means to kill them violently.

A State Senator in Oklahoma said that American Muslims are a cancer in our Nation that needs cutting out. So when we arrive at how the state deals with this Muslim population, we know that we are already dealing with the situation in which so many in the law enforcement community see the Muslim community as a security problem, not fully fleshed members of our community here to make a contribution.

So I, too, was disappointed in the guidance that was recently issued by the Department of Justice and believed that at no time can we have a system of justice in which someone's race or religion or what they are wearing can justify engagement by law enforcement. Law enforcement should engage citizens when there is some articulable suspicion that that person might commit a specific crime. And that should be the basis of the engagement.

Until we say that racial profiling, religious profiling, is actually bad law enforcement, we will continue to bother people and engage people who had nothing to do with any wrongdoing and we will miss people who are up to no good and will harm us.

Again, thank you, all of the Committee Members and my fellow panelists for this excellent presentation. Thank you, Mr. Chairman.

Chairman DURBIN. Congressman Ellison, thank you. Congressman Gutiérrez it is great to see you over here again.

Representative GUTIÉRREZ. Thank you.

Chairman DURBIN. Senator Booker, thanks. We appreciate it as your colleagues. I dismiss, with gratitude, our first panel and thank them for adding to this.

I want to acknowledge—in the audience today is Martin Castro, Chair of the U.S. Commission on Civil Rights. It is good to see you Marty.

Now I would like to call the second witness panel to come to the table. As they are coming to the table, I will give you an introduction on them.

One longtime friend, Wade Henderson, president and chief executive officer of the Leadership Conference on Civil and Human Rights. The Leadership Conference is the Nation's preeminent civil and human rights coalition with more than 200 national organizations in its membership.

Mr. Henderson, professor at the University of District of Columbia David Clarke School of Law—prior to joining the Leadership Conference he was the Washington bureau director of the NAACP, graduate of Howard University and Rutgers University School of Law. I thank you for being here today.

Dr. Cedric Alexander currently serves as president of NOBLE, the National Organization of Black Law Enforcement Executives on whose behalf he is appearing. He is the deputy chief operating officer in charge of the Office of Public Safety for DeKalb County, Georgia.

Dr. Alexander previously served as Transportation Security Administration Federal Security Director for Dallas Fort Worth International Airport, deputy commissioner of the Office of Public Safety at the New York State Division of Criminal Justice and chief of police in Rochester, New York, law enforcement officer for 15 years in Florida, a doctoral degree in clinical psychology from Wright State University. Dr. Alexander, thank you.

Our next witness is a familiar friend, Laura Murphy, director of the Washington Legislative Office of the American Civil Liberties Union, a position she has held on several occasions. She is the first woman, first African American, longest serving head of the Federal Affairs Operation in ACLU's 94-year history. She received her Bachelor's from Wellesley College.

It is the custom of this Committee to swear in our witnesses. If you would all please rise.

Do you affirm that the testimony you are about to give before the Subcommittee be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ALEXANDER. I do.

Mr. HENDERSON. I do.

Ms. MURPHY. I do.

Chairman DURBIN. Thank you. Let the record reflect that all three witnesses answered in the affirmative.

Let me first call as the first witness, Wade Henderson.

STATEMENT OF WADE HENDERSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, WASHINGTON, DC

Mr. HENDERSON. Thank you, Mr. Chairman—Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee. I am

Wade Henderson, president and CEO of the Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations representing persons of color, women, children, organized labor, persons with disabilities, seniors, the lesbian, gay, bisexual and transgender community, and the faith-based community.

Let me start by thanking you, Senator Durbin, for your remarkable leadership of the Subcommittee. From the passage of bipartisan legislation like the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act and the Fair Sentencing Act, to chairing hearings, examining voter rights, Stand Your Ground Laws, and the civil rights of American Muslims. You have been a champion on issues of vital importance to the civil and human rights community for years.

Let me also acknowledge you, Ranking Member Cruz, in your role as the new Chair of the Subcommittee in the 114th Congress. Senator, we are hopeful that as the new Chair, you will build on the Subcommittee's legacy and continue to work in a bipartisan fashion to make progress for our Nation. We look forward to collaborating with you to achieve our common goal of protecting and advancing civil and human rights for all Americans.

This hearing is taking place at a pivotal time for the Nation. The recent killings of unarmed Black boys and men by police officers across the country have fueled a growing diverse passionate and increasingly organized movement for justice across racial lines that cannot be ignored.

In particular, the recent non-indictments of the police officers who killed Michael Brown in Ferguson, Missouri, and Eric Garner in Staten Island, New York, and the new information about the suitability of Officer Timothy Loehmann who killed 12-year-old Tamir Rice in Cleveland, Ohio, remind us that we live in a country founded on principles of equality and opportunity, African Americans and other communities of color still find that the promise of equality and opportunity has yet to be fully realized.

On nearly every indicator that we use in the United States to measure progress, people of color are falling further behind. And in some important ways, doing worse than they were in 1960. Our schools have re-segregated. Our levels of unemployment are at an all-time high. We face continued discrimination in voting and our incarceration rates have increased exponentially.

So as we mark a number of anniversaries this year and next, including the Civil Rights Act, Freedom Summer, the Voting Rights Act, and Bloody Sunday, we must acknowledge and celebrate how far we have come. But we must also be aware of just how far we have to go in the quest for equality. Systemic obstacles to full inclusion and opportunity remain for our communities and we have failed to establish the justice and equality that we all seek.

Now without question, our criminal justice system is in crisis. Racial and ethnic bias and discrimination persists at every stage from policing to trial to sentencing and finally to reentry. We should use our resources to more adequately address public safety and invest in alternatives to incarceration where appropriate.

And we must put in place commonsense reforms that prohibit discriminatory profiling, demilitarize local law enforcement, rede-

fine the standards for use of force by police, and establish accountability. We must eliminate harsh sentencing policies that disproportionately impact communities of color and pass the bipartisan Smarter Sentencing Act as well as assist with successful reentry. Finally, we need vigorous enforcement of hate crime protections and expanded coordinated police community efforts to track and respond to hate violence and improve hate crime data collection.

More than a decade after President Bush announced that racial profiling is "wrong and we will end it in America," communities across the country, particularly African Americans, Latinos, Asian Americans, Arab and Muslim Americans, and those perceived to be Arab and Muslim, including South Asians, Middle Easterners, and Sikhs, are still subjected to profiling in a variety of contexts, including street-level enforcement, immigration enforcement, and counterterrorism efforts.

Profiling is an ineffective law enforcement practice. It is detrimental to public safety and is antithetical to the constitutional right to equal protection under law.

Now yesterday the Department of Justice issued long-awaited revisions to its 2003 profiling guidance for Federal law enforcement. This represents an important step forward by expanding protected categories and limiting some of the existing loopholes.

Where it falls short in the areas of national security, border integrity, and the failure to apply State and local enforcement, we will work with this administration to end profiling by all law enforcement. Further, the shortfalls in the guidance reinforce the need for Congress to act and we will redouble our efforts to ensure passage of the End Racial Profiling Act in the 114th Congress.

I would like to turn next to voting rights. While the days of poll taxes, literacy tests, and brutal physical intimidation are behind us, voting discrimination is still a problem for many Americans. Last month's midterm elections were the first to be held without the protection of Section 5 of the Voting Rights Act because of the Supreme Court's 2013 *Shelby County versus Holder* decision and we saw increased efforts to implement the new restrictions on voting, including mandatory voter identification laws, limits on early voting, last-minute changes in polling places, changes to methods of elections, and racially biased gerrymandering that disproportionately impact communities of color.

As a result, we witnessed the most unfair, confusing, and discriminatory election landscape in almost 50 years. It is a disgrace to our citizens, to our Nation, and to our standing in the world as a beacon of democracy. The 114th Congress must fix the *Shelby* decision by enacting the bipartisan Voting Rights Amendment Act to ensure that no voter faces discrimination.

These are big challenges, Mr. Chairman. The Leadership Conference's goal is to create an America as good as its ideals. It is not just rhetoric. This is the critical and necessary work in which all Americans of good conscience should be engaged, particularly our elected officials who are charged with addressing problems of national importance.

We look forward to working with you and the Subcommittee on these important issues. Thank you, sir.

[The prepared statement of Mr. Henderson appears as a submission for the record.]

Chairman DURBIN. Dr. Alexander.

STATEMENT OF CEDRIC ALEXANDER, PSY.D., PRESIDENT, NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES, AND PUBLIC SAFETY DIRECTOR, DEKALB COUNTY, GEORGIA

Mr. ALEXANDER. Thank you, sir, and good afternoon Chairman Durbin and Ranking Member Cruz and Members of the Subcommittee. I bring you greetings on behalf of the executive board and members of the National Organization of Black Law Enforcement Executives, commonly referred to as NOBLE.

My name is Dr. Cedric Alexander, national president of NOBLE and deputy chief operating for public safety, DeKalb County, Georgia.

It is an honor to be here today to participate as a witness in the Senate's hearing on The State of Civil and Human Rights in the United States. I want to acknowledge and thank you, Chairman Durbin, for holding this hearing and inviting me to participate.

I speak to you from a perspective of a person who has over 37 years of law enforcement experience and who has held a number of high-level positions in Federal, county, and city local levels. In addition, I hold a Ph.D. in clinical psychology. And quite frankly, Senator, some days I do not know whether that is an asset or liability.

I represent an organization, NOBLE, whose mission is to ensure equity in administration of justice and a provision of public service to all communities and to serve as the conscience of law enforcement by being committed to justice by action. It is my position that this country has the unique opportunity today to address the lack of trust and understanding of law enforcement by communities of color. It is imperative to every citizen that we collectively deploy solutions to the areas of training, community policing, and technology to ensure that America is secure both domestically and internationally.

Second, through the solutions we were able to further the hopes and dreams of many of our forefathers and realizing true civil rights and human rights as stated in the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

The recent events in Ferguson, Missouri, and in Staten Island, New York, when combined with real and/or perceived attacks on civil rights legislation, have created an environment where many people of color feel disenfranchised by their national and local government. More importantly, there is a pervasive belief, right or wrong, that the lives of minorities are of less value than that of their counterparts.

So with that, let us talk about solutions to building bridges of understanding and partnership between enforcement and communities they are to serve and protect. Training, sir, being at the forefront of all of this. Cultural competency is a critical component to

bridging the gap amongst law enforcement and communities of color. It is the foundation for people of different cultures and social economic backgrounds to interact effectively.

When developed and implemented as a framework, cultural competency enables systems, agencies, and groups of professionals to function effectively to understand the needs of culturally diverse groups. It is critical that law enforcement reevaluates its training methodologies to ensure that they reflect the 21st century needs and incorporate cultural competency training for police officers—that is part of the recruiting and in-service training.

Militarization of police has become a growing concern and interest throughout our country in recent years through to the use of tactical equipment and gear to combat everyday crime. The 1033 Program was created by the National Defense Authorization Act of 1997 as part of the U.S. Government's Defense Logistics Agency disposition services to transfer excess military equipment to local law enforcement agencies. Every year, hundreds of millions of dollars worth of military equipment flows from the Federal Government to State and local police departments.

As a result, departments have implemented the use of military equipment, as seen most recently in Ferguson, Missouri, which to many Americans was unfairly targeted toward other American citizens. There must be justification, accountability, and training to support the continued use of such tactical measures and equipment. NOBLE feels that training is a key component of ensuring the correct application of this type of resource.

Community-oriented policing, which we all have heard a lot about over the years—it is our recommendation that the law enforcement community adopt community policing as a philosophy of policing in this country. Here are some of the key components of community policing: Community policing allows officers to demonstrate their support for the community; residents and officers are allies; officers respect and protect the civil rights of residents; racial profiling and other forms of discrimination are strictly prohibited.

Community policing demands that officers interact with people who live or work in neighborhoods that they patrol. Officers are trained to communicate with people, solve community problems, and develop an appreciation of cultural and ethnic differences. And the other side of that, sir, is very important as well, too, that communities work closely with police, align themselves with their local police, and become partners.

This is not a one-way street. This is a two-way street when we talk about public safety. It takes everyone, police and community together, in order to provide the type of public safety I think that we all want to embrace in our respective communities.

Community policing emphasizes the importance and the value of human life. The use of excessive force is absolutely prohibited and deadly force is reserved strictly for when an officer's life or the life of a citizen is at risk.

NOBLE has launched a pilot program entitled, "The Law and Your Community." Through funding from the Department of Justice COPS Office, this program's aim is to develop trust and understanding between law enforcement and the community.

The Law and Your Community is an interactive training program for young people between the ages of 13 and 18 years of age. It is designed to improve their communication with law enforcement officers and their understanding of Federal, State, and local laws.

Components of the program include, but are not limited to, citizenship. What does it mean to be a citizen? What are the laws governing everyday life, including traffic laws? And what are your rights as a citizen?

Basic laws—understanding the basic laws of issues such as gun ownership, staying safe within your community, and maintaining positive affiliations with others including peer relationships, maintaining good grades, adult relationships, and the benefits of having mentors.

Law enforcement engagement—educating young people and adults on how to engage and navigate communication with local law enforcement officers. What is community policing? Have a better understanding of realities of working in law enforcement and working with those who do that job.

And last, technology—we feel that technology can be leveraged to support the effective implementation of community policing and ensure maximum transparency to the public. Through technology, partnerships with communities can be strengthened in the area of problem-solving and partnership initiatives.

Likewise, there is an important role in applying technology and improving the effectiveness of law enforcement training. Listed are some of those technology recommendations: requirements of body cameras for every law enforcement officer in this country—every law enforcement officer in this country; deployment of various social media platforms to allow law enforcement departments to better communicate and interact with local residents; and, of course, use of force and firearm training systems which will help them to develop and sharpen their skills of "shoot" and "don't shoot."

By implementing these recommendations on training, community policing, and technology, we believe that real progress can be made in improving the relationship between law enforcement and the communities they serve. This would greatly improve the state of civil rights and human rights in America.

I thank the Subcommittee for the opportunity to testify and would be happy to answer any questions that you may have. Thank you.

[The prepared statement of Mr. Alexander appears as a submission for the record.]

Chairman DURBIN. Thank you, Dr. Alexander.

Laura Murphy.

STATEMENT OF LAURA MURPHY, DIRECTOR, WASHINGTON LEGISLATIVE OFFICE, AMERICAN CIVIL LIBERTIES UNION, WASHINGTON, DC

Ms. MURPHY. Thank you, Senator Durbin and Ranking Member Cruz for inviting the ACLU to testify at today's hearing.

For nearly 100 years, the ACLU has worked to defend and preserve the rights that the Constitution and the laws of the United States guarantee. I would especially like to thank you, Senator

Durbin, for your tireless leadership as Chairman. You have held hearings on a variety of critical issues from solitary confinement to racial profiling and addressing barriers to voting and for that we are so very thankful.

My written testimony provides an extensive and broader view of the state of civil and human rights, but today I will focus my remarks on three areas of unfinished business: (1) the militarization of police; (2) sentencing reform; and (3) criminal disenfranchisement in voting.

We are standing at a crossroads in America right now. One must only look to the current crisis in Ferguson, in New York City, and in Cleveland, to see that extreme problems in policing continue. With recent police paramilitary tactics splashed across our TV screens, we must ask ourselves, Do we want an America where the exercise of First Amendment rights is met by assault weapons and teargas, where armored vehicles are used in our day-to-day policing, where policing resembles our military operations in Iraq and Afghanistan, where communities of color are disproportionately under siege? If the answer to these questions is "no," Congress must act immediately.

Militarized policing goes far beyond Ferguson. Although SWAT teams were originally created to deal with life or death emergencies like hostage crises, they are now overwhelmingly used to serve search warrants in drug investigations. A recent ACLU report found that SWAT teams were used 79 percent of the time for raiding a person's home, most often for drugs.

Such tactics are unnecessary and excessive. What message are we sending by using weapons of war to police American communities?

Congress must ensure accountability. Federal funding and providing military equipment should be conditioned on data collection, use of body-worn cameras, anti-racial profiling training, and insistence on community policing, as my good friend has pointed out.

The war on drugs has created an incarceration nation with too many people in prison for too long, serving no useful benefit to society. One of the major reasons for expanded jail and prison populations over the past 30 years is the use of stiff mandatory minimum sentencing for nonviolent offenses.

Prison costs now absorb nearly a third of DOJ's discretionary budget, 30 percent. The cost, though, goes far beyond simply the money it takes to incarcerate over 2.3 million people. The true cost are human lives, mainly of generations of young Black and Latino men and women who serve long prison sentences and are lost to their families and communities.

Organizations across the political spectrum support truly bipartisan sentencing reform such as the Smarter Sentencing Act and we thank you for that. That act would address the ongoing crisis in our Federal prisons by reducing the prison population. The SSA is sponsored by Senators Durbin, Lee, Leahy, Cruz, and Representatives Bobby Scott and Raúl Labrador.

The bill also has considerable conservative support. The time is now to pass the Smarter Sentencing Act. It is only a first step in reducing over-incarceration.

There is another tragic outcome of our Nation's incarceration binge. Almost 6 million of our citizens have lost the right to vote because of a past criminal conviction, and many instances, very low-level crimes. Upon release from prison, these citizens work, they pay taxes, they live in our communities, and they raise families, but millions cannot vote.

One out of every 13 African Americans of voting age has lost the right to vote. That is four times the national average, but millions have no input on our political process. That is unacceptable.

We commend Senators Ben Cardin and Rand Paul for their leadership in this area and we urge the passage of the Democracy Restoration Act, a bill that would restore voting rights in Federal elections to millions of citizens.

Ending discrimination should be and historically has been a bipartisan issue. Just consider the multiple Voting Rights Act extensions that we have had. Consider the laudatory Fair Sentencing Act of 2010. These would not have happened without bipartisan support. Only with bipartisan support can we make much-needed changes to our criminal justice policies.

I am sorry Senator Cruz had to leave because we would like to work with him as well on changing our criminal justice policies. We look forward to working with him as the new Chair and all Members of the Subcommittee in the 114th Congress on these critical issues.

I want to thank you so much for this opportunity to testify and before I end, I would ask special consideration before the hearing record is closed, I would like to ask if the ACLU may submit a document outlining some of the gender-related problems in our criminal justice system.

Chairman DURBIN. Without objection.

[The information appears as a submission for the record.]

Ms. MURPHY. Thank you.

[The prepared statement of Ms. Murphy appears as a submission for the record.]

Chairman DURBIN. Thank you, Ms. Murphy.

Mr. Henderson, there was a time when witnesses came before this Subcommittee and told us about what had happened when we had the 100–to–1 disparity between crack and powdered cocaine. Over a span of 20 years or more, there was a massive incarceration of African Americans, unjustly, unfairly, for undue long periods of time, but there was another reaction, the African-American community understood it and as a consequence, when many of the same people were called to serve on juries to try people for drug crimes, they remembered and it became increasingly difficult for prosecutors in some areas to win a prosecution before a jury that was integrated.

They told us that story and it was understandable. Let me take that to what I think we currently face, at least in some communities that I am aware of. We have seen a decline in violent crime in the city of Chicago, but still too many violent crimes.

The overwhelming majority are Black-on-Black crimes. When you visit the communities that are the most dangerous, where the children are in the most danger going back and forth to school, even playing, sitting on a porch, you find a reaction from people in the

community that they do not reach out to the police, they do not cooperate with the police, they fear the drug gangs and those who own the guns, but they fear reaching out to the police is going to be just as dangerous or unproductive.

Two areas of nullification, but one that has a direct negative impact on the people living there. Tell me how you react to that.

Mr. HENDERSON. Well, Mr. Chairman, it is a terrific question and I think you have correctly pointed out some of the challenges that law enforcement and the communities that they are paid to protect often encounter in their relationship with one another. The relationship between law enforcement and the African-American community, as Senator Booker helped lay out in his presentation, has a long history based on fundamental injustices that our country has yet to fully overcome.

And you correctly point out that, obviously, communities experiencing crime regardless of the makeup in color of that community needs the protection that law enforcement provides. On the other hand, when law enforcement is applied inconsistently, unfairly, without equal protection and often without respect for the lives of the individuals that law enforcement is charged to protect, you develop a level of ambivalence, indeed a level of fear, that may affect how you respond to the legitimate needs of law enforcement in the engagement with the communities they serve.

Now, let me say at the outset, this is not a generalized indictment of law enforcement. We know many police officers. We work with police officers and many police officers are fully committed to protecting their charges regardless of the race of the communities they prosecute. Having said that, there are identifiable problems, some of which have surfaced in the last several weeks, in the cases that we have cited which clearly point out the need for further training and responsibility to ensure that these individuals are protected.

One of the concerns that we expressed with the guidance issued by the Department of Justice is that it did not go far enough to require State and local police officers not engaged in direct Federal law enforcement activity, which is covered by the guidance, but law enforcement that relies on Federal support, Federal dollars, Federal equipment, that these departments should be required to attest to under Title VI of the Civil Rights Act of 1964 which prohibits racial and ethnic and national origin discrimination. These departments should attest to the fact that they have training programs designed to ensure that racial profiling or profiling of the kind that we have discussed that should be prohibited does not take effect. The problems of unconscious bias which often affect police departments can be overcome with training, that attestations of the fact that these departments have taken affirmative steps are needed.

Now to get back to your specific question about the communities that, in turn, are experiencing crime and are fearful about reporting those crimes to the police, representing another form of nullification, I guess I would say, Senator, the truth is, most crime occurs in this country in communities in which inhabitants reside. So yes, there is Black-on-Black crime just as there is White-on-White

crime. The communities and the makeup of the community often determines that.

Having said that, there is a legitimate concern on the part of many communities that reporting crime, as much as they would like to have the protection of the police officers, often invites a level of systemic abuse which they had seen in the implementation of our criminal laws and the unfairness of it all.

So when we talk about incarcerating individuals for years at a time for nonviolent, drug-related criminal activity and yet we turn to look at legal use of the same product in States like Colorado that had individuals incarcerated for long periods of time, whether it is in Illinois or Minnesota or other locations, there is obviously some sense of unfairness and injustice. We need to try to reconcile that.

One last point, your effort on the Fair Sentencing Act, we have talked about it here, but the truth is, had you not shown the kind of leadership that you demonstrated, your willingness to reach out to Senator Sessions, your willingness to cut a deal and we talked with you at that time, we obviously were pleased that the 100–to–1 disparity was being changed. We had hoped that the disparity would have been eliminated entirely, that there would have been a 1-to-1 ratio of incarceration based on crack or powder cocaine.

Nonetheless, the change that the two of you helped usher in and was approved by the Senate, has led to a substantial reduction in prison time for individuals who would have been adversely affected on an average of about 3 years.

The cost factors involved in the incarceration of these individuals and the impact that returning to their communities at an earlier point in time has had on the overall nature of the community is beyond price. You should be very proud of what you have been able to accomplish.

Chairman DURBIN. Thank you very much, Mr. Henderson.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. Boy, there is so much here. This is a moment, I think, in this country that our first witnesses and all of you have talked about how Ferguson, Staten Island, Cleveland are not anomalies, but there is a focus now in this country. And this is a moment and it is a moment that I think we really need to, at least, at the very least, try to grapple with this, try to focus on it and try to legislate.

I heard from a friend whom I had not heard from in 20 years after Senator Booker spoke—and you heard how powerfully he spoke today. He spoke at our caucus lunch and that same evening I got an email from a friend I had not seen in 20 years who said you have to do something about this. I have conversations with my 15-year-old son that are very uncomfortable, just like Senator Booker talked about, what it is like for a young African-American male, that there is no margin for error in dealing with law enforcement.

I want to ask you, Dr. Alexander, you talked about community policing and it sounds to me that, like what you were saying, Mr. Henderson, I believe, was that when there is not Federal crime involved there is still Federal funding involved. Can we require some kind of protocol in community policing?

Let me ask you something because this is the difference between Ferguson and Staten Island, I think. At Ferguson, the police department really did not represent the community in its makeup. I think in New York it does more. And this is for anyone on the panel, but maybe Dr. Alexander first, what does that say about training versus, or in league with, having the police department represent the community?

Mr. ALEXANDER. Well, it is important, Senator. As we all know, diversity is a very important concept I think we all tend to pay very close attention to and one, in this Nation, that I would hope whether it is Government or private industry, we all make an attempt to rectify, particularly when we see agencies as such that may be lacking in that area.

Diversity is hugely important. There are many departments across this country who are doing it very well every day and there are some communities in this country, Senator, that struggle with the whole concept of diversity. Some of it may be deliberate, where they do not take it that seriously. In some cases, you will have a community such as Ferguson where I had the opportunity to spend some time with the chief there on a number of occasions and we talked about diversification in his department and will use Ferguson as an example.

That is a community where the demographics in that city changed from White to Black over about a 20-year span. I mean, changed hugely. In that transition, the department, the police department itself, did not transition to look more like their community. Now, in all fairness to Chief Jackson, he made attempts as he stated to me, to diversify that department.

One of the biggest challenges that he had inasmuch as he wanted to make that department more representative of that community, he struggled with the fact that the same population that he was trying to recruit, every other police department in his area was trying to recruit as well, too.

For example, St. Louis PD, St. Louis County Police Department. A lot of these officers of color tend to go to larger agencies where they are paid more money and more opportunity for advancements. And then you also had him and others competing for that same population, as well, even in private industry.

But one thing that I concluded and I made very clear to him, and I talked to a number of my chief and police and administrative colleagues across this country, regardless of what that challenge may be to you, we can no longer accept the fact we cannot find any. That is no longer acceptable.

What it means, Senator, is that departments that struggle with recruitment of people of color, they are going to have to work harder. They are going to have to put money in their budgets. They are going to have to go outside their communities to recruit and they may even have to develop within their communities, within their local public schools, pipelines where children and young people can become police explorers, and you begin to groom those young people from very early on in their educational process so that maybe at some point they become a pipeline into your police agency.

It is a challenge in some parts of the country. Where I come from, in DeKalb County, Georgia, metro Atlanta, I do not have a

problem recruiting people of color. I do not have that issue, but here again, it depends on where you are. But one thing I will not accept is the fact that I cannot find people of color. It just means we have to become more creative and we have to become more determined and we have to look around as well, too, and see how other departments or other industries are recruiting, because we may not have to re-create that wheel.

But accepting the fact that we cannot find people of color is not acceptable because a community deserves to look like the government that serves it, whatever that government is that serves that community, there should be some similarities there as well, too. But I can say this, there are a number of departments out there across this country, police departments across this country, who really make dedicated efforts, who really work hard to diversify their agency not only at the lower ranks, but all the way up to the top and we have to applaud those.

But there are agencies out there as well, too, that struggle. Some struggle because they do not have any control over that and others struggle maybe because they do not see the benefit in it and we have to hold those agencies, whoever they are out there, we have to hold them accountable.

Ms. MURPHY. I would ask that these Senators and Members of Congress be creative in attaching conditions to Federal funds to local police departments. We had the Hyde Amendment many years ago which is still in force. It said no Federal funds shall be used for abortion.

Why are Federal funds being used for racial profiling? That is, in fact, what is happening now. We believe the President has the authority under Title VI of the Civil Rights Act to require local police departments receiving Federal funds not to discriminate. And there is a debate in the Justice Department. So many people in the Justice Department said we cannot have any jurisdiction over local police, but millions of dollars flow into over 85 percent of local police departments and I think this should be an amendment strategy or a conversation with the President, but it is important for Congress to act because what is going on in communities of color is just so horrible when it comes to community and police relations. Something has to be done.

And I just want to say that Attorney General Eric Holder, I think, gets this. His staff is working on Byrne JAG grants and that flows a lot of money into police departments.

They say that Congress has a great deal of authority over those programs. So I would ask Members of this Committee to look at the COPS Program, to look at Byrne JAG grants and to see what restrictions can be enacted so that Federal funds are not used in a discriminatory fashion.

Mr. HENDERSON. Senator Franken, could I just add one point to your last question?

Senator FRANKEN. Sure.

Mr. HENDERSON. Thank you. You touched on the non-indictment of Eric Garner and New York and you talked about the police department being more representative of the community. Indeed, it is.

Yesterday, Attorney General Eric Schneiderman of New York issued a request to Governor Cuomo—which we supported, by the way—asking that in instances where police shootings involving civilians occurred, that a special prosecutor be appointed to conduct the inquiry and to handle the indictment process. We believe that that is necessary.

Police departments have an inherent conflict of interest with local prosecutors. That is not to say that they have teamed up to avoid the indictment of police officers. It is to say that the special relationship that prosecutors enjoy with police, after all, they depend upon police to provide information and often testimony in cases that they handle. You cannot handle a police shooting of a civilian in an impartial way without bringing in a prosecutor from the outside.

So when we look at the situation in Staten Island, when we look at the situation in Ferguson—in the Ferguson circumstance, the outcome was virtually foretold at the moment that the prosecutor elected not to recuse himself over the request of local individuals and his record suggested that this outcome was predictable. It is not that way in every circumstance, but certainly it is enough of a concern that the approach that Attorney General Schneiderman took is one that we would recommend broadly.

Senator FRANKEN. Thank you—thank you all.

Chairman DURBIN. Thank you, Senator Franken.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman, and thank you for convening this hearing. Thank you to each of you for being here and for your extraordinary work over many, many years. I want to just go from the last remark that you made, Mr. Henderson, because I think that the lack of indictment in the Garner case has certainly shocked and appalled countless people and led to the kind of suggestions that State Attorney General Schneiderman made. I am not sure that the Federal Government would have authority to require a special State prosecutor to prosecute a local or State policeman, but I think the suggestion certainly is one that has attracted a lot of support and understandably and rightly so.

I appreciate all of you raising the sentencing issue. I am a cosponsor of the Smarter Sentencing Act that was introduced by our Chairman, Senator Durbin, and Senator Lee, and I know as a former prosecutor how important discretion is and how restricting discretion, most particularly in sentencing, can impede justice and fairness and also be against the interest of society.

I also have called for a stronger oversight as the use of military equipment—right now, as you probably know, there really is no, in effect, collection of data as to what is dispensed by the Department of Justice, where it goes, what it is used for. There is essentially no accountability by either the Department of Defense or the Department of Justice and I think one or the other has to impose some accountability.

I want to say, in preface to the question I am going to ask, that I have great respect for police and prosecutors around the country. I have worked in law enforcement for the better part of 40 years, beginning in 1977 as the U.S. Attorney in Connecticut and then as a State Attorney General.

I think there has been tremendous progress in the quality of our policing community at State, local, and Federal levels in the quality of training, the quality of people and practices and even diversity over these years which in no way minimizes the progress that we still have to make. I respect the jobs they have to do, day-in and day-out, facing extraordinary dangers and life-and-death decisions that have to be made sometimes instantaneously.

But I do think that we all benefit by better information and right now I think a lot of folks have come to realize that there is essentially no information about the deaths that occur while individuals are in custody or under arrest. I have introduced legislation in the Senate called the Death In Custody Reporting Act. It is a companion bill to Representative Bobby Scott's bill which passed the House by a voice vote—a voice vote and passed this Committee earlier this year.

It is a pretty simple piece of legislation. It requires States to report how many individuals die each year while they are in custody or during the course of an arrest. The stark staggering fact is we do not know. And I am going to ask that two recent articles be entered into the record. One is from The Washington Post, of September 8, and it is entitled, "How Many Police Shootings A Year? No One Knows." The second comes from the Wall Street Journal, of December 3, and it is entitled, "Hundreds of Police Killings Are Uncounted in Federal Stats."

The Washington Post article essentially says that we know that there are a lot of police shootings, but they are all self-reported. There is no requirement that they be reported. And, again, that is in no way to indicate disrespect for the decisions that are made in those individual instances by 17,000 law enforcement agencies, but the fact is only 750 of them report shootings.

We know the number of police that were shot. We know a vast variety of statistics about what is happening on farms, in cities, but we do not know the number of people including justifiable homicides as they are called that happen on our streets and in our police department. So I hope that—and by the way, Mr. Chairman, I would like for these to be entered into the record if there is no objection.

Chairman DURBIN. So ordered.

[The information appears as submissions for the record.]

Senator BLUMENTHAL. I hope that you will indicate your support for this legislation. I think it would be meaningful to have your opinion and would ask you simply whether you feel this kind of legislation would make sense.

Mr. ALEXANDER. Would you mind if I start, sir?

Senator BLUMENTHAL. Mr. Alexander, I am happy to have you start. I would ask, Mr. Chairman, that each of the other witnesses be given an opportunity to respond as well.

Mr. ALEXANDER. Yes, sir. I am in total support of that. Part of what we are experiencing across this country right now is a failure by many Americans, not just African Americans, but Americans across this country feel a total disconnect from the criminal justice system. In light of the Michael Brown shooting, Eric Garner case, it has become more pronounced. I think people who are not African American, people who did not have that experience, being African

American or of color in this country, are beginning to see clearly that something is wrong in our criminal justice system, not just police, but our entire criminal justice system across the board 360 degrees.

In regards to what you are speaking to sir, I find it unfortunate and embarrassing, as a law enforcement official, that there is not any Federal legislation that requires that cities, States, travel communities, villages all across this great Nation are not reporting those types of shootings and deaths to a Federal authority because they need to be reported, they need to be investigated, they need to be studied scientifically and develop some evidence-based material that might be helpful in identifying a trend in which right now we are just all kind of anecdotally looking at.

So I certainly support that as the president of NOBLE and I would hope that the rest of this country would support it as well, too, because as a sophisticated country as we are, and the leaders of the world, we have a responsibility in this Nation where we have the people who are now protesting in the streets from Berkeley to Maine and from South Florida to Detroit, all across this Nation and around the world. We need to take more accountability.

We need to begin to close some of those gaps and expose ourselves and become much more transparent to the American people in terms of the criminal justice system and how we do business because that is the biggest piece that angers people in Ferguson, and Staten Island, and the rest of this Nation. There is absolutely no sense of transparency. There is a loss of trust and commitment not just from police, but from the entire criminal justice community, and we are a better Nation than that and we have to move toward some real reform, sir.

Senator BLUMENTHAL. Very well said.

Mr. ALEXANDER. Thank you.

Senator BLUMENTHAL. Ms. Murphy?

Ms. MURPHY. Yes. We support the Death in Custody Act and we hope that the Senate can take it up before the end of the lame-duck session. But, you know, data collection is key. We were making momentum in Congress after the Rodney King shooting.

First, the ACLU helped write the Traffic Stop Statistics Act because we had documented in a report that we call, "Driving While Black," how many times Black motorists were pulled over by State and Federal police. There was no data there, but then the problem expanded to stop and frisk and street interactions and we did not have data there. So we worked on the End Racial Profiling Act which would require data collection as a key element. And we think without the data, it is hard to make real reform because we need to know where the problem is, how long it has been going on, which departments are having the most difficult encounters, and the fact that this information is not collected by the Federal Government is just a travesty.

So data collection is crucial to any kind of criminal justice reform, especially getting to the issue of racial profiling.

Mr. HENDERSON. Senator, my colleagues have elaborated quite clearly on the value of the Death In Custody Act. The Leadership Conference is a big supporter of the bill. Like Ms. Murphy, we are hopeful that the Senate will act on this initiative before it adjourns

sini die. That gives us just a few days, but it is such a basic fundamental piece of legislation.

The data collection is essential and that is all the bill would do. So for that reason, we hope that I can get the kind of bipartisan support here that it was able to obtain in the House and we hope the bill becomes law.

Senator BLUMENTHAL. Thank you—thank you all.

Chairman DURBIN. Senator Coons.

Senator COONS. Thank you Senator Durbin—thank you Chairman Durbin for convening this hearing today. I would like to thank the panel for your compelling testimony and for your answers to the many questions posed here.

Like my colleagues, and certainly the leadership of Senator Durbin has been outstanding on this, I am a cosponsor and a supporter of the Smarter Sentencing Act that he and Senator Lee have advanced of the Death In Custody Reporting bill that was just discussed by Senator Blumenthal. So let me—rather than repeating a lot of topics that have already been covered—simply ask for your input on two different questions that are related.

First, I, too, find it shocking we do not have reliable statistics. I, like many of my colleagues, worked closely with and respect law enforcement and the difficult and dangerous jobs that they do, but for us to simply have no data, no meaningful data on deaths in law enforcement incidents, to me is deeply puzzling, frustrating, concerning, and something we need to step forward and take some responsibility for and act to address.

First, why do so many departments refuse to collect and report reliable statistics and why can we not get stronger bipartisan action on that first? Second, we have an undeniably unequaled impact on communities of color in this country from our criminal justice system. Just in my home State of Delaware, which is roughly 22 percent African-American, 42 percent of arrests, 64 percent of the prison population, 86 percent of those who are arrested for drug use. There is an undeniably disparate impact on communities of color and there are several different ways that we could also have broken that out.

The costs, both the lifetime costs, the moral cost, the fiscal costs on African-American men in particular, as my colleague, Senator Booker detailed earlier, is overwhelming. I choose to be encouraged that there are bipartisan bills that I hope this Congress will consider and take up now and in the next Congress. But what can we do to reduce and eliminate the unfair toll that our criminal justice system takes on minority communities? And I would be grateful if the panel will answer each of those two questions to the extent you feel inclined, in the time we have remaining. Thank you.

Mr. HENDERSON. I will start, Senator Coons, and I will be very brief. First, again, I want to reiterate a point that both I and Laura Murphy have made about using Title VI of the Civil Rights Act to condition the receipt of Federal funds on a commitment of nondiscrimination and providing the affirmative training necessary to ensure that that commitment can be carried out.

I believe—I think many of us believe that the departments that receive Federal funds, over 85 percent of the police departments in the country today, do not begin with an affirmative decision to dis-

criminate against their citizens. These are police departments with officers that are committed to fair treatment, I think, for all.

Having said that, however, there are certain systemic factors that enter into the equation that make the kind of biased policing that we have seen almost inevitable. Stereotypes, misperceptions about activity, the assumption that one community is more dependent on drug use than another when in fact the statistics would suggest almost equanimity in the way in which drugs are used. All of those are factors.

So data collection is important. Training is important and encouraging affirmative behavior by using a statute that is over 50 years old, in our view, makes common sense and we hope that that can be encouraged.

I would make one other point. The Smarter Sentencing Act is an incredibly valuable tool and it is often framed in moral terms as a way of addressing this disparity that exists in sentencing and, indeed, it is a moral issue.

But there is another very practical factor that makes this such an important initiative. The Department of Justice will tell you that the Bureau of Prisons, which it administers, is currently eating up about 40 percent of the Department's budget with that number growing annually because of the mass incarceration that our Government supports.

The growth of the Federal budget, the Department of Justice budget and being consumed by the Bureau of Prisons means that other discretionary programs that are so important to the communities in which our Federal officers are deployed cannot be administered effectively with that rate of growth in the Bureau of Prisons. And we are hoping that those statistics will help encourage Members to look at this.

And then last, the President has initiated, as you know, a program called My Brother's Keeper. It has spawned a private initiative called the Boys and Men of Color Initiative. When it was initially proposed, there were some who seemed skeptical about the value of that program.

However, looking at the events of recent weeks and months with the killing of young boys and men by police officers and the attendant economic circumstances that feed into that problem, one would hope that the President's initiative would get a second look and a measure of support and that goes beyond the enforcement of existing Federal laws and using the good offices of the President and Members of Congress to encourage private engagement in these activities as well.

Senator COONS. Thank you, Mr. Henderson.

Dr. Alexander?

Mr. ALEXANDER. Yes, Senator, I think it becomes important to note, unfortunately, sometimes cities and States are not going to take the responsibility to collect data. And it becomes, for me, I think, at that point, a Federal issue where legislation needs to be imposed so that we can begin to direct communities to impart with all of us publicly and privately any information, particularly around in custody deaths. I would even go beyond that and say severe injuries as well, too, because if there are re-occurrences or if

there is a threshold that is met that brings about a certain amount of pause.

I think that gives an opportunity for all of us to begin to look at those agencies. Sometimes it may not be without ill intent. It may just be because of poor training or a lack of internal policies that dictates that certain procedures need to take place.

Oftentimes, what I found over the years, and I have been in this business a very long time now, is that many of our police officers out there who were doing this job every day across this country are doing a great job. That is the greatest majority of them. And sometimes along the way, being that policing is not an exact science, sometimes they get it wrong, not intentionally, but sometimes they do.

But the difference is this, though, it is life-and-death and when death is experienced, then it comes to light and then people start asking questions across this country and in those communities and oftentimes there are no answers. That is one of the biggest problems that is happening today. There are no answers. There is a feeling of no transparency whatsoever. And where truth is not seen or experienced or felt by people emotionally, what we end up with is just what we are experiencing today.

The questions you are asking, Senator, are really age-old questions and questions we have talked about and danced around before, but we have never drawn any conclusion to.

We are at a place now, in this Nation's history, that we are going to have to begin to answer these questions. We are going to have to explore, Mr. Chairman, reasons and ways in which we are going to change and look at this criminal justice system in a very different kind of way because it is not the same for all people.

Sometimes it is based on race. Sometimes it is based on gender. Sometimes it is based on what your economic class may happen to be or all of the above plus some more. But we have got to change this because this is just not a—what we are experiencing every night in this country now is no longer just a fashionable thing, if you will.

It is not just a reaction. We are seeing what is evolving into a movement. It is like we saw the civil rights movement in the 1960s. It is evolving into a movement because all people across this Nation—if you look at Berkeley, California, you look at the demographics of that community both economically and race, thousands of people who are marching out there every night and some will say that that group is also made up of anarchists, and it may be, but I can pretty much assure you as well to that a great number of people that are marching across this country every night are just American citizens who are saying we want to see something different. We need—our whole criminal justice system needs to be explored and possibly revamped.

Now that is a heavy lift. We understand that, but what we have to do right now and ginger in the rest of this country, is a sense of hope that someone is looking at this, someone is paying attention, someone is hearing them and something different is going to happen because the American people in my estimation are just not going to accept this is just being another incident because they had been too frequent and they had been—I should have you look at

the overall incidence in each one of these cases, what you will constantly find is young African Americans confronting police officers who are oftentimes very different from them in race and in economic status, there is a disconnect in this country, not just in policing but there is a disconnect across the whole criminal justice system.

Even the grand jury process needs to be explored because when you have communities in this Nation who no longer trust law enforcement, when you have people in this Nation who tell their children that they should be afraid of the police and they are afraid for their children to go outside because they may be harmed by the police, that is a bad place that we are at in this country and we need to acknowledge it and we need to begin to do something about it.

But I have to be perfectly honest with you, I am tired of people talking to me about it. We truly have to figure out some strategies, some new strategies and maybe do some things in this country we have never tried before, but we have got to take some risk to do something very different than just the same rhetoric that we can constantly give back to people of this country because they are not accepting it any longer and I am not going to give it to them any longer.

Back in my community, my whole idea is to help create some strategies, some change so that community and police and the criminal justice system work well together. A safer community, a safer America. This is not a separated States of America. This is a United States of America and part of our whole criminal justice system is based on the fact of equality for everyone and when we can reach that goal—and it may not become attainable in my lifetime, but we have to get on that trajectory and we have got to find a way to get there. I am willing to do whatever it takes to get there and I think we all are, but it is something that has to be addressed today, sir. Thank you for the question.

Senator COONS. Thank you, Dr. Alexander.

Ms. Murphy?

Ms. MURPHY. Yes. It is always interesting being the only woman at a hearing. We represent 50 percent of the population, but we have to be feisty in order to be heard. So I appreciate my male colleagues but I think there are a number of questions that I would like to address and if I am not able to address them in the oral part of the hearing, I would like to be able to submit answers to you for the record.

But I think your specific question about why we cannot get to data collection goes back to the Fraternal Order of Police. They oppose the Traffic Stop Statistics Act, they oppose the End Racial Profiling Act.

What we need is a convening of police unions and civil rights leaders, maybe at the initiation of you, Senator Coons, or you, Senator Durbin, because they feel—and members of the FOP have told me that if data is collected, it will be used to punish them.

We are not out to punish the police. We are out to end discrimination. And I think the police have to be brought into these discussions and the unions have to be brought into these discussions because they are the people who many Members of Congress rely on

for political endorsements. So they have a greater power in some cases than many of our organizations that do not have political action committees.

I still think that there is this lingering fear that many elected officials have of looking soft on crime. So we have not policed the police as vigorously as we could or should.

I think now is a moment. We have got to use this moment. If it does not happen now, it is not going to happen.

Senator COONS. Well, thank you, Ms. Murphy. Thank you, Mr. Chairman, for indulging a full answer to my questions by the whole panel of witnesses. It is, to summarize, my hope to that in a period when a lack of answers, a lack of transparency, a lack of accountability has led many to protest, not just the perception but the reality of a disconnection between our communities and those charged with the important duty of keeping us safe but doing so within our constitutional order, it is my real hope that we will take action—an action that leads to change, that leads to hope.

But I am clear that without this sort of action that you, Mr. Chairman, have led in leading this bipartisan bill, we will not make progress. So thank you for your leadership in convening this hearing, and for everything you are doing and we hope to do together ahead. Thank you.

Chairman DURBIN. Thanks, Senator Coons. I would like to do maybe one or two follow-up questions.

Ms. Murphy, when I first saw that armored personnel carrier in Ferguson, Missouri, I thought, what in the world is going on here? I did not know police departments had that kind of equipment. I assumed, maybe the most elite biggest city, terrorist threat type of situation, but Ferguson, Missouri?

And it crossed my mind, several questions, what in the world are they doing parading that out at what appeared to be, at the moment, a much different kind of street demonstration? Second, what are we doing as a Federal Government peddling this kind of hardware? Third, is this just a product of some swaggering, chest-thumping chief of police and procurement officer that want to have the newest and biggest and toughest looking vehicles?

But then another question kind of came to me. Do we not live in a country where people are fighting for the right of individual citizens to own military assault weapons? And are we not asking these police to keep communities safe where those citizens might live?

It seems to me that there is an interesting conversation that needs to take place here. I do not want to see armored personnel carriers in every police department in my State, by any means. But I also want to be cognizant of the fact that our police are facing weaponry that we are blessing here, at some levels—and you have even heard it here today in this Committee—that go way beyond the threats that policemen historically faced. I want to be sensitive to that. So how do you respond?

Ms. MURPHY. I want to be sensitive to that, too. But, if you look at the usage of these armored vehicles, these helicopters, these bazookas, these M–16s, they are used for routine law enforcement.

Chairman DURBIN. Which makes no sense.

Ms. MURPHY. Which makes absolutely no sense. Now, if they were used to fight terrorism or armed robbery, bank robberies, or hostage situations, then it makes more sense. And it is so racially biased the way this equipment is being used.

When there is a hostage crisis in the White community, you will see the armored vehicles. But when there is a routine protest or drug arrests in the Black community, you will see these vehicles and more.

Plus, we are rewarding people like Sheriff Arpaio who has a boatload of weaponry that he claims he needs in order to enforce our immigration laws.

Chairman DURBIN. Let us let the police organization respond.

Mr. ALEXANDER. Thank you, Chairman. I certainly do appreciate what my colleague, Ms. Murphy, is saying and I certainly do understand her perception and am quite sure in conversations that she has had with many citizens in her community across the country.

Let me say this as a 37-year veteran in policing where I have spent all of my career, from Miami, Florida, to Orlando to New York and now DeKalb County, Georgia.

The 1033 Program, I think one of the failures of the program, sir, is quite frankly this. You just cannot give out this equipment to anyone who wants it.

In Ferguson, Missouri, that equipment did not belong to the Ferguson Police Department. That equipment belonged, if I am not mistaken, to St. Louis County Police Department or the State Police. Now, some of that equipment, maybe all of it, I cannot say specifically, may have been acquired through the 1033 Program, but the way in which it was utilized in Ferguson, quite frankly in short, was wrong. All day it was wrong. And many chiefs across this country have spoken out against the fact that, how it was used was wrong.

Now the other piece, or the other side to your point, Mr. Chairman, is the fact that post-9/11, this country is still in a position where we are keeping ourselves safe. Police departments across this country are certainly being confronted with small arms and large arms that are at the pleasure of a lot of criminals that are out there.

We find situations, and certainly I have seen situations, in my county in DeKalb where we have used equipment, they are not tanks, we do not own bazookas and sometimes I think this equipment gets exaggerated because none of us have rocket launchers or bazookas, but to the common layperson it all looks the same. I get it. It is the optics of it.

But the reality of it is, there are going to be times when police are going to have to respond to active shooters. If we think about situations across this country where we have had school shootings, mall shootings, movie theater shootings, we want our officers to be able to get in, find that target, and do what needs to be done to save the lives of others. The only way they are going to do that sometimes is, they are going to have to be in armored equipment.

The problem is not the equipment itself, it is the utilization of it and before that heavy equipment, in my opinion, is given out, there needs to be—you need to be able to show a need for it in your

community. That is number one. You need to be able to show cause and a need.

Number two, you need to be held accountable to that equipment which means that you have to have written policies which have its terms of engagement as to when you will take that equipment out and under what circumstances it would be used for.

One thing we cannot use it for is for people who are peacefully protesting in this country. We cannot do that. The optics on Ferguson was horrific and I think it shocked many people in this country, all across this country, regardless of whether they were Democrats or Republicans, Black or White, men or women. It was shocking. And we learned from it, hopefully.

But what we want to be able to do is also protect our police officers. But there has to be a time and moment when that equipment is utilized because if I am being held hostage in my home or in my bank when I am making a deposit, I want the police to be able to get there and be safe in getting there so that they can secure that bank, arrest that criminal, and get me home.

So there is a place for it, but it is not to be used against American people who are protesting and exercising their First Amendment right as to what we all witnessed and which, understandably, left a bad taste in many Americans' mouths.

Chairman DURBIN. Thank you very much, Dr. Alexander.

Mr. ALEXANDER. Thank you.

Chairman DURBIN. My thanks to this panel. There has been a great deal of interest in this hearing today. We have here a statement from Senator Leahy and statements from more than 70 different organizations wanting to be a part of the record on this general overview of civil rights in America today. Since there is no one here to object, it is going to be put in the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

[The information appears as submissions for the record.]

Chairman DURBIN. I want to make two closing comments.

First, I want to acknowledge Mara Silver on my staff who has been the author of the Smarter Sentencing Act and has worked harder on it than anybody. Mara, thank you so much for what you have done.

And special thanks to Joe Zogby who, 8 years ago, said to me, Senator, I think we need a Subcommittee on Human Rights. And I said, Joe, what would we talk about? Well, we found a lot to talk about for 4 years and then, when we were merged into the Constitution, Civil Rights and Human Rights Subcommittee—I am very proud of what this Subcommittee has set out to do, particularly proud of the fact that we actually created legislation that starts to address some of these issues rather than just talk about them and that is primarily due to the guidance of Joe Zogby and the staffers who have worked with him. I thank Joe and his family here today, for giving me such great service to this Judiciary Committee.

There may be some follow-up questions coming your way and if you could respond to them in a timely fashion, I would certainly appreciate that.

This is, as I said, my last hearing as Subcommittee Chair for the time being and I am hoping that Senator Cruz, or whoever succeeds me, will continue in this tradition of addressing the issues of our day.

Thank you for joining us.

This Subcommittee stands adjourned.

[Whereupon, at 4:40 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

On

"The State of Civil and Human Rights in the United States"

Tuesday, December 9, 2014
Hart Senate Office Building, Room 216
2:30 p.m.

Panel I

The Honorable Cory Booker
United States Senator
State of New Jersey

The Honorable Luis Gutiérrez
United States Representative
State of Illinois, 4th District

The Honorable Keith Ellison
United States Representative
State of Minnesota, 5th District

Panel II

Dr. Cedric Alexander
President, National Organization of Black Law Enforcement Executives
Public Safety Director, DeKalb County
DeKalb County, GA

Wade Henderson
President and CEO
The Leadership Conference on Civil and Human Rights
Washington, DC

Laura Murphy
Director, Washington Legislative Office
American Civil Liberties Union
Washington, DC

Testimony of Dr. Cedric Alexander
National President of the National Organization of Black Law Enforcement Executives (NOBLE)
Before the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on "The State of Civil and Human Rights in the United States"
December 9, 2014

Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee, I bring you greetings on behalf of the Executive Board and members of the National Organization of Black Law Enforcement Executives – NOBLE.

My name is Dr. Cedric Alexander, National President of NOBLE, and Deputy Chief Operating Officer for Public Safety, DeKalb County, GA. It is an honor to be here today to participate as a witness in the Senate's hearing on "The State of Civil and Human Rights in the United States". I want to acknowledge and thank Chairman Durbin for holding this hearing and inviting me to participate.

I speak to you from the perspective of a person who has over 37 years of law enforcement experience and who has held positions at the highest levels both at the federal, county, and city levels. In addition, I hold a Ph.D. in clinical psychology.

I represent an organization, NOBLE, whose mission is to ensure EQUITY IN THE ADMINISTRATION OF JUSTICE in the provision of public service to all communities, and to serve as the conscience of law enforcement by being committed to JUSTICE BY ACTION.

It is my position that this country has the unique opportunity TODAY to address the lack of trust and understanding of law enforcement by communities of color. It is imperative to every citizen that we collectively deploy solutions in the areas of training, community policing, and technology to ensure that America is secure both domestically and internationally.

Secondly, through these solutions, we are able to further the hopes and dreams of many of our forefathers in realizing true Civil Rights and Human Rights as stated in the Declaration of Independence: *"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."*

The recent events in Ferguson, Missouri and in Staten Island, New York, when combined with real and/or perceived attacks on civil rights legislation, have created an environment where many people of color feel disenfranchised by their national and local governments. More importantly, there is a pervasive belief (right or wrong) that the lives of minorities are of less value than that of their counterparts.

Solutions to Building Bridges of Understanding and Partnership Between Law Enforcement & Communities They Are to Protect & Serve

Training

Cultural competency is a critical component to bridging the gap amongst law enforcement and communities of color. It is the foundation for people of different cultures and socio-economic backgrounds to interact effectively. When developed and implemented as a framework, cultural competency enables systems, agencies, and groups of professionals to function effectively to understand the needs of culturally diverse groups. It is critical that law enforcement reevaluate its training methodologies to ensure that they reflect the 21st century needs and incorporate cultural competency training for police officers that is part of the recruit and in-service training.

Militarization of police has become a growing concern and interest throughout our country in recent years due to the use of tactical equipment and gear to combat everyday crimes. The 1033 Program was created by the National Defense Authorization Act in 1997 as part of the U.S. Government's Defense Logistics Agency Disposition Services (DLA) to transfer excess military equipment to law enforcement agencies. Every year, hundreds of millions of dollars worth of military equipment flows from the federal government to state and local police departments. As a result, departments have implemented the use of military equipment, as seen during recent events in Ferguson, which has unfairly targeted American citizens. There must be justification, accountability and training to support the continued use of such tactical measures. NOBLE feels that training is a key component of ensuring the correct application of this type of resource.

Community Oriented Policing

It is our recommendation that the law enforcement community adopt community policing as the philosophy of policing in the U.S.

Here are the key components of community policing:

- Community policing allows officers to demonstrate their support for the community. Residents and officers are allies. Officers respect and protect

the civil rights of residents. Racial profiling and other forms of discrimination are strictly prohibited.

- Community policing demands that officers interact with people who live or work in neighborhoods that they patrol. Officers are trained to communicate with people, solve community problems and develop an appreciation of cultural and ethnic differences.
- Community policing emphasizes the importance and value of human life. The use of excessive force is absolutely prohibited and deadly force is reserved strictly for when an officer's life or the life of a citizen is at risk.

NOBLE has launched a pilot program entitled "The Law and Your Community" through funding from the Department of Justice – COPS Office. The program's aim is to develop trust and understanding between law enforcement and the community. The Law and Your Community is an interactive training program for young people ages 13-18 designed to improve their communications with law enforcement officers and their understanding of their federal, state and local laws. Components of the program include:

- Citizenship: What does it mean to be a citizen? What are the laws governing everyday life including traffic laws? What are your rights as a citizen?

- Basic Laws: Understanding the basic laws governing issues such as "stand your ground," gun ownership, staying safe within your community, and maintaining positive affiliations – including peer relationships, maintaining good grades, adult relationships, and benefits of mentors.
- Law Enforcement Engagement: Educating young people and adults on how to engage and navigate communication with law enforcement officers, what is community policing?, and understanding the realities of working in law enforcement.

Technology

We feel that technology can be leveraged to support the effective implementation of community policing and ensure maximum transparency to the public. Through technology, partnerships with communities can be strengthened in the areas of problem-solving and partnership initiatives. Likewise, there is an important role in applying technology in improving the effectiveness of law enforcement training.

Listed below are technology recommendations:

- Requirement of body cameras for law enforcement officers.

- Deployment of various social media platforms to allow law enforcement departments to better communicate and interact with local residents.
- Use-of-force and firearms training systems.

By implementing these recommendations on training, community policing and technology, we believe that real progress can be made in improving the relationship between law enforcement and the communities they serve. This would greatly improve the state of civil rights and human rights in America. I thank the Subcommittee for the opportunity to testify and I would be happy to answer any questions.

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The Leadership Conference

The State of Civil and Human Rights in the United States

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

December 9, 2014

Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee: I am Wade Henderson, president & CEO of The Leadership Conference on Civil and Human Rights. I want to thank you for the opportunity to submit testimony for the record regarding the state of civil and human rights in the United States.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership to promote and protect the civil and human rights of all persons in the United States. Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative advocacy and public education. The Leadership Conference's more than 200 national organizations represent persons of color, women, children, organized labor, persons with disabilities, seniors, the lesbian, gay, bisexual, and transgender (LGBT) community, and faith-based organizations.

The Leadership Conference is committed to building an America as good as its ideals – an America that affords everyone access to the polls, ensures economic and educational opportunity for all, and guarantees that our justice system operates in a manner that is fair to all Americans.

This is the critical and necessary work of not only the civil and human rights community, but our elected officials, in order to continue to meet the current challenges we face in our society.

As such, we welcome the opportunity that this important and timely hearing provides to look back on what this subcommittee has accomplished and look forward to the work that is left undone in order to further advance civil and human rights in the areas of voting, justice system reform, and hate crimes protections.

I. Introduction

The Leadership Conference's goal - to create an America as good as its ideals - is not just rhetoric. We have come a long way from the race riots and physical violence of just decades ago. But we have far more work to do to create a fair and equal society, where all members are treated as first class citizens.

We mark a number of anniversaries this year –the 50th anniversary of the Civil Rights Act, the 5th Anniversary of the Hate Crimes Prevention Act, the 20-year commemoration of the United States' ratification of the Convention on the Elimination of All Forms of Racial

Discrimination (CERD), and the 10-year anniversary of the last OSCE anti-Semitism convening—while, next year, we commemorate the 50th anniversary of the Voting Rights Act. These anniversaries provide an ideal opportunity to reflect on how far we have come, and to rededicate ourselves to what lies ahead.

In addition to marking these significant anniversaries, this year, the United States was reviewed on its compliance with international human rights standards under treaties like CERD, the Convention against Torture (CAT), and the International Covenant on Civil and Political Rights (ICCPR). These treaties obligate member nations to take steps to reduce racial and ethnic discrimination and disparities within their borders. During the United States' review, voting rights, racial discrimination, criminal justice, and police brutality were consistently recognized as continuing problems that alienate a significant portion of our society.

These issues are among the most important for our nation to address in the 21st century. While much progress has been made, we still face struggles on many fronts. For the past several decades, our laws have largely failed to ensure the justice that we all seek. We need to fix our voting system so no voter is kept from the ballot box, and we must eradicate any and all racial discrimination in voting. We must reform our racially and ethnically discriminatory justice system. We need vigorous enforcement of hate crime protections and expanded, coordinated police-community efforts to track and respond to hate violence and improve hate crime data collection efforts.

These are big challenges. But historic anniversaries remind us that our journey toward justice is like an Olympic relay. We take the torch from those who came before and pass it along to those who will follow. We applaud efforts to address civil rights issues and spark reform, but a significant portion of the country continues to be alienated and disenfranchised. We must continue to work together to better protect and promote justice throughout the United States.

We hope this committee will continue to build on its impressive legacy. While much has been achieved, there is much left to do, and we look forward to working with the subcommittee on voting rights, criminal justice reform, and hate crimes, as well as other issues important to ensuring fairness and justice for all Americans. Moving forward, we must continue to work together to protect the right to vote for all Americans, by passing legislation like the Voting Rights Amendment Act (VRAA) and the Democracy Restoration Act (DRA). Indeed, this recent mid-term election made clear that voting discrimination remains a real and ongoing problem that must be actively rooted out. Moreover, tragic current events highlight systemic issues of police brutality and racial discrimination that persist at every stage of our justice system. We must enact policies aimed at improving the system in ways that reduce mass incarceration, assist in successful re-entry, and dispel racial biases that are pervasive throughout our country. Moreover, it is imperative to address violence committed against individuals because of their race, religion, ethnicity, national origin, gender, gender identity, or sexual orientation.

Although significant progress has been made to advance civil and human rights, these issues demonstrate the continued need for bipartisan collaboration to break down discriminatory barriers and promote justice throughout the United States. In partnership with civil and human rights groups and civic leaders, Congress and law enforcement officials can and should advance these reforms.

II. Voting Rights

The Aftermath of Shelby

Voting rights is a cornerstone of our democracy—if you don't vote, you don't count. The Voting Rights Act (VRA) is universally recognized as the most significant piece of legislation to emerge from the civil rights movement. It enshrined our most fundamental values by guaranteeing to all of our citizens the right to vote, which the U.S. Supreme Court has called "preservative of all rights."[i] It assures voters of color the utmost protection to participate fully in our political process.

As one of this country's most successful pieces of civil rights legislation, the VRA stands as a shining example of bipartisan cooperation. It has enjoyed broad, bipartisan support every time it has come up for reauthorization. In fact, since it was passed in 1965, each of the last four reauthorizations of the VRA were signed into law by Republican presidents. In each instance, members of both parties recognized the ongoing importance of protecting minority voters from discrimination and, during the most recent renewal in 2006, they worked together to amass an extensive record to establish the ongoing need for these protections.[ii]

Since the adoption of the VRA, Section 5 of the Act has been a particularly important and effective tool in the fight against voting discrimination.[iii] It requires review of any proposed voting changes in states with the worst histories of voting discrimination. However, in June 2013, in *Shelby County v. Holder*, the U.S. Supreme Court, in a bare majority vote, struck down a core provision of the VRA – Section 4(b) – which functioned to gut Section 5's federal "preclearance" compliance review process.[iv] In its wake, there is no comparable safeguard. That is why the *Shelby* decision was devastating not only to communities who have been protected by Section 5, but also to our nation's democratic process. The Court undermined congressional authority and wrongly gutted one of the most important protections the VRA contains. By striking down the coverage formula—Section 4(b)—the Court effectively removed the ability of Section 5 to do its job. Section 2 alone, involving cases are long, expensive, and complex, is insufficient to protect the rights of minorities and other marginalized groups. Accordingly, we now must look to Congress to renew its efforts to ensure that all voters are able to participate in the democratic process by passing legislation to correct the *Shelby* decision.

The VRA has provided significant protection to voters of color, particularly in areas where historical forms of discrimination in voting have proliferated. Although the days of poll taxes, literacy tests, and brutal physical intimidation are behind us, efforts at disenfranchisement of voters of color continue to this day. The *Shelby* decision made millions of voters of color more vulnerable to voting discrimination by opening the door for formerly covered states and localities to implement new and onerous restrictions on voting.[v] Two months after the Court's decision, the North Carolina state legislature passed a wide-ranging bill that adds numerous procedural barriers to voting and reduces voting opportunities by requiring a government-issued photo identification card, limiting early in-person voting, and prohibiting citizens from registering to vote in conjunction with early voting.[vi] Likewise, within mere hours of the *Shelby* decision, Texas state officials announced that they would immediately begin to enforce a 2011 photo-identification requirement for in-person voting—a requirement that had been blocked under Section 5 not only by an administrative objection by DOJ, but also by the judgment of a three-judge federal court.[vii] In the immediate wake of the *Shelby* decision, the city of Pasadena, Texas, changed the structure of its district council by eliminating two seats elected from predominantly Latino districts, and replacing those seats with two at-large seats elected from majority white districts. Within several months after *Shelby*, changes to early voting were announced in Georgia and Florida.[viii] Equally troublesome are reports of statewide voter purges in Florida and Virginia.[ix]

Although statewide changes to redistricting or voter qualifications are more widely known, the lack of preclearance is particularly troublesome at the local level where a number of counties and cities have

eliminated elected positions once held by people of color, altered voting districts or methods of election, moved or closed polling places, and shifted the dates of or even cancelled elections—all of which can effectively disfranchise voters of color, and which can occur without any prior public notice or legal challenge.

In the pre-*Shelby* world, states and local jurisdictions with a recent history of racial discrimination in voting had to notify their local community members of all proposed changes to the voting laws in the jurisdiction. By eliminating the requirement that states and localities have those proposed changes reviewed by the federal government to determine whether they are racially discriminatory, the Court also eliminated the notice requirement. Thus, there is no requirement that state or local government provide *any notice at all* to the local community when they plan to change the rules governing the voting process – including no notice of changes to polling place locations, changes in the times for early voting, or changes to the rules governing electoral districts. Where there used to be information sharing, collaboration among communities, and transparent government decision-making informed by the perspective of the local community, there is now silence and confusion.

The question for our country is whether this "new normal" is consistent with our vision of a vibrant, inclusive, 21st century democracy. Are we comfortable with a system that makes it harder for you to vote if you are poor, Black, Native American, or have a disability? The answer must be "no."

Voting should make us truly equal, whether we're rich or poor, young or old, famous or unknown, male or female, gay or straight, White, Black, Asian, or Latino. But in state after state, we've seen politicians manipulating the election rules to make it harder for people – primarily people of color, low-income people, and students – to register, vote, and have an equal political voice in our democracy.

Rather than blocking access to our democracy, we must all work together to ensure that all voters have a voice.

Why We Need the VRAA

The recent midterm federal election was the first to be held without the protection of Section 5. In it, we witnessed the most unfair, confusing and discriminatory election landscape in almost 50 years.[x] And it's a disgrace to our citizens, to our nation, and to our standing in the world as a beacon of democracy. However, it comes as no surprise. This is the predictable outcome of the first major election since the Supreme Court's decision in *Shelby*.

In elections across the country, from congressional races to local school board elections, the right to vote – and our democracy – took a brutal and totally unacceptable beating. The real losers in this election were the voters.

We cannot allow this recent mid-term election – with its discriminatory voting laws and mass confusion – to become the new normal. That's why Congress must restore the VRA.

We applaud bipartisan efforts to introduce legislation in Congress to address the gaping holes left by the *Shelby* decision. A group of senators and representatives, including Senator Durbin, cosponsored the Voting Rights Amendment Act of 2014, which updates the Voting Rights Act of 1965 in response to the *Shelby* decision. This bipartisan bill contains a modern, flexible and forward-looking set of protections that work together to ensure an effective response to racial discrimination in voting in every part of the country. It will enhance the power of federal courts to stop discriminatory voting changes before they go

into effect; establish a flexible coverage formula that is updated annually to require preclearance for all voter rule changes in places with numerous recent voting rights violations; require increased transparency through public reporting requirements that will help keep communities informed about voting changes across the country; and continue the federal observer program in order to combat racial discrimination at the polls.

Without congressional action, decades of progress in combating racial discrimination in our electoral system is now at risk. Our common aim is to ensure that all Americans can participate equally in the political process. It is crucial that we work together to ensure that no one is denied the right to vote, particularly because of his or her race or ethnicity.

Felon Disenfranchisement
Disenfranchisement of formerly incarcerated persons is contrary to our democratic principles, disproportionally impacts minorities, and is a barrier to successful reintegration.

Though, until the *Shelby* decision, the nation has made consistent progress toward expanding and securing the right to vote for all citizens, the denial of voting rights for formerly incarcerated individuals remains a huge issue. In one form or another, laws that disenfranchise individuals with felony convictions have existed in the United States since its founding. In fact, 29 states had such laws on the books at the time of the ratification of the Constitution.[xi] These laws were based on the concept of a punitive criminal justice system; because those convicted of a crime had violated social norms, they had therefore proven themselves unfit to participate in the political process. Beginning around the end of Reconstruction—many southern states significantly broadened felony disenfranchisement and began focusing on crimes believed to be disproportionately committed by African Americans.[xii] The practice, together with many of other measures, were used as a means to circumvent the requirements of the Fifteenth Amendment,[xiii] which prohibited states from preventing individuals from voting on the basis of "race, color, or previous condition of servitude."[xiv]

Currently, individuals with felony convictions in the United States are subject to a patchwork of state laws governing their right to vote. The scope and severity of these laws varies widely, ranging from the uninterrupted right to vote to lifetime disenfranchisement, despite completion of one's full sentence.

While some states provide only for the disenfranchisement of those currently serving their sentence, the vast majority of disenfranchised individuals have completed their prison term.[xv] Of the estimated 5.85 million American adults barred from voting, only 25 percent are in prison. By contrast, 75 percent of disenfranchised individuals reside in their communities while on probation or parole, or after having completed their sentences.[xvi] Approximately 2.6 million individuals who have completed their sentences remain disenfranchised due to restrictive state laws.[xvii]

Further, there is clear evidence that state felony disenfranchisement laws have a disparate impact on African Americans and other minority groups. At present, 7.7 percent of the adult African-American population, or one out of every thirteen, is disenfranchised. This rate is four times greater than the non-African- American population rate of 1.8 percent.[xviii] In three states, at least one out of every five African-American adults is disenfranchised: Florida (23 percent), Kentucky (22 percent), and Virginia (20 percent).[xix] Nationwide, 2.2 million African-Americans are disenfranchised on the basis of involvement with the criminal justice system, more than 40 percent of whom have completed the terms of their sentences.[xx]

Information on the disenfranchisement rates of other groups is extremely limited, but the available data suggests felony disenfranchisement laws may also disproportionately impact individuals of Hispanic origin and others. Hispanics are incarcerated in state and federal prisons at higher rates than non-Hispanics: about 2.2 times greater for Hispanic men and 1.7 times for Hispanic women.[xxi] If current incarceration trends hold, 17 percent of Hispanic men will be incarcerated during their lifetimes, in contrast to less than 6 percent of non-Hispanic white men.[xxii] Given these disparities, it is reasonable to assume that individuals of Hispanic origin are likely to be barred from voting under felony disenfranchisement laws at disproportionate rates.

Although voting rights restoration is possible in many states, it is frequently a difficult process that varies widely among states. Individuals with felony convictions are typically unaware of their restoration rights or how to exercise them. Further, confusion among election officials about state law contributes to the disenfranchisement of eligible voters.[xxiii] Reliable information on the rate and number of individuals whose rights have been restored is difficult to obtain, but preliminary data suggest that in states that continue to disenfranchise after the completion of an individual's sentence, the percentage of restoration ranges from less than 1 percent to 16 percent.[xxiv] This data indicate that the vast majority of individuals in these states remain disenfranchised.[xxv]

It is detrimental to individuals and society for voting rights to be taken away for life simply because a crime has been committed, especially after the individual's sentence has been completed and amends have been made. According to the American Civil Liberties Union:

> *Studies have shown that the benefits of voting are numerous. Individuals who vote generally help to make their communities safer and more vibrant by giving to charity, volunteering, attending school board meetings, serving on juries and participating more actively in their communities.* [xxvi]

Research has also shown that formerly incarcerated individuals who vote are less likely to be rearrested."[xxvii] In Florida, where former Governor Charlie Crist briefly made it easier for people with felony convictions to get their voting rights restored, a parole commission study found that re-enfranchised people with felony convictions were far less likely to reoffend than those who hadn't gotten their rights back.[xxviii] According to the report, the overall three-year recidivism rate of all formerly incarcerated people was 33.1 percent, while the rate for formerly incarcerated people who were given their voting rights back was 11 percent.[xxix]

When someone has served time in prison, society must restore that person's right to vote. There is no rationale for continuing to deny individuals the right to vote after the completion of their sentence. Simply put, no one in a democracy is truly free unless they can participate in it to the fullest extent possible.[xxx]

Recent efforts from both Democrats and Republicans are underway to address this problem, at least in federal elections. In the 113th Congress, Senator Ben Cardin introduced the Democracy Restoration Act (DRA), restoring voting rights in federal elections to disenfranchised individuals upon their release from incarceration. In addition, Senator Rand Paul introduced the Civil Rights Voting Restoration Act, which does not go as far as DRA, but would restore federal voting rights for non-violent offenders. Both Senators Cardin and Paul have pledged to work on a bipartisan basis to combine the two pieces of legislation and we hope they will continue to work in that fashion to pass reform legislation in the 114th Congress.

The administration has also expressed its support for re-enfranchising individuals with convictions. In February of this year, Attorney General Eric Holder recognized that it was time to reconsider laws that permanently disenfranchise individuals who have been released from incarceration.[xxxi] Unfortunately, the attorney general placed limitations on the department's support for removing voting bans. We encourage the Department of Justice to expand its support of automatic restoration and oppose restrictions for those on parole or probation or with unpaid fines.

The ability to vote—to have a part in choosing the elected officials whose decisions impact our lives, families, communities, and country—is at the core of our democracy and what it means to be an American. The VRAA and Democracy Restoration Act are workable approaches to resolve these problems and we must continue to work together to ensure no one is denied the right to vote because of racial discrimination or a former criminal conviction.

III. Justice System Reform

Our justice system is in crisis. The United States has the highest rate of incarceration in the world, with almost 2 million people incarcerated and 7 million people under some form of correctional supervision or control.[xxxii] Further, racial and ethnic minorities continue to be overrepresented in state and federal prisons. Though African Americans and Latinos make up 13 percent and 17 percent of the U.S. population, respectively, they comprise 40 percent and 35 percent of the federal prison population.[xxxiii] This is evidence of the continued racial bias and discrimination that persist at every stage of our justice system, from policing to trial to sentencing and finally to reentry. Without a doubt, tragic events like the deaths of unarmed individuals Michael Brown in Ferguson, Missouri, Eric Garner in New York City, New York, and Tamir Rice in Cleveland, Ohio, among others, provide a teachable moment for our nation – and an urgent opportunity to discuss and address the need for systemic reform.[xxxiv] The failure to do so will continue to erode any remaining trust that communities of color have in our justice system operating fairly and impartially.

Racial Profiling

More than a decade after President Bush announced racial profiling is "wrong and we will end it in America," communities of color across the country are still subjected to profiling in a variety of contexts. In particular, Muslim Americans and those perceived to be Muslim, including Arabs, South Asians, Middle Easterners, and Sikhs have been subject to heightened scrutiny, invasive questioning, and wide spread surveillance and mapping by federal law enforcement based on cultural and ethnic behavior since the 9/11 terror attacks.

Racial or discriminatory profiling involves the unwarranted screening of certain groups of people, assumed by the police and other law enforcement agents to be predisposed to criminal behavior. Multiple studies have proven that profiling results in the misallocation of law enforcement resources and therefore the failure to identify actual crimes that are planned and committed. In addition, by relying on stereotypes rather than proven investigative procedures, the lives of innocent people are needlessly harmed by law enforcement agencies and officials.

According to the U.S. Constitution, federal laws, and guidelines, every person has the fundamental right to equal protection under the law, regardless of race, ethnicity, religion, national origin, gender, sexual orientation, or gender identity. Profiling is antithetical to the founding principle in the Declaration of Independence that "all men are created equal" and to the constitutional right to equal protection under the law. Biased law enforcement practices primarily designed to impact certain groups are ineffective and

often result in the destruction of civil liberties for everyone. Racial profiling makes us all less safe, by distracting law enforcement from the pursuit of individuals who pose serious threats to security.

Racial profiling also violates international standards against non-discrimination and undermines U.S. human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights. Multiple international human rights bodies, including the United Nations Committee on the Elimination of Racial Discrimination (which monitors implementation of the ICERD), have raised concerns about the persistence of racial and ethnic profiling by U.S. law enforcement. In its 2014 concluding observations to the United States, the Committee stated "it remains concerned at the practice of racial profiling of racial or ethnic minorities by law enforcement officials."[xxxv]

Indeed, discrimination and racial disparities persist at every stage of the U.S. criminal justice system, from policing to trial to sentencing. Police officers, whether federal, state, or local, exercise substantial discretion when determining whether an individual's behavior is suspicious enough to warrant further investigation.[xxxvi] Profiling is so insidious and pervasive that it can affect people in their homes or at work, or while driving, flying, or walking, causing distrust in our diverse communities. Moreover, tragedies like the recent shooting death of Michael Brown, highlight the reality that military-style response by the local police to demonstrators, and allegations of racially biased law enforcement, are the result of longstanding and corrosive limitations on our nation's law enforcement policies that allow unlawful profiling to persist across the country.

For more than a decade, we have consistently urged the Department of Justice to revise its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of discriminatory profiling. Although the 2003 Guidance prohibited the use of race and ethnicity by federal law enforcement as an element of suspicion absent any suspect-specific information, it contained a blanket exception for national and border security. It also did not cover profiling based on religion, national origin, gender, sexual orientation, or gender identity and was not applicable to, nor binding on, state or local law enforcement.[xxxvii]

We applaud Attorney General Holder's commitment to ending racial profiling and the release of the long-awaited Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity. The revised guidance is a significant step forward from the 2003 Guidance by: including gender, national origin, religion, sexual orientation and gender identity as protected categories in addition to race and ethnicity; removing some of the existing loopholes, including one for national security; requiring enhanced data collection, additional training and oversight measures for federal law enforcement agencies; and applying to state and local authorities participating in federal task forces.

While these are significant advances, we remain troubled by the exceptions that remain for the screening and inspection activities for border and transportation security and U.S. Border Patrol activities in the vicinity of the border and ICE Homeland Security Investigation activities at ports of entry. These excluded activities create continued cause for concern, particularly because Latinos and religious minorities are disproportionately affected by their practices. In addition, we remain troubled by provisions that allow the offensive practice of collecting racial and ethnic information and "mapping" American communities around the country based on stereotypes. These mapping activities have unfairly targeted Arab, Muslim, Sikh, South Asian, and Middle Eastern communities. Moreover, the revised guidance does

not appear to curtail the Federal Bureau of Investigation's authority to engage in unlawful and abusive surveillance of innocent Americans.

Finally, we hope the 2014 Guidance will be used as an example for state and local law enforcement agencies of unbiased law enforcement practices. We remain committed to working with DOJ to ensure greater accountability for state and local police agencies that receive federal funds. It is more critical now than ever to ensure practices that end the ability for state and local agencies to profile individuals or communities and to continue to reward those agencies that adopt best practices.

In addition, we applaud and support federal legislative efforts to prohibit profiling through the End Racial Profiling Act (ERPA). ERPA would prohibit profiling and mandate training for federal law enforcement officials on these issues. As a condition of receiving federal funding, state, local, and Indian tribal law enforcement agencies would be required to collect data on both routine and spontaneous investigatory activities. The Department of Justice would be authorized to provide grants to state and local law enforcement agencies for the development and implementation of best policing practices, such as early warning systems, technology integration, and other management protocols that discourage profiling. Lastly, this important legislation would require the attorney general to issue periodic reports to Congress assessing the nature of any ongoing racial profiling.

Despite bipartisan energy supporting legislation like ERPA, racial profiling continues to be a pervasive and harmful practice that negatively impacts both individuals and communities. We look forward to working with policymakers and this committee to ensure progress of this important legislation.

Police Militarization and Excessive Use of Force

In addition to a reliance on unlawful profiling, issues of excessive use of force and militarization of law enforcement agencies are of grave concern to communities of color. Policing in the United States has become dangerously militarized, largely through federal programs that arm state and local agencies with weapons for use in law enforcement activities. The police response in Ferguson in the aftermath of the August 9, 2014, shooting death of Michael Brown brought national attention to the issue. The nation watched as peaceful protestors took to the streets to express their angst over Michael Brown's death and police responded with armored vehicles, assault rifles, and other military weapons and equipment. The country soon learned that such highly militarized responses were not limited to Ferguson. In fact, Special Weapons and Tactics (SWAT) teams have long been carrying out the so-called War on Drugs, though most often for low level drug offenses, in militarized fashion,[xxxviii] which disproportionately affects minority communities. Indeed, for drug investigations involving minorities, SWAT teams were twice as likely to force entry into an individual's home using violent tactics and equipment.[xxxix]

The Department of Defense excess property program, known as DoD 1033, provides surplus DoD military equipment to state and local civilian law enforcement agencies for use in counter-narcotics and counter-terrorism operations, and to enhance officer safety.[xl] Since the 1990s, DoD 1033 has provided more than $5 billion worth of surplus military equipment to state and local agencies at no cost to those agencies, yet at substantial cost to federal taxpayers.[xli] During a September 9, 2014 Senate hearing, we learned that one-third of the equipment being transferred through the program is new.[xlii] Hearing witnesses also revealed a lack of communication and coordination between the Department of Defense and the other agencies providing funding to local agencies for military equipment.[xliii] Ultimately, the hearing raised more questions than it provided answers.

The White House[xliv] and Congress[xlv] have begun examinations of DOD, DOJ, and DHS programs that transfer excess military equipment and weapons to police departments for counterterrorism and drug interdiction purposes.[xlvi] Specifically, the White House recently asked for federal funds to reform police departments to focus on improving officer training when given access to high-powered weapons.[xlvii] Further, in the recent NDAA reauthorization, the counterterrorism and counter-drug language was removed.[xlviii] These are steps in the right direction, but more work must be done to prevent any future Fergusons from happening.

Additionally, the shooting death of Michael Brown is but one instance in a long list of unexplained deaths that has raised significant questions about misconduct and excessive use of force by police officers. Federal, state, and local police continue to use force, and in particular, more deadly force, disproportionately against individuals and communities of color.[xlix] The National Police Misconduct Statistics and Reporting Project, run by the Cato Institute, reports that there were 4,861 unique reports of police misconduct that involved 6,613 sworn law enforcement officers and 6,826 alleged victims in 2010, the most recent year for which there are data.[l] There were 247 deaths associated with the tracked reports in 2010 and 23.8 percent of the reports involved excessive use of force, followed by sexual misconduct complaints at 9.3 percent.[li] In 2010, states spent an estimated $346 million on misconduct-related civil judgments and settlements, not including sealed settlements, court costs, and attorney fees.[lii]

Though telling, these data are limited and do not provide a full picture of the scope of the problem. Currently, there is no federal requirement to collect data disaggregated by race on use of force or deaths in custody by state and local police, illustrating the crucial need for systemic reform at the federal level to address these issues.

The administration recently announced several new initiatives to study these issues and provide recommendations for solutions, including the purchasing of body worn cameras for police in the field, a pilot project to improve community police relations and more than 200 million dollars for better training of law enforcement officials. Though a step in the right direction, there is more to be done to restore the confidence that so many have lost in our justice system and to address issues of police misconduct.

Congress must act to collect reliable and comprehensive data disaggregated by race[liii] and use its federal funding authority to require state and local police departments to take necessary steps to reduce the use of deadly force and decrease instances of police misconduct. Further, the administration must continue to launch both criminal and civil rights investigations in cases of misconduct or excessive use of force by state and local police.

Sentencing

The proliferation of the use of mandatory minimum penalties, particularly at the federal level as a result of the "War on Drugs," has had a significant impact on minority communities and fueled the country's incarceration rates. This country has enacted policies that have contributed to an incarceration rate on a scale that exists nowhere else in the world, which, in turn, has resulted in a system that is racially and ethnically discriminatory – and, ultimately, unsustainable.

The economic, societal, and human costs of these policies have been devastating. We've destroyed Black and Brown communities all over the nation by locking up millions of Black and Brown men and thus robbing those communities of fathers, brothers, uncles, and sons. And we have accelerated the incarceration rate of Black women, making them the fastest growing segment of the prison population. This has been accomplished through a misguided so-called War on Drugs that has disproportionately

targeted nonviolent low-level drug offenders and others who are not necessarily threats to public safety and cohesion.

As a result, the federal prison system is out of control. The Bureau of Prisons is currently operating at 33 percent over capacity, housing about 219,000 inmates, 50 percent of which are drug offenders, and thereby eating up nearly a quarter of the Justice Department's annual budget.[liv] Perhaps no single factor has contributed more to these rising costs and over population than mandatory minimum sentences, meted out to low-level, non-violent drug offenders.

Beginning in the mid-20th century, Congress expanded its use of mandatory minimum penalties by enacting more mandatory minimum penalties generally, broadening its use of mandatory minimums to different offenses, particularly controlled substances, and lengthening the mandatory minimum sentencing.[lv] Mandatory minimums require uniform, automatic, binding prison terms of a particular length for people convicted of certain federal and state crimes without taking circumstances or individualized factors into account.[lvi]

Mandatory minimums were enacted for a variety of reasons. Proponents believed that they would: increase certainty in sentencing; act as a deterrent to potential offenders; warn that specific behaviors would result in harsh punishment; and increase public safety by removing dangerous criminals from our streets. This ideology was further buttressed by the belief by some that significant declines in crime over the last several decades were directly related to federal mandatory minimum penalties. Yet, since that time, we have learned that the imposition of mandatory minimum penalties have decreased certainty in sentencing; have not significantly deterred criminal behavior; have no causal relationship to reductions in crime; have increased the likelihood of recidivism; and have had a direct impact on rising incarceration costs.

Mandatory minimum sentencing systems are especially problematic because they require judges to act on a "one-size-fits-all" mandate for individuals, eliminating any of their judicial discretion and preventing courts from considering all relevant factors, such as culpability and role in the offense, and tailoring the punishment to the crime and offender. There is no space to check and balance the prosecutors' decisions in individual cases. In 2010, the U.S. Sentencing Commission conducted a study that demonstrated the quantitative impact of mandatory minimums. The Sentencing Commission found that in 2010, of the nearly 80,000 cases for which it had information, almost 25 percent of the offenders were sentenced to some sort of mandatory minimum penalty.[lvii] More specifically, 77.4 percent of those convictions that carried a mandatory minimum penalty were for drug trafficking offenses and minorities comprised three-quarters of those serving a mandatory sentence for a federal drug trafficking offense.[lviii] Further, in those instances in which relief from the mandatory minimum penalty occurred, it occurred least often for Black offenders.[lix]

Finally, the study also found racial disparities in the percentage of all federal offenders who were subject to a mandatory minimum penalty sentencing. Black offenders remained subject to the highest rate of any racial group at 65.1 percent of their cases, followed by Whites at 53.5 percent, Hispanics at 44.3 percent, and Other Races at 41.1 percent.[lx] Those who were convicted of their offense were subjected to 139 months, compared to 63 months for those offenders who received relief from their mandatory minimum penalty.[lxi]

As a result of this report, the Commission concluded that "If Congress decides to exercise its power to direct sentencing policy by enacting mandatory minimum penalties . . . such penalties should (1) not be

excessively severe, (2) be narrowly tailored to apply only to those offenders who warrant such punishment, and (3) be applied consistently."[lxii] Clearly, what was once thought to be sound criminal justice policy has had the unintended consequence of increasing disparities in the administration of justice and has led to mass incarceration.

Furthermore, the cost to incarcerate individuals for lengthy periods of time has become too great. Since 1980, and the transition from the War on Poverty to the War on Drugs in 1982, the United States has spent about $540 million on federal prisons.[lxiii] In 2013, the United States will spend more than 12 times that amount, reaching $6.8 billion.[lxiv] Mandatory minimums are cost-ineffective. Taxpayers spend almost $70 billion a year on prisons and jails,[lxv] raising state spending on corrections more than 300 percent over the last two decades.[lxvi] The Department of Justice has cut funding for crime-fighting equipment and personnel, and spends one out of four of its dollars to lock up mostly non-violent offenders.[lxvii]

In a time of such financial crisis, there is simply no rationale to spend millions of dollars on the prison system. Our country must look towards criminal justice models that rely less on punishment and focus more on rehabilitation and prevention. Resources should be funneled to programs that have that been proven to impact criminal behavior by diverting low level non-violent offenders away from prison and to treatment.

We have proven that we can work to correct wrongheaded policies, restore equality, and reduce costs without any significant impact on public safety. As recently as 2010, a bipartisan effort led by Senators Durbin and Sessions resulted in the passage of the Fair Sentencing Act (FSA), which reduced the sentencing disparity between powder and crack cocaine offenses, capping a longterm effort to address the disproportionate impact the sentencing disparity had on African-American defendants. In addition the U.S. Sentencing Commission has worked to address these systemic issues, voting in 2010 to adjust guideline ranges to comport with the FSA and making those new guidelines retroactive, and in 2014, to reduce sentencing guidelines by two levels across all drug offenses, making those changes retroactive, and allowing more than 50,000 incarcerated individuals to be eligible for a reduction in sentence.

Though admirable and a critical step in the right direction, these reforms are just a down payment on larger systemic reform needed to stem the flow of person into the justice system, reduce racial disparities, restore fairness in sentencing and decrease federal spending on incarceration. Progressives and conservatives alike agree, though for different reasons, that our current system is failing and must be reformed.

We applaud recent bipartisan efforts by members of this Subcommittee to make further changes. This Congress, Senators Dick Durbin and Mike Lee introduced The Smarter Sentencing Act of 2014, a narrow and incremental approach to address front end sentencing reform and reduce federal spending on prisons. If enacted, the legislation would narrowly expand the current "safety valve" to offenders who have two criminal history points, but do not pose a public safety risk; reduce the 5, 10, and 20 year mandatory minimums to 2, 5, and 10 years for certain drug offenses; and make the FSA retroactive, providing relief to approximately 8,000 individuals currently serving sentences under the old 100-1 disparity. Further, these proposed changes would have a significant impact on the federal budget, with the Congressional Budget Office estimating the bill would save $4.36 billion over 10 years and DOJ estimating $7.4 billion over 10 years.[lxviii]

We have an opportunity to correct our previous mistakes. Restoring certainty and fairness in sentencing and reducing an exploding prison population is both the moral and financially responsible course of

action. Studies have demonstrated that mandatory minimums are inherently unfair and ineffective. They have a disproportionate impact on communities of color, eliminate judicial discretion in the sentencing process, and apply a one size-fits-all approach, resulting in exactly what policymakers intended to guard against—uncertainty in sentencing and no real deterrent in criminal behavior. It is our hope that in the new Congress, policymakers will reach across the aisle to introduce and pass legislation that meets our collective goals and interests.

IV. Hate Crimes

Prior to the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, the Department of Justice could only investigate hate crimes motivated by the victim's race, color, religion, and national origin when the victim is engaged in a federally protected activity, such as serving on a jury. This law expanded the definition of federal hate crimes to include sexual orientation, gender, gender identity, and disability. It also removed obstacles that had made it difficult for the federal government to adequately prosecute these crimes. The HCPA encourages partnerships between state and federal law enforcement officials to more effectively address hate violence, and provides expanded authority for federal hate crime investigations and prosecutions when local authorities are unwilling or unable to act. It is the most important, comprehensive, and inclusive federal crimes civil rights enforcement law in the past 40 years.

We worked for more than a decade to secure passage of the Hate Crimes Prevention Act. The law stands as a testament to the power of effective and persistent work by a broad group of collaborators. Working closely with our House and Senate champions, including Senator Durbin, and through the leadership of The Leadership Conference, The Anti-Defamation League, and the Human Rights Campaign, we built a powerfully diverse coalition of support. We were able to amass a large, diverse coalition of more than 300 civil rights, professional, civic, educational, and major religious groups, 26 state attorneys general, U.S. Attorney General Eric Holder, former U.S. Attorney General Dick Thornburgh, and virtually every major national law enforcement organization in America, including the International Association of Chiefs of Police and the Police Executive Research Forum, in support of the bill.

None of this came easily, of course. But with our diverse coalition standing side by side the many members of Congress who supported this bill, we were able to celebrate a huge victory at the end of a 12-year fight.

Violence committed against individuals because of their race, religion, ethnicity, national origin, gender, gender identity, or sexual orientation remains a serious problem in the United States. In the more than twenty years since national hate crime reporting began, the number of hate crimes reported has consistently ranged around 6,000 to 7,000 or more annually—that's nearly one bias-motivated criminal act every hour of every day.[lxix]

The fifth anniversary of this important law provides a teachable moment for advocates, the administration, and Congress to promote awareness of the HCPA, to report on the progress our nation has made in preventing hate violence, and to rededicate ourselves and our nation to effectively responding to bias crimes when they occur.

The FBI has been tracking and documenting hate crimes reported from federal, state, and local law enforcement officials since 1991 under the Hate Crime Statistics Act of 1990 (HCSA). Though incomplete, the FBI's annual HCSA report provides a national snapshot of bias-motivated criminal

activity in the United States. Overall, reported hate crimes directed against individuals because of race, religion, sexual orientation, and national origin increased in 2012, as compared to 2011, but this comparison may still be misleading because of under-reporting. Notably, more than a quarter of law enforcement agencies did not provide the FBI with their hate crime statistics.[lxx] Only about 14,500 law enforcement agencies (out of about 18,000) reported in 2012.[lxxi] Almost 90 cities with populations over 100,000 either did not report hate crime data to the FBI or they affirmatively reported zero hate crimes.[lxxii]

The FBI, the Justice Department, and U.S. attorneys should create incentives for participation in the FBI's HCSA data collection program – including national recognition, targeted funding, and mechanisms to promote replication of effective and successful programs. In partnership with civil and human rights groups and civic leaders, Congress and law enforcement officials can advance police-community relations by demonstrating a commitment to be both tough on hate crime perpetrators and sensitive to the special needs of hate crime victims.

V. Conclusion

Moving forward, we must continue bipartisan collaboration to provide equal access to the right to vote, reform the justice system, and dispel racial disparities that are pervasive throughout our country. Half a century ago, civil rights activists fought to fulfill the promise of the Emancipation Proclamation from a century before. Fifty years later, we still struggle to turn the language of landmark civil rights legislation into living realities for all of our people. Legislation like the Voting Rights Amendment Act, the Democracy Restoration Act, the End Racial Profiling Act, and the Smarter Sentencing Act represent important steps toward addressing the deep injustices that plague our society.

However, these efforts alone are insufficient to fully address the depths of systemic issues of racial bias and discrimination. Federal enforcement of these policies has been slow and racial inequities continue to create barriers that stifle full participation in our democracy. Moving forward, we must continue to foster bipartisan collaboration to protect and advance civil and human rights for all Americans. Again, thank you for convening this hearing and for the opportunity for The Leadership Conference to express its views on the state of civil and human rights in the United States.

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[iii] 42 U.S.C. § 1973 (2006).
[iv] *Shelby Cnty. v. Holder*, 133 S. Ct. 2612, 2636 (2013).
[v] Wendy Weiser, *How much of a difference did new voting restrictions make in yesterday's close races?* BRENNAN CENTER FOR JUSTICE, Nov. 5, 2014.
[vi] *Id.*
[vii] Ryan Reilly, *Harsh Texas voter ID law 'immediately' takes effect after Voting Rights Act ruling*, HUFF. POST, June 25, 2013.
[viii] Wendy Weiser, *How much of a difference did new voting restrictions make in yesterday's close races?* BRENNAN CENTER FOR JUSTICE, Nov. 5, 2014.
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[xii] Reuven Ziegler, *Legal Outlier, Again? U.S. Felon Suffrage: Comparative and International Human Rights Perspectives*, 29 B.U. INT'L L.J. 197, 217 (2011).

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[xv] E. Ann Carson & Daniela Golinelli, *Prisoners in 2012-Advance Counts*, BUREAU OF JUSTICE STATISTICS (July 2013), http://www.bjs.gov/content/pub/pdf/p12ac.pdf; Christopher Uggen, Sarah Shannon & Jeff Manza, *State-Level Estimates of Felon Disenfranchisement in the United States*, 2010 (July 2012), THE SENTENCING PROJECT, http://www.sentencingproject.org/doc/publicationsfd_State_Level_Estimates_of_Felon_Disen_2010.pdf.
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[xvii] *Id.*
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[xx] *Id.* at 17.
[xxi] E. Ann Carson, *Prisoners in 2013*, BUREAU OF JUSTICE STATISTICS, 8 (Sept. 30, 2014), http://www.bjs.gov/content/pub/pdf/p13.pdf.
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[xxvi] Kathleen Macrae, *Voting Rights are due to All*, ACLU, March 9, 2012, http://www.aclu-de.org/news/voting-rights-are-due-to-all/2012/03/09/.
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[xxxiv] See, for example, Anti-Defamation League, Privilege, Discrimination, and Racial Disparities in the Criminal Justice System, *available at*: http://www.adl.org/assets/pdf/education-outreach/privilege-discrimination-and-racial-disparities-in-the-criminal-justice-system.pdf.
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[lxvi] *Id.*
[lxvii] *Id.*
[lxviii] Christina Mulka & Emily Long, *Durbin & Lee: According to CBO, Smarter Sentencing Bill would reduce prison costs by more than $4 billion*, DICK DURBIN PRESS RELEASE (Sept. 15, 2014).
[lxix] 2012 Hate Crime Statistics Act Report, http:// www.fbi.gov/about-us/cjis/ucr/hate-crime/2012 and 2012 Hate Crime Addendum, http://www.fbi. gov/about-us/cjis/ucr/hate-crime/2012-addendum.
[lxx] Fed. Bureau of Investigation, *Hate Crime Zero Data Submitted* (2012), http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012-addendum/table-14-addendum.
[lxxi] 2012 Hate Crime Statistics Act Report, http:// www.fbi.gov/about-us/cjis/ucr/hate-crime/2012 and 2012 Hate Crime Addendum, http://www.fbi. gov/about-us/cjis/ucr/hate-crime/2012-addendum.
[lxxii] *Id.*

Written Testimony of the
American Civil Liberties Union

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For a Hearing on

"The State of Civil and Human Rights in the United States"

Submitted to the

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Subcommittee on the Constitution, Civil Rights, and Human Rights

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For nearly 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 everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, gender identity, sexual orientation, disability, or national origin.

This written testimony provides a broad overview of the state of civil and human rights in the United States. While the ACLU advocates at the federal and state level, and litigates across a wide spectrum of civil and human rights and civil liberties issues, including immigration, racial disparities in education, employment discrimination, disability rights, privacy, and religious liberty, just to name a few of the very important issues we work to address, my statement today will be limited to the issues most at the heart of the Subcommittee's hearing today on the racial disparities that continue to exist in our voting and criminal justice systems.

We are standing at a crossroads in America right now. There is no doubt that we have made progress towards racial justice and equality as a nation. But one must only look to the crises of Ferguson, mass incarceration, over-policing, racial profiling, the stripping of protections for minority voters, and our dark history that has led to one in 13 African Americans today without the right to vote, to see that there is still much to achieve. We are also standing at a crossroads at this time of transition in Congress as well. We are at a pivotal moment where we need to safeguard any rollbacks of our civil rights laws by the courts and legislatures, while also seizing the momentum brought about by crises to push forward bipartisan reforms that proactively protect the civil rights and human rights of millions of Americans. More specifically, this statement will discuss voting rights, sentencing reform, solitary confinement, racial profiling, the militarization of police, law enforcement practices targeting American Muslim communities, and non-discrimination protections for LGBT Americans. I will provide recommendations that I urge the next Congress to act upon.

I. VOTING RIGHTS

Voting is a fundamental right and a cornerstone of our democracy. As the Supreme Court has said, "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."[1] All the other rights we discuss in this testimony are dependent on the ability of our citizens to participate in democracy. Voting barriers, and those disproportionately impacting our minority citizens, are at the heart of so many areas of concern to this Subcommittee.

A. Voting Rights Act

i. History of the Voting Rights Act

Last year, the U.S. Supreme Court in *Shelby County v. Holder* severely limited critical protections of the Voting Rights Act of 1965 (VRA) that had protected minority and language minority voters for decades. On June 25, 2013, the Court struck down Section 4(b) of the VRA -- the "coverage formula" -- one of the Act's key provisions.[2] For decades under this provision, certain states and localities with a

[1] *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).
[2] *Shelby County, Ala. v. Holder*, 133 S.Ct. 2612 (2013).

history of racial discrimination in voting had to submit all of their voting changes to the federal government (either the Department of Justice ("DOJ") or the D.C. District Court) for approval before they could be implemented, a process known as Section 5 "preclearance." The coverage formula determined which jurisdictions fell under the government's purview. In *Shelby*, the Court declared the coverage formula unconstitutional.

Very significant progress has been made as a result of the passage and renewal of the Voting Rights Act. However, equal opportunity in voting still does not exist in many places. Discrimination on the basis of race and language still deny many Americans their basic democratic rights. Although such discrimination today is often more subtle than it used to be, it still exists and must still be remedied. Before the Supreme Court struck down the coverage formula, Section 5 was actively combatting discriminatory barriers and deterring discriminatory voting changes.[3] Section 5 has given tangible protections to millions of voters since 1965.[4] Its absence, through the loss of Section 4(b), has made combatting discrimination and disfranchisement all the more difficult. Emboldened by *Shelby* and nearly fifty years after the passage of the VRA, many states and localities continue to impose restrictions on access to the polls.

November 2014 was the first election in 50 years in which voters of color did not have full protections at the poll. This past year alone, new discriminatory voting laws were enacted or proposed across the country. In 29 states, at least 83 restrictive voting bills have been introduced.[5] In 14 states, 2014 was the first major federal election with new voting restrictions in place.[6] If not for the work of the ACLU and other civil rights organizations, more states, including Pennsylvania, Wisconsin, and Arkansas would have had discriminatory voting laws in effect for the 2014 election.[7] On Election Day, there were widespread reports of voters having difficulty casting a ballot across the country due to new barriers and the lack of protections following the loss of Section 5 protections.[8]

ii. Legislative Solution: Voting Rights Amendment Act

In January 2014, a bipartisan group of Members of Congress, led by Senate Judiciary Committee Chairman Patrick Leahy (D-VT) and Representative Jim Sensenbrenner (D-WI), introduced the Voting Rights Amendment Act of 2014.[9] The bill responds directly to *Shelby;* it seeks to go beyond a static, geographically based statute and instead is flexible and forward-looking, capturing jurisdictions that have recently engaged in acts of discrimination. While the bill does not restore everything that was lost in the *Shelby* decision, when viewed holistically, this bill would give the public the opportunity to learn about

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[3] Deborah J. Vagins & Laughlin McDonald, *Supreme Court Put a Dagger in the Heart of the Voting Rights Act*, http://www.aclu.org/blog/voting-rights/supreme-court-put-dagger-heart-voting-rights-act (July 2, 2013).

[4] CAROLINE FREDRICKSON AND DEBORAH J. VAGINS, PROMISES TO KEEP: THE IMPACT OF THE VOTING RIGHTS ACT IN 2006, ACLU (March 2006), *available at* http://www.aclu.org/voting-rights/promises-keep-impact-voting-rights-act-2006.

[5] WENDY WEISER & ERIK OPSAL, BRENNAN CENTER FOR JUSTICE, THE STATE OF VOTING IN 2014 (2014), *available at* http://www.brennancenter.org/sites/default/files/analysis/State_of_Voting_2014.pdf.

[6] *Id.* at 4. The Arkansas law was blocked by the courts prior to implementation. The ACLU successfully blocked the implementation of Wisconsin's voter ID law, but other restrictions went into effect. *See* Dale Ho, *This Election Season, the ACLU Won Three of Five Against the Vote Suppressors*, https://www.aclu.org/blog/voting-rights/election-season-aclu-won-three-five-against-vote-suppressors (Nov. 3, 2014).

[7] Dale Ho, *This Election Season, the ACLU Won Three of Five Against the Vote Suppressors*, https://www.aclu.org/blog/voting-rights/election-season-aclu-won-three-five-against-vote-suppressors (Nov. 3, 2014).

[8] Press Release, Election Protection, Election Day 2014: Democracy Should Not Be This Hard (Nov. 4, 2014), *available at* http://www.866ourvote.org/newsroom/releases/election-day-2014-democracy-should-not-be-this-hard.

[9] Voting Rights Amendment Act of 2014, H.R.3899/S. 1945, 113th Cong. (2014).

discriminatory voting changes and stop them, through different sets of tools, before they could disfranchise voters. The bill would still require those jurisdictions with the worst, most recent records of discrimination to be subjected to preclearance, while also providing new nationwide tools to ensure an effective response to race discrimination wherever it occurs. In light of the new modest coverage formula, these other nationwide protections are critical in fulfilling the Voting Rights Act mandate of eradicating race discrimination in voting for all citizens.[10]

The Voting Rights Act has enjoyed a long history of bipartisan support in Congress and in multiple Administrations.[11] Its work of preventing racially discriminatory changes to election laws must continue. Congressional action must be taken before any more elections take place in order restore and modernize the VRA's critical protections.

B. Restoration of Voting Rights

i. History of Criminal Disfranchisement

In addition to the new barriers many citizens are facing due to the loss of the Voting Rights Act's full strength, there are also currently millions of Americans who have had their right to vote revoked because of a past criminal conviction. The Supreme Court has said the right to vote is "preservative of all rights;"[12] however, upon release from incarceration, these citizens work, pay taxes, live in our communities and bring up families, yet they are without a voice in all the other laws that impact them. An estimated 5.85 million citizens cannot vote as a result of criminal convictions, often for minor, low-level crimes and even some misdemeanors; nearly 4.4 million of those citizens have been released from prison and are living and working in communities across the nation.[13] One court has noted that "[d]isenfranchisement is the harshest civil sanction imposed by a democratic society. When brought beneath its axe, the disenfranchised is severed from the body politic and condemned to the lowest form of citizenship."[14]

Worse even still, criminal disfranchisement laws proliferated during the Jim Crow era, and were enacted alongside poll taxes and literacy tests with the intent of keeping African Americans from voting.[15] The racial impact of these laws continues today. Nationwide, one in 13 African Americans of voting age has lost the right to vote – a rate four times the national average.[16] Latino citizens are also impacted

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[10] For a detailed analysis of the legislation *see The Voting Rights Amendment Act, S.1945: Updating the Voting Rights Act in Response to Shelby County v. Holder Hearing on S. 1945 Before the S. Comm on the Judiciary*, 113th Cong. (2014)(American Civil Liberties Union statement for the record), *available at* https://www.aclu.org/voting-rights/aclu-statement-senate-judiciary-hearing-voting-rights-amendment-act-s-1945-updating.

[11] Deborah J, Vagins, The Most Conservative Principle in American Politics, HUFFINGTON POST, June 25, 2014, *available at* http://www.huffingtonpost.com/deborah-j-vagins/the-most-conservative-pri_b_5530104.html.

[12] *Katzenbach v. Morgan*, 384 U.S. 641, 652 (1966) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

[13] *See* CHRISTOPHER UGGEN, SARAH SHANNON, & JEFF MANZA, THE SENTENCING PROJECT, STATE-LEVEL ESTIMATES OF FELON DISENFRANCHISEMENT IN THE UNITED STATES, 2010 1 (2012), *available at* http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf. *See e.g.*, Nina Liss-Schultz, *The Obama Administration Wants 6 Million Americans to Get Back Their Right to Vote. Here's How*, MOTHER JONES (Feb. 13, 2014), *available at* http://www.motherjones.com/mojo/2014/02/felony-convictions-voting-rights-black-american-african-disenfranchisement (citing ProCon.org, State Felon Voting Laws, http://felonvoting.procon.org/view.resource.php?resourceID=286#misdemeanor (last visited Dec. 5, 2014).

[14] McLaughlin v. City of Canton, 947 F. Supp. 954, 971 (S.D. Miss. 1995).

[15] *See* DEBORAH J. VAGINS AND ERIKA WOOD, THE DEMOCRACY RESTORATION ACT: ADDRESSING A CENTURIES-OLD INJUSTICE 3-5 (Mar. 2010), *available at* http://www.acslaw.org/files/ACS%20Issue%20Brief%20Vagins%20and%20Wood.pdf.

[16] JEAN CHUNG, THE SENTENCING PROJECT, FELONY DISENFRANCHISEMENT: A PRIMER, 2 (JUNE 2014), *available at* http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf.

because they are disproportionately over-represented in the criminal justice system. Over the last few decades, the number of disfranchised citizens has been increasing because of an incarceration boom fueled by mandatory minimum sentences and the "war on drugs." In turn, this has impacted the families of those who are disfranchised and the communities in which they reside by reducing their collective political voice.

Any democracy is stronger with broad civic engagement and election participation. The United States, however, is one of the few western democratic nations that excludes such large numbers of people from the democratic process. In fact, almost half of European countries preserve the right to vote for all incarcerated persons and a smaller number of countries impose a time limited ban on voting for a few categories of prisoners.[17]

By continuing to deny citizens the right to vote based on a past criminal conviction, the government is endorsing a system that expects these citizens to contribute to the community, but denies them participation in our democracy. Not only is disfranchising millions of citizens undemocratic, but it is counterproductive to the rehabilitation and reintegration into society of those released from prison.

Some progress has been made at both the federal and state levels, including Attorney General Eric Holder's recent statements in support of the easing of restoration requirements,[18] and states like Virginia and Kentucky pursuing reforms. However, these reforms do not go far enough to address the disfranchisement of millions of Americans following a criminal conviction.

Currently, individuals with criminal convictions are subject to a patchwork of state laws governing their right to vote. The scope and severity of these laws varies widely, ranging from the uninterrupted right to vote to lifetime disfranchisement, despite completion of one's full sentence.[19] Although voting rights restoration is possible in many states, and some recent progress has been made,[20] it is frequently a difficult process that varies widely across states.[21] In addition, individuals with criminal convictions may lack information about the status of their voting rights or how to restore them. Confusion among election officials about state law contributes to the disfranchisement of even eligible voters.[22] Nationwide reform is necessary to provide a uniform standard across the country.

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[17] LALEH ISPAHANI, OUT OF STEP WITH THE WORLD: AN ANALYSIS OF FELONY DISFRANCHISEMENT IN THE U.S. AND OTHER DEMOCRACIES 3 (2006), *available at* http://www.aclu.org/votingrights/exoffenders/25663pub20060525.html.

[18] In February 2014, Attorney General Holder called upon state leaders and elected officials to pass reforms to restore voting rights. Although the calls for reforms are more limited than those provided in the Democracy Restoration Act, they are welcome statements from the DOJ. Attorney General Eric Holder, Remarks on Criminal Justice Reform at Georgetown University Law Center (Feb. 11, 2014), *available at* http://www.justice.gov/iso/opa/ag/speeches/2014/ag-speech-140211.html.

[19] Three states (Florida, Iowa, and Kentucky) permanently disfranchise citizens with felony convictions unless the state approves individual rights restoration; two states (Maine and Vermont) allow all persons with felony convictions to vote, even while incarcerated; all other states fall somewhere in between. *See* Voting Rights for People with Criminal Records, http://www.aclu.org/map-state-felony-disfranchisement-laws (last visited Dec. 4, 2014) (contains a map detailing state laws).

[20] Recently, bipartisan lawmakers in states with very restrictive laws, like Virginia and Kentucky, have made reforms and considered changes. *See* Letter from Robert F. McDonnell, Governor of the Commonwealth of Virginia, to the Honorable Janet V. Kelly, Secretary of the Commonwealth (May 29, 2013), *available at* https://commonwealth.virginia.gov/media/1803/2013GovernorLettertoSOC.pdf. *See also* Press Release, Senator Rand Paul, Sen. Paul Testifies in Support of Restoring Voting Rights; Constitutional Amendment Passes Kentucky Senate (Feb. 19, 2014), *available at* http://www.paul.senate.gov/?p=press_release&id=1109.

[21] *ACLU Factsheet The Democracy Restoration Act of 2014*, ACLU (July 22, 2014), *available at* https://www.aclu.org/racial-justice-voting-rights/aclu-factsheet-democracy-restoration-act-2014.

[22] ERIKA WOOD & RACHEL BLOOM, DE FACTO DISENFRANCHISEMENT 1 (2008) at 2, *available at* http://www.aclu.org/votingrights/exoffenders/36992pub20081001.html.

ii. Legislative Solution: The Democracy Restoration Act[23]

Congressional action is needed to establish a standard that restores voting rights in federal elections to the millions of Americans who are living in the community, but continue to be denied their ability to fully participate in civic life.

In April 2014, Senator Ben Cardin (D-MD) and Representative John Conyers (D-MI) introduced the Democracy Restoration Act of 2014 (DRA).[24] The legislation would restore voting rights in federal elections to the 4.4 million Americans who have been released from prison and are living in the community and ensure that probationers never lose their right to vote in federal elections. In addition, the bill improves access to information by requiring notification about an individual's right to vote in federal elections when they are leaving prison, sentenced to probation, or convicted of a misdemeanor. Building on the momentum of state reforms, the first ever bipartisan congressional briefing on voting rights restoration was held in July 2014 featuring Senators Ben Cardin and Rand Paul (R-KY) discussing their respective bills and their shared interest in eliminating this draconian problem.[25]

Passage of the Democracy Restoration Act would create a uniform standard in federal elections and strengthen our democracy by creating a broader and more just base of voter participation. The legislation has also been endorsed and is strongly supported by the law enforcement community. Their continued support for passage of this bill is based on their experience that such a law would benefit the public safety by encouraging participation in civic life, assisting reintegration, reducing recidivism, and rebuilding ties to the community.[26] The DRA would improve election administration by streamlining registration issues and eliminating the opportunity for erroneous purges of eligible voters, and would eliminate the confusion about who is eligible to vote. And perhaps most importantly, it would put an end to this form of racial injustice.

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[23] *ACLU Factsheet The Democracy Restoration Act of 2014*, ACLU (July 22, 2014), *available at* https://www.aclu.org/racial-justice-voting-rights/aclu-factsheet-democracy-restoration-act-2014.

[24] Democracy Restoration Act of 2014, H.R. 4459/S. 2235, 113th Cong. (2014). Senator Rand Paul has introduced similar legislation to restore voting rights, but the Democracy Restoration Act adopts a more expansive approach. Civil Rights Voting Restoration Act of 2014, S.2550, 113th Cong. (2014).

[25] Press Release, Senators Ben Cardin (D-MD.) and Rand Paul (R-KY), Cardin, Paul Unite for Discussion of How Best to Restore Voting Rights for Millions of Americans (July 22, 2014), *available at* http://www.cardin.senate.gov/newsroom/press/release/cardin-paul-unite-for-discussion-of-how-best-to-restore-voting-rights-for-millions-of-americans.

[26] *See* Letter in Support of The Democracy Restoration Act (S.2235/H.R.445) from Law Enforcement and Criminal Justice Organizations, to Member of Congress (July 22, 2014), *available at* https://www.aclu.org/racial-justice-voting-rights/law-enforcement-sign-letter-support-democracy-restoration-act-2014. *See also* Letter in Support of The Democracy Restoration Act (S.2235/H.R.445) from Religious and Faith-Based Organizations, to Member of Congress (July 22, 2014), *available at* https://www.aclu.org/racial-justice-voting-rights/religious-and-faith-based-sign-letter-support-democracy-restoration-a-0; Letter in Support of The Democracy Restoration Act (S.2235/H.R.445) from Civil Rights and Reform Organizations, to Member of Congress (July 22, 2014), *available at* https://www.aclu.org/racial-justice-voting-rights/civil-rights-coalition-letter-support-democracy-restoration-act-2014.

Recommendations

Congress should:

- Pass the Voting Rights Amendment Act
- Pass the Democracy Restoration Act

II. SENTENCING REFORM

Voter disfranchisement is just one byproduct our nation's flawed justice system. Fueling the problem, in the 1980s, Congress and most state legislatures enacted laws requiring prison sentences of 5, 10, and 20 years or longer for drug offenses, violent offenses, and "career criminals."[27] We now know that many of these policies and laws have resulted in an overincarceration crisis in both the federal and state criminal justice systems. Recent research has concluded that the main drivers of the growth in incarceration over the past 30 years have been changes in policies related to sentencing and punishment in this country.[28] One of the worst, most racially biased policies over the last 40 years has been "war on drugs." We've spent trillions of dollars on enforcing senseless drug laws and drug use has not declined. However, millions of people – to a disproportionate degree poor people and people of color – have increasingly been swept into federal and state jails and prisons as well as into a net of correctional control including probation and parole. This type of control under the auspices of the criminal justice system is difficult to escape and ruins lives.

One result of the "war on drugs" is that the cost of incarceration in the federal system accounts for nearly a third of the Department of Justice's discretionary budget. Federal incarceration has become one of our nation's biggest expenditures, swallowing the budget of federal law enforcement.[29] The Federal Bureau of Prisons (BOP) is at least 30 percent over capacity, and the safety of both prison guards and inmates is at risk. For the past two years, the Department of Justice's ("DOJ") Inspector General identified the growing crisis of overcrowding in the federal prison system as one of DOJ's top challenges.[30]

People convicted of drug offenses continue to make up almost 49 percent of the federal prison population, despite increases in the number of immigration and weapons offenders.[31] The increased time

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[27] COMM. ON LAW AND JUSTICE, NAT'L ACAD. OF SCI'S, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 3 (2014) [hereinafter NATIONAL ACADEMY REPORT], *available at* http://www.nap.edu/catalog.php?record_id=18613.

[28] *Id.;* KAMALA MALLIK-KANE, BARBARA PARTHASARATHY & WILLIAM ADAMS, URBAN INSTITUTE, EXAMINING GROWTH IN THE FEDERAL PRISON POPULATION, 1998 TO 2010, at 3 (2012) [hereinafter KAMALA URBAN INSTITUTE REPORT], *available at* http://www.urban.org/uploadedpdf/412720-examining-growth-in-the-federal-prison-population.pdf; NATHAN JAMES, CONG. RESEARCH SERV., R42937, THE FEDERAL PRISON POPULATION BUILDUP: OVERVIEW, POLICY CHANGES, ISSUES, AND OPTIONS 9 (Jan. 22, 2013) [hereinafter CRS REPORT]; U.S. SENTENCING COMM'N, SPECIAL REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE CRIMINAL JUSTICE SYSTEM (hereinafter USSC 2011 Mandatory Minimum Report) (October 2011).

[29] NANCY LA VIGNE & JULIE SAMUELS, URBAN INSTITUTE, THE GROWTH & INCREASING COST OF THE FEDERAL PRISON SYSTEM: DRIVERS AND POTENTIAL SOLUTIONS 1-2 (2012), *available at* http://www.urban.org/UploadedPDF/412693-The-Growth-and-Increasing-Cost-of-the-Federal-Prison-System.pdf.

[30] Horowitz, Michael, *Top Management and Performance Challenges Facing the Department of Justice*, Memo to Attorney General and Deputy Attorney General (November 10, 2014).

[31] *Quick Facts about the Bureau of Prisons*, FEDERAL BUREAU OF PRISONS, http://www.bop.gov/news/quick.jsp (last visited Dec. 4. 2014).

served by people who commit drug crimes accounted for almost one-third of the total federal prison population growth between 1998 and 2010.[32] It costs more than $29,000 a year to house just one federal inmate, almost four times the average yearly cost of tuition at a public university.[33]

The costs have far more consequences than simply the fiscal expenditures necessary to incarcerate 25 percent of the world's prisoners in a country with just 5 percent of the world's population.[34] Like many of the issues discussed in this testimony, the true costs are human lives and particularly generations of young black and Latino men who serve long prison sentences and are lost to their families and communities.

That is why organizations across the political spectrum[35] support bipartisan sentencing reform legislation such as S.1410, the Smarter Sentencing Act, which was introduced by Constitution Subcommittee Chairman Dick Durbin (D-IL) and Senator Mike Lee (R-UT) and cosponsored by Chairman Leahy and Constitution Subcommittee Ranking Member Ted Cruz (R-TX). The Smarter Sentencing Act would address the ongoing crisis in the BOP. What groups such as Americans for Tax Reform, the Faith & Freedom Coalition, Heritage Action for America, and the American Federation of Government Employees (BOP prison guards union) recognize is that this current crisis in the Bureau of Prisons is unsustainable. Also, the ACLU along with the Leadership Conference on Civil and Human Rights, NAACP, NAACP Legal Defense Fund, Lawyers Committee for Civil Rights under Law, National Urban League, National Action Network, and National Council of La Raza all strongly support the Smarter Sentencing Act. With African Americans making up 37 percent and Hispanics 34 percent of the BOP population, civil rights groups think the time is now to address the federal sentencing policies that are resulting in so many people of color being incarcerated. This legislation is a top priority for many of these groups.[36]

As part of the Anti-Drug Abuse Act of 1986, Congress ignored empirical evidence and created a 100-to-1 disparity between the amounts of crack and powder cocaine required to trigger certain mandatory minimum sentences. In 2010, in recognition of the unfairness of the sentencing disparity, Congress passed the Fair Sentencing Act (FSA), bipartisan legislation authored by Chairman Durbin and Senator Jeff Sessions (R-AL), which reduced the disparity between the amounts of crack and powder cocaine required to trigger certain mandatory minimum sentences from 100-to-1 to 18-to-1. Unfortunately, over 8,800 people are still serving extreme sentences for crack cocaine related offenses because the FSA was not retroactive.[37]

Criminal sentences should be based on the nature of the offense and on relevant personal characteristics and circumstances of the defendant. Thus, the ACLU opposes mandatory sentences or any other sentencing scheme that unduly restricts a judge's ability to engage in individualized sentencing.

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[32] KAMALA URBAN INSTITUTE REPORT *supra* note 28.
[33] *Annual Determination of Average Cost of Incarceration,* FEDERAL BUREAU OF PRISONS, https://federalregister.gov/a/2014-10859 (May 12, 2014).
[34] NATIONAL RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES 2 (2014).
[35] Americans for Tax Reform, the Faith & Freedom Coalition, Heritage Action for America, Justice Fellowship/Prison Fellowship Ministries, the National Association of Evangelicals and the American Federation of Government Employees (BOP Prison Guards) and the ACLU, Leadership Conference on Civil and Human Rights, NAACP, NAACP LDF have come together to support sentencing reform and the Smarter Sentencing Act.
[36] *Quick Facts about the Bureau of Prisons*, FEDERAL BUREAU OF PRISONS, http://www.bop.gov/news/quick.jsp (last visited Dec. 4. 2014).
[37] *Waiting on a Fix*, AL JAZEERA AMERICA (Mar. 24, 2014), http://projects.aljazeera.com/2014/crack-cocaine/.

Unless the number of people who are subjected to long and unfair sentences is addressed, any effort to reform the federal criminal justice system will have little to no effect on the current crisis in the BOP. Congress simply must make sentencing reform a priority.

Recommendations

- Congress should enact S.1410 and H.R. 3382, the Smarter Sentencing Act, legislation that would reduce the length of some drug mandatory minimum sentences, allow judges to use more discretion to determine sentences for low-level drug offenses, and apply the Fair Sentencing Act (the law that reduced the crack-powder cocaine sentencing disparity) to those currently serving sentences for these offenses.

III. SOLITARY CONFINEMENT

Another indirect result of overincarceration is that for the last two decades, corrections systems have increasingly relied on solitary confinement, even building entire "supermax" prisons, where prisoners are held in extreme isolation, often for years or even decades. Although supermax prisons were rare in the United States before the 1990s, today 44 states and the federal government have supermax units or facilities, housing at least 25,000 people.[38] But this figure does not reflect the total number of prisoners held in solitary confinement in the United States on any given day. Using data from the Bureau of Justice Statistics, researchers estimated in 2011 that over 80,000 prisoners are held in "restricted housing," including administrative segregation, disciplinary segregation and protective custody—all forms of housing involving substantial social isolation.[39]

Solitary confinement is widely recognized as extremely harmful. Indeed, people held in solitary confinement experience a variety of negative physiological and psychological reactions: hypersensitivity to stimuli;[40] perceptual distortions and hallucinations;[41] increased anxiety and nervousness;[42] revenge fantasies, rage, and irrational anger;[43] fears of persecution;[44] lack of impulse control;[45] severe and chronic depression;[46] appetite loss and weight loss;[47] heart palpitations;[48] withdrawal;[49] blunting of affect and

[38] DANIEL P. MEARS, URBAN INST., EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS 4 (2006).
[39] Angela Browne, Alissa Cambier, Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FED'L SENTENCING REPORTER 46 (2011).
[40] Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983).
[41] *Id.*; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130 (2003); *see generally* Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 Soc. Just. 8 (1988).
[42] Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452-53 (1983).Haney, *supra* note 40, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994); *see generally* Stanley L. Brodsky & Forest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988).
[43] Grassian, *supra* note 42, at 1453; Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997); Haney, *supra* note 40, at 130, 134; *see generally* HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992).
[44] Grassian, *supra* note 42, at 1453.
[45] *Id.*; Miller & Young, *supra* note 43, at 92.
[46] Grassian, *supra* note 42, at 1453; Miller & Young, *supra* note 43, at 92; Haney, *supra* note 41, at 131.
[47] Haney, *supra* note 41, at 130; *see generally* Korn, *supra* note 41.
[48] Haney, *supra* note 41, at 131.
[49] Miller & Young, *supra* note 43, at 91; *see generally* Korn, *supra* note 41.

apathy;[50] talking to oneself;[51] headaches;[52] problems sleeping;[53] confusing thought processes;[54] nightmares;[55] dizziness;[56] self-mutilation;[57] and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.[58] Additionally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. A February 2014 study by the American Journal of Public Health found that detainees in solitary confinement in New York City jails were nearly seven times more likely to harm themselves than those in general population, and that the effect was particularly pronounced for juveniles and people with severe mental illness. This research also found that in California prisons in 2004, 73% of all suicides occurred in isolation units—though these units accounted for less than 10% of the state's total prison population.[59]

There is a common misconception that prisoners in solitary confinement are dangerous, the "worst of the worst,"[60] but few actually meet this description. Sadly, the thousands of people in solitary confinement include many with severe mental illness or cognitive disabilities, who find it difficult to function in prison settings or to understand and follow prison rules.[61] For example, Indiana prison officials admitted in 2005 that "well over half" of the state's supermax prisoners suffer from mental illness.[62] On average, researchers estimate that at least 30 percent of prisoners held in solitary confinement suffer from mental illness.[63]

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[50] Miller & Young, *supra* note 43, at 91; *see generally* Korn, *supra* note 41.
[51] Haney, *supra* note 41, at 134; *see generally* Brodsky & Scogin, *supra* note 42.
[52] Haney, *supra* note 41, at 133.
[53] *Id.*
[54] Haney, *supra* note 41, at 137; *see generally* Brodsky & Scogin, *supra* note 42.
[55] Haney, *supra* note 41, at 133.
[56] *Id.*
[57] Grassian, *supra* note 42, at 1453; Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHABILITATION 529, 539-40 (2009).
[58] Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCHOL. 54, 57-58 (1972).
[59] *See* Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104:3 AM. J. PUBLIC HEALTH 442, 442-447 (March 2014), *available at* http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742; Expert Report of Professor Craig Haney at 45-46 n. 119, *Coleman v. Schwarzenegger*, 2008 WL 8697735 (ED. Cal 2010) (No: Civ S 90-0520 LKK-JFM P). Another study examined the impact of solitary confinement on the amount of time that passes between incidents in which prisoners harm themselves and found that prisoners in solitary harm themselves on average 17 months earlier than prisoners in general population. *See* Lanes, *supra* note 57, at 539-40.
[60] Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME AND JUST. 385, 391 (2001).
[61] Haney, *supra* note 41, at 127.
[62] Howard Greninger, *Suit Targets Carlisle Prison*, TERRE HAUTE TRIBUNE-STAR, Feb. 4, 2005.
[63] *See, e.g.*, James Ridgeway & Jean Casella, *Locking Down The Mentally Ill: Solitary Confinement Cells Have Become America's New Asylums,* THE CRIME REP.(Feb.20, 2010), http://www.thecrimereport.org/archive/locking-down-the-mentally-ill; MARY BETH PFEIFFER, CRAZY IN AMERICA: THE HIDDEN TRAGEDY OF OUR CRIMINALIZED MENTALLY ILL (2007); JENNIFER R. WYNN, ALISA SZATROWSKI & GREGORY WARNER, THE CORRECTIONAL ASSOCIATION OF NEW YORK, MENTAL HEALTH IN THE HOUSE OF CORRECTIONS: A STUDY OF MENTAL HEALTH CARE IN NEW YORK STATE PRISONS 48 (2004). For a recent indictment of states' and the federal government's practices of warehousing people with mental illness in prisons, see generally Nicholas Kristof, *Inside a Mental Hospital Called Jail*, N.Y. TIMES (Feb. 9, 2014), http://www.nytimes.com/2014/02/09/opinion/sunday/inside-a-mental-hospital-called-jail.html (not focusing on solitary confinement).
[63] HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, 132 (2012), *available at* http://www.aclu.org/growinguplockeddown

Children in both the adult and juvenile systems are routinely subjected to solitary confinement. In adult prisons and jails, youth are often placed in "protective custody" for safety reasons. Despite the prevalence of youth under the age of 18 in adult facilities in the United States—estimated at more than 95,000 in 2011—most adult correctional systems offer few alternatives to solitary confinement as a means of protecting youth.[64] Young people may spend weeks, months, even years in solitary.

Solitary confinement serves no demonstrable correctional purpose, yet costs more than any other form of imprisonment. There is little evidence on the utility of solitary confinement.[65] A 2006 study found that opening a supermax prison or Special Housing Units had no effect on prisoner-on-prisoner violence in Arizona, Illinois, and Minnesota,[66] and that creating isolation units had only limited impact on prisoner-on-staff violence in Illinois, none in Minnesota, and actually increased violence in Arizona.[67] A similar study in California found that supermax or administrative segregation prisons had increased violence levels.[68] Some researchers have concluded that the severe restrictions in solitary confinement increase violence and engender other behavioral problems.[69] Although there is little evidence that solitary confinement is an effective prison management tool, there is ample evidence that it is the most expensive. Supermax prisons and segregation units can cost two or three times as much as conventional facilities to build and operate.[70]

Not only is there little evidence that the enormous outlay of resources for these units makes prisons safer, there is growing concern that such facilities are actually detrimental to public safety. Indeed, release directly from isolation strongly correlates with an increased risk of recidivism. Preliminary research from California suggests that rates of return to prison are 20 percent higher for solitary confinement prisoners.[71]

A 2001 study in Connecticut found that 92 percent of prisoners who had been held at the state's supermax prison were rearrested within three years of release, compared with 66 percent of prisoners who had not been held in administrative segregation.[72] Another study, in Washington State, tracked 8,000 former prisoners upon release and found that, not only were those who came from segregation more likely to reoffend, but they were also more likely to commit violent crimes.[73] Findings like these, suggesting a

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[64] HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, 132 (2012), *available at* http://www.aclu.org/growinguplockeddown; WASH. COAL. FOR THE JUST TREATMENT OF YOUTH, A REEXAMINATION OF YOUTH INVOLVEMENT IN THE ADULT CRIMINAL JUSTICE SYSTEM IN WASHINGTON: IMPLICATIONS OF NEW FINDINGS ABOUT JUVENILE RECIDIVISM AND ADOLESCENT BRAIN DEVELOPMENT 8 (2009), *available at* http://www.columbialegal.org/files/JLWOP_cls.pdf.

[65] DANIEL P. MEARS, URBAN INST., EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS 1-2 (2006).

[66] Chad S. Briggs, et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 CRIMINOLOGY 1341, 1341-42 (2006).

[67] *Id.* at 1365-66.

[68] KERAMET REITER, PAROLE, SNITCH, OR DIE: CALIFORNIA'S SUPERMAX PRISONS & PRISONERS, 1987-2007 44-46 (2010).

[69] *See* Kurki& Morris, *supra* note 60, at 391; Miller & Young, *supra* note 43; Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997).

[70] CAROLINE ISAACS & MATTHEW LOWEN, AM. FRIENDS SERV. COMM., BURIED ALIVE: SOLITARY CONFINEMENT IN ARIZONA'S PRISONS AND JAILS 14 (2007); Daniel P. Mears & Jamie Watson, *Towards a Fair and Balanced Assessment of Supermax Prisons*, 23 JUST. Q. 233, 260 (2006).

[71] REITER, *supra* note 68, at 50.

REITER, *supra* note 68, at 50.

[72] LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE, RECIDIVISM IN CONNECTICUT 41 (2001).

[73] COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS, CONFRONTING CONFINEMENT 55 (2006), *available at* http://www.vera.org/download?file=2845/Confronting_Confinement.pdf (Hon. John J. Gibbons & Nicholas de B. Katzenbach, Co-Chairs).

link between recidivism and the debilitating conditions in segregation, have led mental health experts to call for prerelease programs to help prisoners held in solitary confinement transition to the community more safely.[74]

In recent years, a number of states have implemented significant reforms in solitary confinement. In addition, this Subcommittee held the first-ever Congressional hearings on solitary confinement.[75] At Chairman Durbin's request, the Bureau of Prisons is undergoing the first independent assessment of its solitary confinement policies and practices.[76] Immigration and Customs Enforcement issued important guidance limiting its use of solitary confinement for immigration detainees, the implementation of which we are monitoring closely.

Recommendations

Congress should:

- Enact legislation that would establish a commission to create national standards to address the overuse of solitary confinement in federal, state and local prisons, jails and other detention facilities.
- Pass legislation to require reforms in the use of solitary confinement in federal facilities operated by or contracted with BOP. This legislation should include a BOP ban on the solitary confinement of juveniles held in federal custody and prisoners with mental illness.
- Engage in increased federal oversight and monitoring of BOP's use of solitary confinement and provide more funding to the agency for alternatives to solitary confinement in order to further the goals of transparency and substantive reform.
- Enact legislation that would require federal, state, and local prisons; jails; detention centers; and juvenile facilities to report to the Bureau of Justice Statistics (BJS) who is held in solitary confinement and for what reason and the length of their segregation. BJS should annually publish the statistical analysis and present a comprehensive review of the use of solitary confinement in the United States.

IV. RACIAL PROFILING

The tragic shooting death of Michael Brown in Ferguson, Missouri and other similar events across the country highlight the need for systemic change throughout the United States in the implicit and explicit bias against people of color and particularly African American youth who are routinely targeted by law enforcement even within their own communities.[77] Racial profiling in law enforcement is a

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[74] Terry Kupers, *What To Do with the Survivors? Coping with the Long-term Effects of Isolated Confinement*, 35 CRIM. JUST. & BEHAV. 1005 (2008).

[75] *Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences, Hearing Before the Subcommittee on the Constitution, Civil Rights and Human Rights of the S. Comm. On the Judiciary*, 112th Cong. (2012); *Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences Hearing Before the Subcommittee on the Constitution, Civil Rights and Human Rights of the S. Comm. On the Judiciary*, 113th Cong. (2014).

[76] Statement of Senator Dick Durbin on Federal Bureau of Prisons Assessment of its Solitary Confinement Practices (Feb. 4, 2013), *available at* http://www.durbin.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=07260483-4972-4720-8d43-8fc82a9909ac.

[77] *See* ACLU FOUNDATION OF MASSACHUSETTS &ACLU RACIAL JUSTICE PROGRAM, BLACK, BROWN AND TARGETED: A REPORT ON BOSTON POLICE DEPARTMENT STREET ENCOUNTERS FROM 2007-2010 (Oct.2014),

persistent problem in the United States. Although top U.S. officials and international human rights bodies[78] have condemned racial profiling, noting that it "can leave a lasting scar on communities and individuals" and is "bad policing," current federal policy fails to protect against it.[79]

The ACLU has long advocated for revisions to the 2003 Guidance on the Use of Race by Federal Law Enforcement ("Guidance"),[80] including our testimony at this Subcommittee's 2012 hearing.[81] The 2003 Guidance included exemptions for profiling practices that are related to "protecting the integrity of the Nation's borders" and "investigating or preventing threats to national security or other catastrophic events (including the performance of duties related to air transportation security)." Furthermore, the Guidance did not ban profiling based on religion, national origin, or sexual orientation. As a result of these broad exemptions and omissions, the Guidance does not protect against profiling against numerous minority communities in the United States, whether it is Federal Bureau of Investigation ("FBI") racial mapping; Transportation Security Administration ("TSA") profiling; or immigration enforcement through programs like the recently-discontinued Secure Communities program.[82] Allowing profiling in "border integrity" investigations disproportionately impacts Latino communities and communities living and working within the 100-mile zone. Profiling in national security investigations has led to the inappropriate targeting of Muslims, Sikhs, and people of Arab, Middle Eastern, and South Asian descent.

On December 8, the U.S. Department of Justice released a revised version of its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.

According to the White House and Justice Department, the revised Guidance will eliminate some of the existing carve-outs for law enforcement activities related to "protecting national security or the integrity of the borders."[83] It will prohibit profiling based on national origin, religion, gender, sexual orientation, and gender identity, in addition to race and ethnicity. It also will apply to state and local law enforcement agencies participating in federal law enforcement task forces.[84]

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available at https://www.aclum.org/sites/all/files/images/education/stopandfrisk/black_brown_and_targeted_online.pdf.

[78] U.N. Committee on the Elimination of Racial Discrimination [CERD], *Concluding observations on the combined seventh to ninth periodic reports of United States of America*, 3, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014), *available at* http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf.

[79] *See* Eric Holder, Att'y Gen., Speech at the American-Arab Anti-Discrimination Committee's 30th Anniversary National Convention (Jun. 5, 2010), *available at* http://www.justice.gov/ag/speeches/2010/ag-speech-100604.html.

[80] CIV. RIGHTS DIV., DEP'T OF JUSTICE, GUIDANCE REGARDING THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENCIES (June 2003), *available at* http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf.

[81] *Ending Racial Profiling in America, Hearing Before the Subcommittee on the Constitution, Civil Rights and Human Rights of the S. Comm. On the Judiciary*, 112th Cong. (2012) (statement of Anthony D. Romero, Executive Director, American Civil Liberties Union), *available at* https://www.aclu.org/files/assets/senate_hearing_ending_racial_profiling_in_america_written_statement_romero.pdf.

[82] *See* DEPARTMENT OF HOMELAND SECURITY MEMORANDUM FROM SECRETARY JEH JOHNSON, "RE: SECURE COMMUNITIES" (Nov. 20, 2014), *available at* http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf; AARTI KOHLI, PETER L. MARKOWITZ & LISA CHAVEZ, SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS AND DUE PROCESS, (Oct. 2011), *available at* http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

[83] CIV. RIGHTS DIV., DEP'T OF JUSTICE, GUIDANCE FOR FEDERAL LAW ENFORCEMENT AGENCIES REGARDING THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY (Dec. 2014), *available at* http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf.

[84] *Id.*

However, the Guidance does not eliminate exemptions permitting discrimination at the border by Transportation Security Administration (TSA) and both at and in the "vicinity" of the border by U.S. Customs and Border Protection (CBP), nor does it fully bar biased profiling in the national security context.

The release of this revised Guidance is an important signal of progress, but it does not completely address the need for reform of policing tactics at the state and local level. The inclusion of new categories such as national origin, religion, sexual orientation and gender identity; establishment of much-needed data collection and training, and coverage of some state and local law enforcement activities are important steps forward.

Nonetheless, several components of the Guidance do little to protect some minority populations that have to endure unfair targeting by law enforcement every day. Using race, the color of someone's skin, religion, or ethnicity as any basis for suspicion or investigation is demoralizing, unconstitutional. Although, the government recognizes that bias-based policing is patently unacceptable, it will continue to allow the FBI, TSA, and CBP to profile racial, religious and other minorities at or in the vicinity of the border and in certain national security contexts, and does not apply the Guidance to most state and local law enforcement.

DOJ should release the full current version of the FBI Domestic Intelligence and Operations Guide (DIOG) and require the FBI to amend it to completely prohibit profiling in all contexts, require at least an articulable factual basis to open investigations, and prohibit the recruitment or tasking of informants when there is no reasonable suspicion of wrongdoing.

Furthermore, the Department of Homeland Security should revise its April 2013 memorandum to component heads regarding its commitment to non-discriminatory law enforcement and screening activities, which incorporates the Justice Department's Guidance by reference, accordingly

This Guidance is not an adequate response to the crisis of racial profiling in America. The President should compel all his federal police, as well as state and local agencies to adhere to the law and stop engaging in biased profiling now. Moreover, legislative action such as the End Racial Profiling Act (ERPA) is needed to end racial profiling in all of its forms.

Recommendations

- The government should eliminate exemptions to the Guidance that allows the FBI, TSA, and CBP to profile racial, religious and other minorities at or in the vicinity of the border and in certain national security contexts, and should also apply the Guidance to state and local law enforcement who receive federal funds. DOJ should release the full current version of the FBI Domestic Intelligence and Operations Guide (DIOG) and require the FBI to amend it to completely prohibit profiling in all contexts, require at least an articulable factual basis to open investigations, and prohibit the recruitment or tasking of informants when there is no reasonable suspicion of wrongdoing.
- DHS should make corresponding changes to its relevant memorandum on non-discriminatory law enforcement activities.
- Congress should pass the End Racial Profiling Act.

V. MILITARIZATION OF POLICE AND POLICE REFORMS

In addition to the implicit and explicit bias against people of color and particularly African American youth, the recent events in Ferguson, Missouri, have given national attention to concerns about domestic policing. These concerns range from racial profiling, to excessive use of force, to militarization of state and local law enforcement agencies. In the immediate aftermath of the death of Michael Brown, the nation saw a highly and dangerously militarized response by law enforcement. Media reports indicate that the Ferguson Police Department, in conjunction with other state and local agencies, responded to protests and demonstrations with "armored vehicles, noise-based crowd-control devices, shotguns, M4 rifles like those used by forces in Iraq and Afghanistan, rubber-coated pellets, and tear gas."[85] The protests and demonstrations that now follow a grand jury's decision not to indict the police officer who killed Michael Brown have also been met with armored vehicles.[86]

Militarized policing is not limited to situations like those in Ferguson or emergency situations—like riots, barricade and hostage scenarios, and active shooter or sniper situations—that Special Weapons And Tactics ("SWAT") were originally created for in the late 1960s.[87] Rather, SWAT teams are now overwhelmingly used to serve search warrants in drug investigations. Our June 2014 report, *War Comes Home: The Excessive Militarization of American Policing*, found that 79 percent of the incidents reviewed involved the use of a SWAT team to search a person's home, and more than 60 percent of the cases involved searches for drugs.[88]

Just as the "war on drugs" has disproportionately impacted people and communities of color in many ways, including voter disfranchisement, as discussed above, the use of paramilitary weapons and tactics also primarily impacts people of color. Of the people impacted by SWAT deployments for warrants examined by the ACLU, at least 54 percent were minorities. When data was examined by agency (and with local population taken into consideration), racial disparities in SWAT deployments were extreme. In every agency, African Americans were disproportionately more likely to be impacted by a SWAT raid than whites, sometimes substantially so. For example, in Allentown, Pennsylvania, African Americans were nearly 24 times more likely to be impacted by a SWAT raid than whites. In Ogden, Utah, African Americans were 40 times more likely to be impacted by a SWAT raid than whites.[89]

The Department of Defense's 1033 Program provides state and local law enforcement with military weapons and equipment. We are concerned that the 1033 Program, along with other federal programs, has resulted in the militarization of American policing. Since the 1990s, the 1033 program has provided more than $5 billion worth of surplus military equipment to state and local agencies at no cost. During a September Senate hearing, we learned that one-third of the equipment being transferred through the program is new.[90] While we now know that assault rifles and mine-resistant ambush- protected vehicles (MRAPs) constitute 4% of what is transferred through 1033, that 4% translates into 78,000

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[85] David Nakamura & Niraj Chokshi, *Obama orders review of military equipment supplied to police*, WASH. POST (Aug. 23, 2014), http://www.washingtonpost.com/politics/obama-orders-review-of-military-equipment-supplied-to-police/2014/08/23/6316b8aa-2b03-11e4-8593-da634b334390_story.html.

[86] Representative Hank Johnson, *Why does Ferguson still look like Iraq? Congress can stop the military police*, THE GUARDIAN (Nov. 26, 2014, 6:15 PM), http://www.theguardian.com/commentisfree/2014/nov/26/ferguson-congress-military-police-streets.

[87] DARYL GATES, CHIEF: MY LIFE IN THE LAPD 131 (New York: Bantam, 1992),. For an excellent summary of the creation and evolution of SWAT, *see* RADLEY BALKO, RISE OF THE WARRIOR COP (New York: PublicAffairs, 2013).

[88] WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AMERICAN POLICING, ACLU, June 23, 2014, 3, *available at* https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf.

[89] *Id.* at 36-37.

[90] Tim Devaney, *Senators blast program that 'militarized police,'* THE HILL, Sept. 9, 2014.

pieces of such equipment for last year alone and 460,000 pieces of such equipment since the Program's inception.[91]

Problems with law enforcement go beyond militarization, certainly, and are evidenced by the police practices that are the cause for continued protest in Ferguson. For one, we do not have a complete picture of domestic policing – the stops, searches, arrests, excessive uses of force, and homicides by law enforcement – because we do not have data. As an example, in 2013 the FBI Uniform Crime Report indicates that there were 461 justifiable homicides by law enforcement, the highest in two decades. These numbers fail to represent the complete universe of police killings, however, because they are self-reported homicides.[92] What we do know is that African Americans are arrested at a rate 10 times greater than those who are not African American by at least 70 police departments,[93] which suggests some degree of bias in law enforcement. And certainly, as the situation in Ferguson demonstrates, there is a need for greater police force diversity. The Ferguson Police Department is 94 percent white in a town that is two-thirds black.[94]

These concerns about police practices, along with the increased militarization of police forces, demonstrate the need for comprehensive law enforcement reform. In the wake of the Administration's December 1, 2014, report on federal programs that have encouraged militarized policing, as well as its creation of a task force on 21st Century policing, the ACLU looks forward to working with both the White House and the Congress on solutions.

Recommendations

Congress should:

- Impose a moratorium on the 1033 Program as it continues to be reviewed.
- Continue oversight of the 1033 Program and determine if certain military weapons and equipment are not suitable for law enforcement purposes under the Program.
- Condition state and local law enforcement agencies' receipt of federal funds on the implementation of body cameras, with the appropriate privacy protections.
- Condition state and local law enforcement agencies' receipt of federal funds on the implementation of community policing practices that include citizen review boards, police force diversity recruitment, and law enforcement diversion programs.
- Condition state and local law enforcement agencies' receipt of federal funds on the implementation of standards for SWAT/Tactical teams that include the circumstances under which they can be deployed, the equipment they can use, and the government oversight the teams will be given.
- Investigate whether the Department of Justice Byrne JAG program is skewing police priorities, in particular toward increasing low-level drug arrests.

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[91] Executive Office of the President, REVIEW: FEDERAL SUPPORT FOR LOCAL LAW ENFORCEMENT EQUIPMENT ACQUISITION, Dec. 2014, *available at* http://www.whitehouse.gov/sites/default/files/docs/federal_support_for_local_law_enforcement_equipment_acquisition.pdf.

[92] Kevin Johnson, *Police killings highest in two decades*, USA TODAY (Nov. 11, 2014), http://www.usatoday.com/story/news/nation/2014/11/11/police-killings-hundreds/18818663/.

[93] Brad Heath, *Racial gap in U.S. arrest rates: 'staggering disparity'*, USA TODAY (Nov. 19, 2014), http://www.usatoday.com/story/news/nation/2014/11/18/ferguson-black-arrest-rates/19043207/.

[94] Taylor Wofford, *After midterms, little changes in troubled Ferguson*, NEWSWEEK (Nov. 11, 2014), http://www.newsweek.com/after-midterms-little-change-troubled-ferguson-283777.

- Create a national federal database to collect and report data on stops, searches, arrests, excessive uses of force, and homicides by law enforcement.

VI. GOVERNMENT DISCRIMINATION AGAINST AMERICAN MUSLIM COMMUNITIES

Many law enforcement agencies and policymakers continue to focus their counterterrorism efforts unjustly and unconstitutionally on American Muslim communities. Unfortunately, these agencies and officials rely on the widely debunked theory that Muslim religious belief, practices, and community engagement are the first step toward committing terrorist acts. The premise, rooted in ignorance and bias, ignores empirical evidence that there is no direct link between religious observance or radical ideas and violent acts. It is wrong, unfairly stigmatizes Muslims, and results in unjust targeting of these communities.

When law enforcement practices are premised on this flawed theory, the outcomes are very troubling. The Federal Bureau of Investigation ("FBI") has used community outreach programs to gather intelligence. The FBI and local law enforcement have conducted sweeping surveillance and monitoring of American Muslim communities, including deploying undercover employees and informants to infiltrate mosques and community centers in the absence of particularized suspicion of wrongdoing. The FBI has pressured law-abiding American Muslims to become informants against their own communities, often in coercive circumstances.

Investigations have also revealed numerous FBI counterterrorism training materials that paint an inaccurate and bigoted portrait of Arab and Muslim communities, which have been used by the FBI and the Department of Homeland Security ("DHS") to train federal, state and local law enforcement officers across the country for close to a decade,[95] perpetuating these problems and leading to biased policing that targets individuals and communities based on religion.

The White House is increasingly emphasizing its Countering Violent Extremism (CVE) program; though the purported goal is addressing all types of violent extremism in the United States, its focus on American Muslim communities stigmatizes them as inherently suspect. We are deeply concerned the abusive and discriminatory practices outlined above will be perpetuated under CVE. One method of implementing CVE may task community members to expansively monitor and report to law enforcement on the beliefs and expressive or associational activities of members of their own communities. That approach to American Muslim communities—or any belief community—reproduces the same harm as government surveillance and monitoring. The result of generalized monitoring—whether conducted by the government or by community "partners"—is a climate of fear and self-censorship, where people must watch what they say and with whom they speak, lest they be reported for engaging in behavior vaguely defined as suspicious. Religious exercise and political expression are among the casualties, as individuals may abandon discussions about religion and politics—or avoid mosque and community spaces altogether—to avoid being tracked into CVE programs.

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[95] Spencer Ackerman, *FBI 'Islam 101' Guide Depicted Muslims as 7th Century Simpletons*, WIRED (July 27, 2007), http://www.wired.com/2011/07/fbi-islam-101-guide/; Spencer Ackerman, *FBI Teaches Agents: 'Mainstream' Muslims are 'Violent, Radical,'* WIRED (Sept. 14, 2011), http://www.wired.com/2011/09/fbi-muslims-radical/; Spencer Ackerman, *New Evidence of Anti-Islam Bias Underscores Deep Challenges for FBI Reform Pledge*, WIRED (Sept. 23, 2011), http://www.wired.com/2011/09/fbi-islam-domination/; *FBI's Use of Anti-Arab and Anti-Muslim Counterterrorism Training Materials*, ACLU (Oct. 20, 2011), https://www.aclu.org/files/assets/aclu_eye_on_the_fbi_alert_-_fbi_use_of_anti-arab_and_anti-muslim_counterterrorism_training_materials.pdf.

Not only do these policies and practices harm religious exercise and political expression among American Muslims, but they also erode trust of law enforcement by the community. They also foster fear and suspicion of American Muslims among law enforcement and the general public, aggravating existing prejudices and reinforcing intolerance, which can only increase discrimination, bullying, harassment, and anti-Muslim violence.

Law enforcement practices and government policies must be changed to align with our nation's commitment to religious liberty, free association, free speech, and equal protection of the law for all, not just some. One crucial step toward ending abusive counterterrorism practices would be strengthened Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.

Recommendations

- The government should eliminate exemptions to the Guidance that allows the FBI, TSA, and CBP to profile racial, religious and other minorities at or in the vicinity of the border and in certain national security contexts, and should also apply the Guidance to state and local law enforcement who receive federal funds. DOJ should release the full current version of the FBI Domestic Intelligence and Operations Guide (DIOG) and require the FBI to amend it to completely prohibit profiling in all contexts, require at least an articulable factual basis to open investigations, and prohibit the recruitment or tasking of informants when there is no reasonable suspicion of wrongdoing.
- DOJ should release the full current version of the FBI Domestic Intelligence and Operations Guide (DIOG) and require the FBI to amend it to completely prohibit profiling in all contexts, require at least an articulable factual basis to open investigations, and prohibit the recruitment or tasking of informants when there is no reasonable suspicion of wrongdoing.
- The White House should ensure that CVE programs do not perpetuate discriminatory law enforcement practices and issue safeguards and guidance to address CVE programs' impact on religious exercise, freedom of expression, and the First Amendment's Establishment Clause.

VII. NON-DISCRIMINATION PROTECTIONS FOR LGBT AMERICANS

While we have made incredible progress for lesbian, gay, bisexual, and transgender ("LGBT") Americans, like the other issues discussed above, this too remains a civil rights area where protections are lacking. Despite remarkable progress in recent years in expanding the number of states with the freedom to marry for same-sex couples, there is a startling dearth of explicit non-discrimination protections for LGBT Americans. Today, same-sex couples enjoy the freedom to marry in 34 states, as well as the District of Columbia.[96] In contrast, 18 states (plus DC) have explicit protections for LGBT people in employment[97] and housing.[98] The number drops to 17 states (plus DC) that have explicit public accommodation non-discrimination protections.[99] A mere 13 states (plus DC) have laws that explicitly protect LGBT students. [100] In addition, there are just two federal laws that provide explicit protections to individuals on the basis of their sexual orientation or gender identity – the Matthew Shepard and James

[96] *Marriage and Relationship Recognition Laws*, MOVEMENT ADVANCEMENT PROJECT http://www.lgbtmap.org/equality-maps/marriage_relationship_laws (last visited Nov. 24, 2014).
[97] *Non-Discrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/non_discrimination_laws (last visited Nov. 24, 2014).
[98] *Id.*
[99] *Id.*
[100] *Safe Schools Laws*, MOVEMENT ADVANCEMENT PROJECT http://www.lgbtmap.org/equality-maps/safe_school_laws (last visited Nov. 24, 2014).

Byrd, Jr., Hate Crimes Prevention Act of 2009 and the Violence Against Women Reauthorization Act of 2013.

The disproportionate impact of discrimination on LGBT Americans is not surprising given this lack of explicit protection in state and federal law. For example, a staggering 90 percent of respondents in a landmark transgender survey reported experiencing harassment, mistreatment or discrimination on the job or took actions like hiding who they are to avoid it.[101] From the ability to obtain a public education free from discrimination to being able to work and find housing without fear of being rejected because of who you are or who you[102] love, the lack of explicit protections for LGBT Americans is unacceptable. It is long past time for Congress to address this, and to do so in a holistic manner that is fully consistent with our existing civil rights laws that date back over 50 years.

Recommendation

- Congress should pass a comprehensive LGBT non-discrimination bill that bans discrimination based on sexual orientation and gender identity.

VIII. Conclusion

On behalf of the ACLU, I thank the Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Human Rights for holding this capstone hearing to address the State of Civil and Human Rights in the United States. I would like to specifically thank Chairman Durbin for his leadership and tireless work as Chairman of this Subcommittee to protect the civil and human rights of all Americans. Addressing discrimination of any kind should not be, and has not been, partisan. Both parties have come together in the past, whether it has been on multiple Voting Rights Act extensions or on the Fair Sentencing Act, for example, to make historic changes for the most vulnerable in our society. We look forward to working with the new Chair and all Members of this Subcommittee in the 114th Congress on these critical and wanting areas considered today.

[101] Jamie Grant, Lisa Mottet & Justin Tanis, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, EXECUTIVE SUMMARY (2011), *available at* http://endtransdiscrimination.org/PDFs/NTDS_Exec_Summary.pdf.

Leahy Statement On The State of Civil Rights

WASHINGTON (Tuesday, December 9, 2014) – The Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights is currently holding a hearing on "The State of Civil and Human Rights in the United States." Committee Chairman Senator Patrick Leahy (D-Vt.) helped to pass the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, which was enacted in 2009 and broadened federal hate crimes law to include crimes based on gender, sexual orientation, gender identity or disability. He is the author of the bipartisan, bicameral legislation to strengthen the Voting Rights Act and combat voter discrimination in all states and jurisdictions, and a cosponsor of the bipartisan Smarter Sentencing Act, which would lower nonviolent drug mandatory sentences. Senator Leahy's statement for the record for today's hearing is below. Testimony, member statements, and a webcast of the hearing are available online.

Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing on "The State of Civil and Human Rights in the United States"
December 9, 2014

Dr. Martin Luther King, Jr., said, "The arc of the moral universe is long, but it bends towards justice." However, the arc does not bend towards justice without effort. We must put in the necessary hard work – as well as build the foundation and structure – for justice to prevail. It has taken the blood, sweat, and tears of many Americans to push for a "more perfect union." We must not stop now.

There are too many cracks in this foundation, especially in areas such as voting rights, the criminal justice system, and privacy and civil liberties. In the area of voting rights, states continue to pass restrictive voting laws that disenfranchise millions of voters, a disproportionate number of which are minorities. Discriminatory voting laws have become even more common in the wake of last year's Supreme Court decision dismantling key provisions of the Voting Rights Act.

Our criminal justice system incarcerates too many individuals, especially non-violent drug offenders, because of its reliance on mandatory minimum sentences. And there continues to be distrust between law enforcement and communities of color because of a long history of unfair treatment towards minorities.

On privacy, we have seen that the Federal government can overreach when we do not remain vigilant. We have seen the privacy rights of American citizens violated through the indiscriminate bulk collection of data about their lives without compelling justification. These are just some of the significant problems that continue to test our Nation – and which we have not adequately addressed.

As Chairman of the Judiciary Committee and as a Senator who has served the state of Vermont and this country for nearly 40 years, I will continue to fight to address these problems. I believe in being part of a constructive process to reform our system and address these injustices. That is why I have introduced bipartisan bills this past Congress to help ensure that the moral arc continues to bend towards justice.

In January 2014, on the eve of the weekend celebrating Dr. Martin Luther King's holiday, I introduced the Voting Rights Amendment Act of 2014 along with Congressmen Jim Sensenbrenner, John Conyers, and John Lewis that would have restored the most fundamental

protections of the law. Senator Durbin was an original cosponsor of our legislation. This bill was drafted in response to the Supreme Court's decision in *Shelby County v. Holder* in which five justices disregarded extensive findings of Congress and gutted the Voting Rights Act. A narrow and conservative majority of the Court struck down the coverage formula and dramatically undercut the Act's ability to protect Americans from racial discrimination in voting. I have been disappointed that not a single Senate Republican has joined our efforts to restore the voting rights of all Americans, despite mounting evidence that in too many places, racial discrimination in voting persists.

Within weeks of the Supreme Court's ruling, Republican governors and state legislatures exploited the *Shelby County* decision in order to implement sweeping voter suppression laws that disproportionately prevent African Americans from voting. In North Carolina, the Republican legislature and governor passed the most comprehensive voter suppression law in recent memory. That state law resulted in many minorities, students, elderly and lower income individuals being disenfranchised this past election. In Texas, then-Attorney General Greg Abbott pushed to immediately implement the most restrictive voter ID law in the country. A Federal judge found the restrictive Texas voter ID law to be an "unconstitutional poll tax" that could disenfranchise up to 600,000 voters, most of whom would be African Americans and Hispanics. Nevertheless, the Supreme Court allowed the law to be implemented for this past November's election. We *must* act in the new Congress to restore the protections of the Voting Rights Act.

Reforming our nation's sentencing laws must also remain a high priority. The United States has a mass incarceration problem. Between 1970 and 2010, the number of people incarcerated grew by 700 percent. Although the United States has only five percent of the world's population, we incarcerate almost a quarter of its prisoners. This is largely driven by inflexible and unfair mandatory minimum sentences, which disproportionately impact communities of color. Our one-size-fits-all approach to sentencing has been a great mistake, and Congress must fix it. Our Smarter Sentencing Act would allow reductions in certain drug sentences by providing judges more discretion to determine an appropriate sentence. It is time to stop relying on decades-old policy that has been disproven and is simply unjust. The Judiciary Committee approved this legislation on a bipartisan basis this year, and I hope we can work together so that the full Senate can pass this legislation next year.

Right now, Americans are having an important conversation about the loss of human life in communities across the country. A critical piece of this conversation is about the relationship between law enforcement and communities of color. We must reexamine the militarization of our law enforcement because while no one questions that law enforcement must maintain order, equipping police officers with the tools of war does nothing to repair a torn community. I have long worked to improve our civil asset forfeiture program, and I am confident both parties can work to address this in the new year.

The issue of privacy and our civil liberties is also in need of reform. The advancement of our civil rights includes the preservation of our civil liberties. Last summer, Americans learned for the first time that the government is secretly collecting the telephone records of innocent Americans – regardless of whether there is any connection whatsoever to terrorism or criminal activity. In response, I introduced the USA FREEDOM Act to end the indiscriminate bulk collection of our private records and enact much-needed reforms to the government's surveillance authorities. This bipartisan bill was supported by the Intelligence Community, privacy and civil liberties groups of all interests and viewpoints, the high-tech industry, and

lawmakers across the political spectrum. I fought to advance the bill last month because it was of critical importance, both to preserve the civil liberties of our citizens but also to protect our national security. Despite its broad support, Senate Republicans would not even allow a debate to begin on our legislation, but I will continue to fight for these reforms in the new Congress.

As the 113th Congress comes to a close, it is essential to have this critical examination of the state of civil rights in this Nation and I thank Senator Durbin for chairing this important hearing. Bending the arc towards justice can oftentimes be very, very difficult. We know from our shared experience that we cannot be the Nation that we strive to be by setting the dial on autopilot and assuming that all will be well. Recently we have seen and experienced setbacks. We must, however, continue the fight by building bridges and proposing solutions. I will continue to do so in my role as a United States Senator and hope that other members of this body will as well.

Opening Statement of U.S. Senator Richard J. Durbin
(As prepared for delivery)

Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on "The State of Civil and Human Rights in the United States"
Tuesday, December 9, 2014

Our identity as Americans is based on ideas and values, not ethnicity or creed. This is what makes our nation unique. But since its founding, there has been a divide between the promise and the reality of America. The man who wrote in our Declaration of Independence that "All men are created equal" was a slaveholder. And the Constitution – our founding charter – treated African Americans as property and women as second-class citizens.

The history of our country has been a slow march to fulfill the promise of our ideas. Brave men and women have fought and sacrificed – sometimes even giving their lives – in the struggle to create the "more perfect union" that our national charter promised.

The election of our first black president shows that we have come a long way as a nation. But it is important to recognize – and to say clearly – that there is still a problem with racism in America and we still have work to do.

This Subcommittee has tried to look in the mirror – to examine what more needs to be done to protect civil and human rights in our country.

We have tried to understand the human impact of the issues we debate by hearing directly from the people who are most affected. We have given a platform to voices that are not often heard in the halls of Congress.

I have often said that this Subcommittee focuses on legislation, not lamentation. And we have taken the words of our witnesses and translated them into action.

I worked with the first Ranking Member of this Subcommittee – Senator Tom Coburn – to pass four laws that give the government more power to prosecute human rights abusers. In 2012, the Obama Administration used this authority to deport Liberian warlord George Boley for using child soldiers.

After we heard the powerful testimony of Cedric Parker, I worked with Senator Jeff Sessions and other members of the Judiciary Committee to pass the Fair Sentencing Act, which significantly reduced the sentencing disparity between crack and powder cocaine and repealed a mandatory minimum sentence for the first time since the Nixon Administration.

After this Subcommittee held the first-ever Congressional hearings on solitary confinement – where we heard from Anthony Graves and Damon Thibodeaux – the federal Bureau of Prisons agreed to my request to submit to the first independent assessment of its solitary confinement policies and practices.

After we heard the brave testimony of Harpreet Singh Saini, I successfully pushed the Justice Department to begin tracking hate crimes against Sikh Americans, Arab Americans, and Hindu Americans.

But, we have been reminded in recent days that there is much more work to do.

When our government still believes that it is acceptable – in the name of security – to profile people based on their race, national origin or religion, there is more work to do.

When Muslim Americans are the targets of violent hate crimes simply because of their religion, there is more work to do.

When states around the country adopt laws that make it harder for minority communities to vote, there is more work to do.

When unarmed African-American men and boys are killed, and their names – Trayvon Martin, Jordan Davis, Michael Brown, and Eric Garner – bring tears to our eyes, there is more work to do.

When protestors take to the streets to shout out:

- "Hands up, don't shoot."
- "I can't breathe."
- "Black lives matter."

... there is more work to do.

When a significant part of the American family is disenfranchised and does not trust the police or the criminal justice system, there is more work to do.

Congress must play our part. We should start with a number of bipartisan efforts to protect civil and human rights. For example, we should pass the Smarter Sentencing Act, which I introduced with Senator Mike Lee, and which is cosponsored by Senator Leahy, the Chairman of the Committee, and Senator Cruz, the Ranking Member of this Subcommittee. The Smarter Sentencing Act would make important reforms to our sentencing laws for nonviolent drug offenses.

We should restore federal voting rights for ex-offenders, which Senators Cardin and Paul have both proposed. There are some 5.8 million Americans who, after paying their debt to society, are still denied the right to vote. And this type of disenfranchisement has a disproportionate impact on people of color.

We also should pass the Voting Rights Amendment Act, which was authored by Chairman Leahy, and Republican Congressman Jim Sensenbrenner. This bipartisan legislation is a response to the Supreme Court's 2013 *Shelby County* decision, which gutted the Voting Rights Act.

This is my last hearing as Chairman of this Subcommittee before I turn over the gavel to Senator Cruz, the incoming Chairman. Clearly, there is much more work to do, and I look forward to working with Senator Cruz in the 114th Congress as we continue the struggle to create a more perfect union.

I. The ICCPR treaty is by definition, a self-executing treaty, having the necessary implemented legislation in place at the time the treaty was ratified on 8 June 1992, as stipulated to by the U.S. Government. This legislation provides for domestic effect of law providing for U.S. citizen rights in U.S. jurisdiction. Declarations do NOT affect the treaty, do not change U.S. citizen rights under the treaty, nor do they bind the courts!

The entire basis for the district courts dismissal of the case, is a pre-ratification *declaration*, which has been perseverated absent consideration of the other *declarations*, *reservations*, *understandings*, or *Major Provision* of the ICCPR treaty. Declarations have no legal effect upon a ratified treaty, nor do they change the *understandings*, *intent* or *purpose* of the treaty and they do NOT legal bind U.S. Courts. U.S. Courts have held that treaties, which have the necessary legislation in place to provide for effect under the law, are by definition *self-executing*. By the time of treaty ratification, the necessary legislation required to make the treaty self-executing was in place as stipulated to by the U.S. Government and as confirmed on multiple occasions before Congressional sessions as expressly documented. *A review of these applicable documents* not previously considered by federal courts, show the necessary legislation required to provide for domestic effect of law, was not only required to be in place prior to ratification, but was in fact in place per U.S. stipulated documentation, before the ICCPR treaty was ratified on 8 June 1992. Such legislation *makes the* ***treaty self-executing by federal court definition***. The ICCPR treaty provides for *Civil and Political Rights* of citizens within their legal country of residence. Cases considering non-U.S. citizens, or U.S. citizens, not within U.S. jurisdiction are not relevant (FRE Rule 401) to this case as the treaty is not applicable in these cases. The ICCPR treaty provides remedies to U.S. citizens for violations in U.S. territory, including violations by the U.S. government.

The focus of declaration 1, as demonstrated by a reading of *the entire record*, was not to limit individual rights under the treaty, but to express concern that the treaty not limit citizen rights already established under the U.S. Constitution or U.S. law. The declaration has been used for the exact opposite purpose, i.e. to limit U.S. citizen rights.

After reviewing all available ICCPR treaty cases and the record of this treaty, *plaintiff* ***brings*** *to the Courts attention for the first time, the parties* ***intent*** *to ratify and the position of the U.S. Government at the time of treaty ratification*. It is unconscionable, given the totality of statements made by the U.S. Government, Congressional statements and U.S. actions taken to date to address other governments violating their citizens rights based upon the ICCPR treaty, that anyone could conclude the ICCPR treaty was anything but self-executing with civil and political rights for U.S. citizens, with remedies enforceable through U.S. Courts when the U.S. government is the source of those violated rights.

The issue as to whether the ICCPR treaty is self-executing or not, is *not* dependent upon a declaration which has no affect upon the treaty document, domestic law, or the federal courts but, whether (1) there was adequate legislative in place to provide domestic effect of law at the time the treaty was ratified (or since) and (2) does the ICCPR treaty provide for individual U.S. citizen rights.

a. Declaration 1 does not change the meaning or effect of the ICCPR treaty! The declaration is NOT law and does not bind the courts. The reservations, understandings and Major Provision clearly demonstrete the ICCPR treaty provides civil and political rights to U.S. citizens since its ratification.

The defendant and district Court base their entire argument for dismissal on a single *declaration* made on 2 April 1992, 138 Cong. Rec. S4781-01 without regard, consideration or referral to multiple other Congressional records, Senate Reports and Common Core Documents filed by the U.S. Department of State. Plaintiff recognizes that this *pre-ratification declaration* was made "that Articles I through 27... are not self-executing." ***Nonetheless, treaty declarations do not alter treaties, do not affect treaty execution and are not the same thing as a treaty understanding.***

A non-self-executing treaty, by definition, is one that was ratified with the understanding that it is not to have domestic effect of its own force. *Medellin v. Texas*, 552 U.S. 491, 527 (2008)

However, the treaty, its *reservations*, *understandings*, *Major Provision* and *post-ratification documentation* clearly stipulate that the position of the United States is that the treaty has domestic effect of law and is therefore self-executing by definition. Specifically that the necessary legislation was in place at the time of ratification to give domestic effect of law and as noted infra, the treaty would NOT have been ratified had the U.S. Government not believed that ALL the necessary legislation was in place at the time of ratification to give the treaty domestic effect of law in the courts. Everything in defense counsel's argument and district Courts erroneous dismissal of the case focuses on the misinterpretation of the legal effect of a single declaration and the failure to consider the applicable record. Declarations *cannot* alter the terms or intent of a treaty and they cannot bind the U.S. Courts by declaring a treaty non self-executing.

> ... A declaration is not part of a treaty in the sense of modifying ....**The treaty is law. The Senate's declaration is not law**....the **Senate's power under Article II extends only to the making of reservations** that require changes to a treaty before the Senate's consent will be efficacious. ....(emphasis added) *See INS v. Chadha*, 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983). *Igartua-De La Rosa v. U.S.*, 417 F.3d 145, 190-91 (1st Cir. 2005)

When read in context the U.S. declarations actually reflected a concern that individual rights of U.S. citizens could be *limited*. Consequently, declaration 1 was followed by declaration 2, which is never mentioned by those seeking to obfuscate the record on declaration 1.

> "That it is the view of the United States ... refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant, even when such restrictions and limitations are permissible under the terms of the Covenant." (Declaration 2)

It is contradictory for defendant to attempt to limit U.S. citizen rights, when the focus was not to limit rights under the treaty. Note it is the effect of *restrictions*, which can alter a treaty when clearly stated for other signatory parties to see; not *declarations*. Consequently, these two declarations have no affect upon the treaty, nor upon the domestic effect under U.S. law. These declarations only show concern that U.S. citizen rights should not be limited; yet this is exactly what defense counsel and defendant would have the courts do. Article 50, not included in declaration 1, further stipulates:

> Article 50: The provisions of the present Covenant shall extend to **all parts of federal States without any limitation or exceptions** (emphasis added).

The first obligation in trying to understand the impact, or rather the lack of impact of declaration 1, apart from the SCOTUS in *Igartua* (supra), that "The Senate lacks the constitutional authority to *declare* the non-self-executing character of a treaty with binding effect on U.S. courts." is to understand the meanings of the terms we are using; viz. *declarations*, *reservations* and *understandings*. They cannot be used interchangeably as they have different meanings, both legally and otherwise. Clearly, if they meant the same thing, we would only need one term. A declaration, such as declaration 1 does NOT change a treaty and a non-self-execution declaration differs materially from a reservation. *See Restatement*. (supra) at § 314, cmt. d. "*A declaration is not presented to the other international signatories as a request for a modification of the treaty's terms. Hence, the different signatories are operating under the original treaty and not some modification of it.*" Should the U.S. not agree with the terms of the treaty, it is not required to sign the treaty. As a ratified treaty, following Presidential signature (infra), the U.S. and its courts have the obligation to honor the treaty as it is written, seen and approved by other signatory nations. Under the U.S. Constitution, the mechanism for treaty ratification is clearly defined, just as legislative actions from the Congress to the President have been defined. Senate line item treaty veto are no more constitutionally valid than a Presidential line item veto.

As two leading commentators have explained and the SCOTUS has held, the Senate does not have the power to bind a court to such declarations, it only has the power to make *reservations* and it is the Courts responsibility to then apply the treaties to the law of the land under the *Supremacy Clause*.

> ... The courts must undertake their own examination of the terms and context of each provision in a treaty ... The Senate's declaration is not law. ... the **Senate's power** under Article II **extends only** to the making of **reservations**.... (emphasis added) *See INS v. Chadha*, 462 U.S. 919, ... *Igartua-De La Rosa v. U.S.*, 417 F.3d 145, 190-91 (1st Cir. 2005)

Clearly members of Congress and defense counsel should and the Courts must, comprehend the significance of differences between *declarations*, *reservations* and *understandings*. The SCOTUS has made it clear the Senate cannot change a treaty by introducing new terms and *declarations* are not law (*Igartua*, supra). Unfortunately, the SCOTUS has itself, introduced err into the ICCPR discussion by calling the declaration an "*expressed understanding*." Neither the defendant, the district court nor apparently anyone else has corrected this, yet both have erroneously referred to it. Two wrongs do not make a right and misquoting incorrect statements, even when made by the SCOTUS does not make them correct. In medicine when attending physicians make mistakes, students and staff are encouraged to correct the mistake. If they do not, everyone will be confused and someone, usually the patient, could be seriously hurt or killed. In a case *not even applicable* to the ICCPR treaty (*Sosa*, infra), given that the ICCPR treaty does NOT apply to Alien citizens and Sosa was filed under the Alien Tort Statute and FTCA, neither of which are applicable to an ICCPR treaty case, the SCOTUS called the self-execution declaration an *express understanding*, instead of a *declaration*, which as already established

(supra) has a completely different legal effect. The SCOTUS erred:

> ... the United States ratified the Covenant on the **express understanding** that it was not self-executing and so did not itself create obligations enforceable in the federal courts. See *supra*, at 2763. (emphasis added) *Sosa v. Alvarez-Machain*, 542 U.S. 692, 735 (2004)

Had this truly been a treaty *understanding*, this might have an impact, except that it cannot alter what President Carter signed (Presidential signature, infra) in 1977; nonetheless *as a declaration, it does not*! Both (1) the defendant

> *"...as when its ratification of the International Covenant on Civil and Political Rights declared that the substantive provision of the document were not self-executing."* (document 25, page 3, lines 7-8)

and (2) the District Court,

> The Supreme Court explains that "although the [ICCPR] does bind the United States as a matter of international law, the United States ratified the [ICCPR] on the **express understanding** that it was not self-executing and so did not itself create obligations enforceable in the federal courts." (emphasis added) (document 57, page 4, lines 11-14)

erred in using this incorrect statement to support their position. The *declarations*, *reservations*, *understandings* and *Major Provision* of the ICCPR treaty are noted (passim) and the self-executing comment was a *declaration*; NOT AN UNDERSTANDING! When the SCOTUS differentiates these terms, rules on them (*Sosa*) and then incorrectly uses them, this error by the SCOTUS does not justify the continued erroneous use of terms by defendant, defense counsel, the district court, an Appellate Court or the U.S. Supreme Court.

Had the Senate disagreed with the ICCPR treaty terms and conditions, it would have had to change them by adding a *reservation*, thereby making other nations aware of a changed *intent* on the part of the U.S., however, the Senate did not. Therefore, all other parties to the ICCPR treaty, by virtue of ratification of what *President Carter signed* and the failure to change the treaty intent; have been guaranteed by the U.S. government and its courts, that the U.S. agrees with the terms of the treaty as signed and ratified; with the intent to be legally bound by the ICCPR treaty language.

> ... concluded ... treaty...self-executing...because **"the language of" the Spanish translation** (*brought to the Court's attention for the first time*) **indicated the parties' intent to ratify and confirm the landgrant "by force of the instrument itself.** (emphasis added) *Id.*, at 89. *Medellin v. Texas*, 552 U.S. 491, 514 (2008)

The Senate could also have refused to ratify the treaty if it disagreed with the treaty terms and conditions, but it did not. The Founding Fathers purpose for integrating the *Treaty Clause* into the U.S. Constitution was to establish a *different principle* from that used by the British; viz. that once signed and ratified, it would have legal effect. Since declarations are not seen by other countries (Restatement, supra) ratifying the treaty, other countries would not be aware of any changed U.S. intent and as such the SCOTUS has held (supra) that declarations do not change the treaty terms and are not considered part of the treaty.

> There is something, too, which **shocks the conscience** in the idea that a treaty can be put forth as embodying the terms of an arrangement with a foreign power or an Indian tribe, **a material provision of which is unknown to one of the contracting parties**, and is **kept in the background to be used by the other** only when the exigencies of a particular case may demand it....In short, ... **cannot be considered a part of the treaty**. (emphasis added) *The Diamond Rings*, 183 U.S. 176, 183-84 (1901)

The SCOTUS has also held that terms, which alter a treaty, cannot be added later.

> The Senate **has no right to ratify the treaty and introduce new terms** ... it may refuse its ratification, or make such ratification conditional upon the adoption of **amendments** to the treaty. (emphasis added) *The Diamond Rings*, 183 U.S. 176, 183 (1901)

The ICCPR treaty was signed on 5 October 1977 by President Jimmy Carter noting that the ICCPR treaty dealt with citizen rights within their own countries; rights which President Carter stated were a matter of U.S. law.

> ...the Covenant was "concerned about the rights of individual human beings and the duties of governments to the people they are created to serve." Parties to the Covenant, the President added, pledge, "**as a matter of law**,....Weissbrodt, United States Ratification of the Human Rights Conventions, 63 U. Minn. L. Rev. 35 (1978).

On 23 February 1978, President Carter submitted the ICCPR treaty to the Senate stating even then, that the ICCPR treaty was entirely consistent with the U.S. Constitution and laws and the DOJ concurred with the State Department.

> "[This Covenant] treats in detail a wide range of civil and political rights.... The great majority of the substantive provisions of [this Covenant] are entirely consistent with the letter and spirit of the [U.S.] Constitution and laws. ... The Department of Justice concurs in the judgment of the Department of State ...there are no constitutional or other legal obstacles to [U.S.] ratification."

Finally, the SCOTUS has also held that once a treaty has been signed by the President of the United States, the Senate can only ratify the treaty as signed to by the President. *The Senate may not alter the terms or conditions of the treaty as signed by the President of the United States*. It is simply limited to ratifying that which the President has already agreed to or not ratifying it.

> By the Constitution (art. 2, § 2) ... the treaty must contain the whole contract between the parties, **and the power of the Senate is limited to a ratification of such terms as have already been agreed upon between the President, acting for the United States, and the commissioners of the other contracting power. The Senate has no right to ratify the treaty and introduce new terms into it**, which shall be obligatory upon the other power, although it may refuse its ratification, or make such ratification conditional upon the adoption of amendments to the treaty. (emphasis added) *The Diamond Rings*, 183 U.S. 176, 183-85 (1901)

No amendments were added to change the ICCPR treaty and it should be obvious that *amendments* are not *declarations*. Since Article II of the U.S. Constitution only gives Congress the power to alter treaties under *reservations*, which would be added to the treaty where other ratifying parties may see the changed U.S. intent, it is important to look at the actual reservations made to the ICCPR treaty, which have not been discussed by defendant or the district court.

ICCPR Treaty Reservations

(1) That article 20 does not authorize or require legislation or other action by the United States ... protected by the Constitution and laws of the United States.
(2) That the United States reserves the right, subject to its Constitutional constrains, to impose capital punishment on any person ... below eighteen years of age.
(3) That the United States considers itself bound by article ....
(4) That because U.S. law generally applies to an offender ...the United States does not adhere to the third clause of paragraph 1 of article 15.
(5) ... the United States reserves the right, in exceptional circumstances, to treat juveniles as adults... who volunteer for military service prior to age 18.

Not only is there NOTHING in the reservations which alter the obligations of the U.S. to enforce the individual U.S. citizen rights under the ICCPR treaty including articles 1-27, minus *specifically noted* items, which have nothing to do with the present case; but, the very reservations themselves make it crystal clear that the ONLY limitations are (1) not restricting the "right of free speech and association protected by the Constitution and laws of the United States", (2) issues of "capital punishment," (3) specific issues regarding "juveniles in the criminal justice system" being treated as "adults" and (4) "individuals who volunteer for military service prior to age 18." Clearly, there is nothing within the reservations of the ICCPR treaty, which would limit the rights of a U.S. citizen under domestic law except for these very

specifically noted *reservations* to the ICCPR treaty, none of which are applicable to this case.

Within this same Congressional report we find the third important component required to Understand the ratified ICCPR treaty; viz. the *understandings* of the United States.

ICCPR Treaty Understandings

II. The Senate's advice and consent is subject to the following understandings, which shall **apply to the obligations of the United States under this Covenant:**

(1) That the Constitution and laws of the United States guarantee ...those terms are used in Article 2, paragraph 1 and Article 26-to be permitted ... rationally related to a legitimate governmental objective. The United States further understands the prohibition in paragraph 1 of Article 4 upon discrimination ...effect upon persons of a particular status.

(2) That the United States understands the **right to compensation** referred to in Articles 9(5) and 14(6) to **require the provision of effective and enforceable mechanisms**... **obtain compensation** from either the responsible individual or the appropriate **governmental entity** ... of domestic law.

(3) That the United States understands ... paragraph 2(a) of Article 10 to permit .... The United States further understands ...paragraph 3 of Article 10 does not diminish ... penitentiary system.

(4) That the United States understands that subparagraphs 3(b) and (d) of Article 14 do not require .... The United States further understands ...paragraph 3(e) does not prohibit a requirement ... to compel is necessary for his defense. The United States understands the prohibition ... double jeopardy in paragraph 7 to apply ... judgment of acquittal ... same governmental unit....

(5) That the United States understands that this Covenant shall be implemented ... for the fulfillment of the Covenant. (emphasis added) 138 Cong. Rec. S4781-01, 1992 WL 65154

The understandings of the United States are not the least bit ambiguous. The treaty is enforceable in U.S. courts for U.S. citizens with compensation for wrongs. There is nothing in either the *reservations* or *understandings* that make the treaty non self-executing! Both the reservations and understandings address specific articles within the first 27 articles, stipulating specific rights under these articles as they apply to U.S. domestic law, including the right to compensation when U.S. citizen rights are violated under the treaty. Thus providing further proof the ICCPR treaty is self-executing and demonstrating the error introduced by confusing the terms *declaration*, *understanding* and *reservation*.

The 2 April 1992 Congressional Record also shows a *Major Provision* of *rights guaranteed* under the ICCPR treaty. This Major Provision appears within the same pre-ratification document defendant and District Court uses in an effort to dismiss this case. [U.S. Senate Executive Report 102-23 (102d Cong., 2d Sess.)]

"Each Party to the Covenant undertakes "to respect and to ensure" **to all individuals within its territory and under its jurisdiction the rights recognized in the Covenant** ... **to adopt legislation or other measures necessary to give effect to these rights; and to provide an effective remedy to those whose rights are violated** (emphasis added)."

It is clear from Congressional Reports (passim), officials at the Department of Justice (infra) and the U.S. Department of State (infra), that between the time of the *pre-ratification* Congressional Report of 2 April 1992 and the *ratification* of the ICCPR treaty on 8 June 1992, the position of the United States of America based upon the reservations, understandings and Major Provision of the Congressional record (passim) was that *the necessary legislation was to be, and in fact was, in place to provide for the rights of individual U.S. citizens at the time the ICCPR treaty was ratified.*

The *Declaration of Independence* was signed by the Continental Congress 4 July 1776, but it did not establish the laws of the land, it did not provide individuals rights or remedies, nor did it provide for courts under which it could have a binding effect. The *Declaration* was a combination of the 1128 *Flemish* (*Plakkaat van Verlatinge*, 1581) deposition of Count Flanders and *British* documents (James 2d) expressing dissatisfaction with James the 2nd; not King George. "Neither aiming at originality of principle or sentiment, ... it was intended to be an expression of the American mind, and to give to that expression the proper tone and spirit called for by the occasion." (1825 letter from Jefferson to Henry Lee). The SCOTUS explicitly held the Declaration was not law. [*Ware v. Hylton*, 3 U.S. 199, 208 (1796)] My GGGGF (a British Justice) as well as *Capt. Fleming*, who crossed the Delaware with Washington on Christmas Eve December 1776, would agree; a Declaration of War does NOT establish Law! The Articles of Confederation, *ratified* by Congress 15 November 1777, followed it establishing law. The Articles were replaced by the U.S. Constitution, adopted on 17 September 1787 and went into effect 4 March 1789. The Constitution established the *understandings* and *reservations* of Congress and defined the law of the land including treaties, citizen rights and remedies; limitations of government power, duties of the courts and it bound the courts, unlike the *Declaration* of Independence. It is this FINAL document of *understanding* and *reservations*, the U.S. Constitution, which defines the law of the land, citizen rights and remedies, government powers and limitations and the responsibilities and obligations of the courts; not the *Declaration* of Independence!

Declaration 1 discusses potential concerns, which were legally addressed through the treaty *understandings*. As can be seen, these *understandings* are quite specific and anything considered in the *declaration* but not noted in these *understandings*, does not affect the treaty rights. The *declaration* did not change or alter the treaty in any manner. It did not change the *intent* of the treaty. It *did not and does not* bind the courts. *Declarations* do not amount to a Senate line item veto of treaties anymore than the President has the power to line item veto legislation so submitted. The *understandings*, *reservations* and *Major Provision* entered into by the Senate are clear statements that the ICCPR treaty provides substantive, procedural and remedial rights to U.S. citizens in U.S. courts. They do not alter the treaty nor the U.S. obligations under the treaty as signed by President Carter on 5 October 1977. The district court has erred in not providing these rights to plaintiff established by ICCPR treaty. The court erred in not distinguishing between *declarations*, *understandings*, *reservations* and *major provisions* of the ICCPR treaty and their substantially different legal effects.

b. The ICCPR treaty is by definition self-executing. Upon ICCPR treaty ratification, the necessary legislation required to provide domestic effect of law for individual U.S. citizen rights under the treaty was in place.

The SCOTUS and the Ninth Circuit Court of Appeals have held that a treaty, which has the necessary legislation implemented to provide domestic effect of law, *is by definition self-executing*. The pre-ratification documents reveal the Senates interest in refraining from limiting U.S. citizen rights.

> ... view of the United States that States Party ... should ... refrain from imposing any restrictions or limitations on ... the rights recognized and protected by the Covenant, ... (Declaration 2)

Since declaration 2 like declaration 1 is merely a declaration, we need to look elsewhere for evidence of the necessary legislation, required for the ICCPR treaty to be self-executing. As discussed (supra), the *understandings* of the Senate included the *obligation to implement* the ICCPR treaty.

> (5) That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction .... 138 Cong. Rec. S4781-01, 1992 WL 65154

As stipulated (passim), many of the rights in the ICCPR treaty articles were understood to already exist, even at the time of this pre-ratification Congressional Report. This is an important point because as *the defendant has stipulated* (document 25, page 2, lines 13-14), [*Whitney v. Robertson*, 124 U.S. 190, 194 (1988)], *a non self-executing treaty becomes self-executing once there is legislation to carry it out*. Defendant again misquotes facts and the law (passim), when he states (document 25, page 2, lines 22-23) that the non self-executing issue was an *understanding* of Congress. As has been established, the *understandings* show that U.S. citizen rights exist under the ICCPR treaty. Defendant and the district court are looking at a *declaration*, which as already established lacks any legal binding effect upon the treaty or the courts. An issue made completely moot by President Carter's signature and the Department of State's (passim) Fourth periodic report. Since declarations do NOT affect the treaty and the understandings ratified by the Senate clearly communicate to the world that the U.S. understands and agrees to these specific treaty obligations and since this treaty is a treaty concerning individual citizen rights for people within their own country; it is unconscionable to think that anyone could continue to believe that U.S. citizens do not have individual rights under the ICCPR treaty which can be brought to U.S. federal courts for remedy.

As already noted, distinguishing which terms one is using is vitally important to understanding the legal significance of what is being said. This should be as obvious to the legal profession, as it is to the medical profession, to which much attention is due single words and their meanings. This case is being no exception! The

defendant, the district and other federal courts have erroneously switched terms without considering the ramification of doing so. Congress did not make a reservation or an understanding upon the ICCPR articles regarding execution of the treaty, but rather a pre-ratification declaration, which lacks legal affect. It is important to differentiate between understandings and declarations and not to trivialize this distinction. If the terms are important enough to be used in treaties, they are important enough to comprehend and appreciate their significant differences. As a physician, plaintiff has been medically trained to understand the importance behind the proper use of terms and to appreciate the critical differences and potentially devastating outcomes resulting from the erroneous use of terms, procedures and medications. Plaintiff can only presume the significance is just as valid legally.

The Congressional Record makes it clear that the United States *understanding* was that the ICCPR treaty did in fact have substantive, procedural and remedial rights for U.S. citizens, with most if not all of the necessary legislation already in place by 2 April 1992. As the Ninth Circuit has held, the *understanding* of a treaty, is what the parties believe the treaty as a whole means in the their own language. Since declarations are not part of the actual treaty (supra), other parties ratifying the treaty would not be aware of them. The treaty would be read in accord with the meaning presented to the other signatories of the treaty; viz. according to the *reservations* and *understandings*. The Ninth Circuit has held that it has the responsibility to make certain treaties are carried out accordingly.

> It is our responsibility to see that the terms of the treaty are carried out, ... **in accordance with the meaning they were understood to have** (emphasis added) ...to protect the ...people. *Cree v. Flores*, 157 F.3d 762, 769 (9th Cir. 1998)

> ... **and in terms of the Treaty as a whole.** (emphasis added) *Cree v. Flores*, 157 F.3d 762, 770 (9th Cir. 1998)

> ... would naturally have understood the terms of the Treaty **and resolved any doubts and ambiguities in their favor.** (emphasis added) *Cree v. Flores*, 157 F.3d 762, 771 (9th Cir. 1998)

Here the *understandings* of the U.S. are *unmistakable*, as are the statements made by the U.S. Department of State for the United States, which have been filed with the U.N. (immediately infra) and placed on the world record; viz. that the necessary legislation was in place at the time the ICCPR treaty was ratified to provide for domestic effect of law (infra). These documents further state that the U.S. did not ratify the ICCPR treaty *until the U.S. knew* the necessary legislation was already in place to provide for domestic effect in law, at the time the ICCPR treaty was ratified on 8 June 1992; several months after the Congressional meeting and pre-ratification discussion of 2 April 1992, thereby **making the ICCPR treaty self-executing by definition.**

It is clear that at the time President Carter signed the treaty (5 October 1977) and during the Senate's pre-ratification discussion of the ICCPR treaty (2 April 1992), that most if not all of the necessary legislation was considered to be in place to provide domestic effect of law to the ICCPR treaty. This is stipulated by multiple Congressional Reports, officials at the Department of Justice (infra) and the U.S. Department of State. Between the pre-ratified Congressional Report of 2 April 1992 and the ratification of the ICCPR treaty on 8 June 1992, the position of the United States of America, in addition to the *understandings* on the Congressional record (passim) was *that the necessary legislation was in place to provide for the rights of individual U.S. citizens; otherwise the treaty would not have been ratified.*

> 121. Duly ratified treaties are binding on the United States ..."supreme Law of the Land" under Article VI, cl. 2 of the U.S. Constitution. .... **In other instances, the United States does not take any new legislative action to accompany its ratification because the substantive obligations set forth in a particular treaty are already reflected in existing domestic law. For example, because the human rights and fundamental freedoms guaranteed by the International Covenant on Civil and Political Rights (other than those to which the United States has taken a reservation) have long been protected as a matter of federal constitutional and statutory law, it was not considered necessary to adopt special implementing legislation to give effect to the Covenant's provisions in domestic law** (emphasis added). Thus, that important human rights treaty was ratified in 1992 shortly after the Senate gave its advice and consent. (Common Core Document of U.S.; Fourth Periodic Report to U.N. Committee on Human Rights concerning ICCPR. December 2011)

The SCOTUS has specifically held that it is the clear treaty language (supra, *"declarations" do NOT change the language of the treaty or its meaning*), which determines if a treaty is self-executing. The language of the ICCPR treaty clearly provides *civil and political rights* to citizens of the nation States who ratify the treaty. The Senate of the U.S. received notification of this in accord with 1 U.S.C. §112b(a) and 22 C.F.R. §181.7 and have not objected or passed legislation to change the effect of the treaty. NO records suggest or imply, that the U.S. did not *understand* the meaning/intent of the ICCPR treaty based upon the terms and language of the treaty. The courts must honor that intent; they have erred in not doing so.

> Our role is limited to giving effect to the intent of the Treaty parties. When the parties to a treaty both agree as to the meaning of a treaty provision, ... we must, ... defer to that interpretation. *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185 (1982)

Congress was not ambivalent about it's intent, when during Congressional hearings, the Chairman of the Senate Foreign Relations Committee entered the following onto the record.

> ...rights guaranteed by the covenant ... cornerstones ... democratic society...ratifying the covenant now ... promote democratic rights and freedoms ... rule of law in the former Soviet Republics, Eastern Europe, ... democracy is taking hold. 138 Cong. Rec. S4781-01, 1992 WL 65154

Congress was also very clear about what these specific rights were.

> "..., **obtain compensation from ... the appropriate governmental entity.**" (emphasis added) U.S. Senate **Executive** Report 102-23 (102d Cong., 2d Sess.)

The Restatement of Foreign Relations clearly defines a self-executing treaty as one, which has domestic effect of law.

> 2) When an international agreement to which the United States is a party, manifests an intention that its provisions shall be effective under the domestic law ... interpreted by the courts as self-executing under the law of the United States... Restatement (Second) of Foreign Relations Law § 154 (1965)

Specifically,

> (1) A treaty made on behalf of the United States in conformity with the constitutional limitations indicated in § 118, that manifests an intention that it shall become effective as domestic law of the United States at the time it becomes binding on the United States (a) is self-executing in that it is effective as domestic law of the United States Restatement (Second) of Foreign Relations Law § 141 (1965)

The 2 April 1992 pre-ratification hearing included a Major Treaty Provision. Since Major Provisions are not considered a required component of treaties, it is clear that the Senate went out of its way to deliberately establish for the record this Major Provision; specifically providing that the ICCPR treaty would have domestic effect of law providing an effective remedy for U.S. citizens whose ICCPR treaty rights are violated in U.S. jurisdiction.

> ... to adopt legislation or other measures necessary to give effect to these rights; and to provide an effective remedy to those whose rights are violated. U.S. Senate Executive Report 102-23 (102d Cong., 2d Sess.).

The Federal Government has established through multiple statements, documents and actions, which have been unmistakably recorded for U.S. citizens, U.S. Courts and the World to see, that the necessary and proper legislation is and was in place to provide for domestic effect of law under the ICCPR treaty, in keeping with the provisions of the treaty and the U.S. Constitution.

> To make all Laws ... necessary and proper for carrying into Execution .... U.S. Const. Art. I, § 8, cl. 18

When the *Supremacy Clause* (Article IV, § 2) was intentionally placed into the U.S. Constitution, it was added to address problems associated with British treaties; viz. British treaties required additional legislative action to be active and were therefore of little importance. To remove this problem, the *Supremacy Clause* was formulated to make all treaties judicially enforceable. (*Cf.* 2 Max Farrand, The Records of the Federal Convention of 1787 at 393.)

> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties,...U.S. Const. art. II, § 2, cl. 2

The documentation (passim) and enacting legislation (passim) of the ICCPR treaty is not only in keeping with the intent of the Founding Fathers and the *Supremacy Clause*, but is consistent with the multiple reports presented by plaintiff to the district court, in addition to the treaty proper. Given the Fourth periodic report and other documents (passim), it is clear that the necessary legislation was in effect at the time of ICCPR treaty ratification. Independent of any other position, the Fourth Periodic Report (supra) *supersedes* any earlier statements or actions, including e.g. any non-legally binding declaration.

> (1) A treaty ... in conformity with the constitutional limitations indicated in § 118, that manifests an intention that it **shall become effective as domestic law** of the United States at the time it becomes binding on the United States **(a) is self-executing in that it is effective as domestic law of the United States, and (b) supersedes, inconsistent provisions of earlier acts of Congress** ... (emphasis added) Restatement (Second) of Foreign Relations Law § 141 (1965)

The complete record *clearly stipulates* that the treaty was ratified *only after* it was determined that there was sufficient constitutional and statutory law to provide substantive rights for U.S. citizens in U.S. jurisdiction under domestic law, qui pro domina justitia sequitur, *that the treaty when ratified was by definition, self-executing*. Post-ratification Congressional Reports, Department of State documents and Department of Justice documents presented to the Law Committee on the Judiciary, all make it clear that the ICCPR treaty, has and had the necessary legislation in place to give effect under domestic law and by definition making it self-executing, effective 8 June 1992.

> ...the Court reasoned that it "has traditionally considered as aids to a treaty's interpretation its negotiating and drafting history...and **the post-ratification understanding of the contracting parties.**" (emphasis added) 525 U.S. at 156. Northwest Austin Municipal Utility District Number One v. Holder, 2009 WL 788635 (U.S.), 21 (U.S. 2009)

Despite multiple post-ratification documents, the courts have failed to consider post-ratification or even ratification *understanding of the contracting parties*, when considering ICCPR treaty cases. Nonetheless, Nevada Courts *have held* that the U.S. State Departments view (supra) is to be respected as to international treaties.

> We are also persuaded by the **State Department's interpretation** (emphasis added).... ("Respect is ordinarily due the reasonable views ... the meaning of an international treaty."). *Garcia v. State*, 17 P.3d 994, 997 (Nev. 2001)

This Nevada position has been upheld by the SCOTUS ruling that the State Department view should be given great weight, since it is the responsible agency for executing/enforcing treaties.

> ... the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight, *id.* at 184-85., Northwest Austin Municipal Utility District Number One v. Holder, 2009 WL 788635 (U.S.), 20 (U.S.,2009)

Given the mass confusion, misuse and abuse of terminology, one should expect the State Department to clarify, as it did on the record, that ALL the necessary legislation was in place at the time the treaty was ratified to provide for domestic effect of law. Unfortunately, the District Court and defendant continue to erroneously and incorrectly use treaty terms and have erroneously selectively elected not to look beyond a pre-ratification declaration, when considering the impact of the ICCPR treaty upon U.S. citizens. It is the responsibility of the Executive Branch and its State Department to clarify this chaos to make certain the Laws of the Land are faithfully executed.

> He shall ... such Measures as he shall judge necessary and expedient; ... take Care that the Laws be faithfully executed, ... U.S. Const. art. II, § 3

From these relevant records previously not considered by the courts, it is transparently clear that the Government of the United States of America, *has stated on the record without hesitation* that the ICCPR treaty was NOT ratified until the "substantive laws set forth [in the ICCPR] treaty...already...exist[ed in] domestic law, making the treaty "self-executing" (supra). On 2 April 1992 Congress may not have considered the ICCPR treaty completely self-executing, but by 8 June 1992 the current position of the U.S. Department of State is that the necessary legislation required for domestic effect WAS in place or the treaty would not have been ratified; the declaration from 8 April 1992 notwithstanding. The Senate, the President and all other components of the U.S. government have NEVER disputed this! Since the U.S. Government ratified the treaty with this stipulation, the ICCPR treaty was by definition self-executing upon its ratification. This has not changed!

There is no ambiguity in the U.S. State Department written records, which specifically stipulate the ICCPR treaty was not ratified until the United States had ALL the necessary legislation in place to establish substantive rights under domestic law. Ergo, it is by definition self-executing.

> ...the United States does not take any new legislative action to accompany its ratification ... the substantive obligations ... are already reflected in existing domestic law. (Fourth Periodic Report)

The Ninth Circuit has also held that a treaty is self-executing when it is enforceable in domestic courts without implementing legislation.

> A treaty is self-executing when it is automatically enforceable in domestic courts without implementing legislation. *Serra v. Lappin*, 600 F.3d 1191, 1197 (9th Cir. 2010)

Since no additional legislation was required to give domestic effect of law to the ICCPR treaty, *by the Ninth Circuit's very definition, the ICCPR treaty is self-executing*. Defendant has submitted no evidence that the United States Congress has amended any of the ICCPR treaty. The treaty remains intact and *self-executing by definition as ratified*.

Had the U.S. Senate NOT agreed with the terms of the treaty, it was NOT forced to ratify the treaty! The ICCPR treaty began with Eleanor Roosevelt, was unanimously adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976. On 5 October 1977, President Jimmy Carter signed the treaty. The Senate didn't ratify the treaty until 8 June 1992, after it had been determined that the necessary legislation existed to provide for individual U.S. citizen rights under domestic law (Fourth Periodic Report, passim).

The Congressional *understandings* of the treaty as well as the statements made by Congress proves that the opinion of Congress on 2 April 1992 was that much of the needed legislation was already established for the guarantee of individual rights under the treaty. Upon ratification of the treaty months later, the position of the United States as noted in the Fourth Report (passim) is that the necessary legislation to ensure individual U.S. citizen rights *was in place* and both the Ninth Circuit and SCOTUS have ruled that such is the definition of a self-executing treaty. Under the *Supremacy Clause* of the U.S. Constitution this makes the ICCPR treaty with its individual rights and remedies, the *law of the land*.

In addition to the stipulated admission by the U.S. Government that the ICCPR treaty is self-executing, given the necessary legislation required to provide for domestic effect in law was in place at the time of treaty ratification, we now look to other court decisions to provide further confirmation that the ICCPR treaty is self-executing. Both the Seventh and Ninth Circuits have emphasized the legal significance of looking at *what the treaty was intended to do* in deciding if a treaty is self-executing.

> Whether a treaty is self-executing is an issue for judicial interpretation, Restatement (Second) of Foreign Relations Law of the United States, § 154(1) (1965), and courts consider several factors in discerning **the intent of the parties** to the agreement: (1) the **language and purposes of the agreement as a whole** (emphasis added); .... *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370, 373 (7th Cir. 1985)

> The extent to which an international agreement establishes affirmative and judicially enforceable obligations without implementing legislation must be determined in each case by reference to many contextual factors .... *People of Saipan, By and Through Guerrero v. U.S. Dept. of Int.*, 502 F.2d 90, 97 (9th Cir. 1974)

The SCOTUS followed the *Saipan* decision by holding that the *purpose* of the treaty and its *objectives* are key to determining if a treaty is self-executing.

> There are at least four relevant factors ... is **self-executing: (1) "the purposes of the treaty and the objectives of its creators,"** ...**We conclude, however, that it is the first factor that is critical to determine *whether* an executive agreement is self-executing**, (emphasis added) .... *Islamic Republic of Iran v. Boeing Co.*, 771 F.2d 1279, 1283 (9th Cir. 1985)

The Third Circuit concurred with its sister jurisdictions.

> ... our role in treaty interpretation is limited to ascertaining and enforcing the **intent of the treaty parties**. (emphasis added) ....*MacNamara v. Korean Air Lines*, 863 F.2d 1135, 1143 (3d Cir. 1988)

The SCOTUS further emphasizes the *purpose* of the treaty in making such decisions.

> ...adherence to the language of the Treaty would not "overlook the **purpose of the Treaty**." (emphasis added) 638 F.2d, at 556. *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185 (1982)

There is no doubt from a detailed review of the record, that the United States understood that the purpose of the ICCPR treaty was to establish U.S. citizen *civil and political rights* and the United States has confirmed this *intention* by making it clear that the necessary legislation was in place at the time of treaty ratification to provide for domestic effect of law resulting in the ICCPR treaty being self-executing by definition, with remedies enforceable by the U.S. judiciary.

> A proposal by the United States at the Second Session of the Commission regarding the enforcement of the rights created by the ICCPR pursuant to Article 2 also sheds light on the intentions of the United States regarding both the question of **self-execution and the enforcement of these rights by the courts of the United States**. ...
>
> a) ... to all persons under its jurisdiction, including citizens ..., the enjoyment of these human rights and fundamental freedoms;
>
> b) that any person whose rights or freedoms are violated *shall have an effective remedy*, whether the violation has been committed by persons acting in an official capacity;
>
> c) that such remedies *shall be **enforceable by a judiciary*** (emphasis added) whose independence is secured....[53] *Igartua v. U.S.*, 626 F.3d 592, 631-32 (1st Cir. 2010)

The documents surrounding the ICCPR treaty confirm a judicial remedy intent by it's very wording.

> The negotiating history of the ICCPR reinforces the clear language of this treaty establishing individual, enforceable rights on behalf of persons situated as are Appellants, and obligating the United States to provide a judicial remedy in its courts to vindicate their violation. **To conclude otherwise is to ignore the plain words of the treaty as well as our basic constitutional duty to interpret international agreements as the Law of the Land**. (emphasis added) *Igartua v. U.S.*, 626 F.3d 592, 633 (1st Cir. 2010)

Here, there can be no doubt that the *purpose* of the ICCPR treaty is to provide for the *Civil and Political Rights* of individuals in their own country. It is impossible to read the treaty and not understand this purpose. Since treaty ratification is a voluntary action, as demonstrated by the amount of time between Presidential signature and Senate ratification of the treaty and given the Fourth Report (passim) confirmation that all necessary legislation was in place at the time of ratification, it would be incomprehensible, unconscionable and myopic for anyone to conclude that the ICCPR treaty did not have the necessary legislation to provide for domestic effect of law in U.S. courts, for U.S. Citizens in U.S. territory/jurisdiction as of the time of ratification; thereby making the treaty self-executing by definition.

There is NOTHING in the treaty proper, nor the Fourth Periodic report by the United States (passim) that would suggest anything but a self-executing treaty. It is by definition self-executing pursuant to the federal courts (supra). It is also clear that the purpose and the objective of the treaty are to establish civil and political rights for citizens within their own countries under domestic effect of law. The court has erred in failing to recognize ratification and post-ratification documentation, which by definition makes the ICCPR treaty self-executing.

c. The ICCPR treaty provides civil and political rights for U.S. Citizens in U.S. territory. It does not provide legal rights for non-U.S. citizens in U.S. jurisdiction, or for violations against U.S. Citizens in non-U.S. jurisdiction.

The agreement between nation States that ratify the ICCPR treaty is that the treaty establishes Civil and Political Rights for individual citizens within their own nations. It is clear from reading the ICCPR treaty and responses from the U.S. Government, that ICCPR provides rights to U.S. citizens in U.S. jurisdiction. In the **Advance Version** of the **Fourth Periodic Report**, the U.S. made it clear that ICCPR treaty rights for U.S. citizens must be acknowledged and respected. With specific detail given to jurisdictional issues, the U.S. further stipulated:

> 504. Article 2(1) of the Covenant states that "[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind."

This same report specified that the United States is *legally obligated under articles 2 and 26* to ensure these individual rights; consistent with the treaty *understandings*, in contrast to *declaration 1* obfuscation.

> 605. In paragraph 25 of its Concluding Observations, ...acknowledge its **legal obligation under articles 2 and 26** (emphasis added) to ensure to everyone the rights recognized by the Covenant...

There is no confusion as to (1) the *understanding* of the treaty intent or (2) to what the United States was agreeing to when it ratified the ICCPR treaty as signed by President Carter or (3) that the entirely treaty, including articles 1-27, is expressly self-executing by definition. It would be the ultimate hypocrisy and unconscionable to the plaintiff, for the U.S. to call for action to be taken upon other countries violating the rights of their citizens under the ICCPR treaty and then for the U.S. to violate these same rights with its own citizens and expect no action to be taken by U.S. courts. The record shows the U.S. has been working diligently to bring to the attention of the world those nation States that are violating the ICCPR treaty. A few examples, which are by no means inclusive, are:

> 1. Calling for a renewed focus on the Government of the Islamic Republic of **Iran's** violations of internationally-recognized human rights as found in the Universal Declaration of Human Rights. 111th CONGRESS, 2nd Session 02/11/2010 PASSED SENATE: CR S592; CR S571).
>
> 2. Whereas the Government of **Syria**, led by President Bashar al-Assad, responded to protests by launching **a** violent crackdown, committing human rights abuses, and violating its international obligations, including the International Covenant on Civil and Political Rights (ICCPR) and ...112th CONGRESS, 1st Session
>
> 3. Whereas the Government of the Islamic Republic of **Iran** is a signatory to the United Nations International Covenant on Civil and Political Rights, adopted December 16, 1966 (ICCPR)... the Government of the Islamic Republic of Iran regularly violates its obligations under the ICCPR,... 113th CONGRESS, and 1st Session.

In fact, the U.S. issued a June 2012 report noting the following ICCPR treaty violations.

> "Accountability and redress for human rights violations ...the USA notes whether there is "access to an independent and impartial court to seek damages for or cessation of an alleged human rights violation." On accountability,...to investigate human rights violations and to bring perpetrators to justice. For example, inter alia, the State Department reported the following":
>
> **Afghanistan**: "Official impunity and lack of accountability were pervasive"
> **Belarus**: "the government often did not investigate reported abuses or hold perpetrators accountable."
> **Cuba**: "Members of the security forces acted with impunity in committing numerous, serious civil rights and human rights abuses."
> **Democratic Republic of the Congo**: "Impunity remained a severe problem, ... despite credible evidence of their direct involvement in serious human rights abuses

or failing to hold subordinates accountable for such abuses."
Kyrgyzstan: "The central government's inability to hold human rights violators accountable allowed security forces to act arbitrarily and emboldened law enforcement to prey on vulnerable citizens."
Mauritania: "The government rarely held security officials accountable or prosecuted them for abuses."
Myanmar: "The government generally did not take action to prosecute or punish those responsible for human rights abuses, with a few isolated exceptions."
Pakistan: "Lack of government accountability remained a pervasive problem. Abuses often went unpunished, fostering a culture of impunity".
Turkmenistan: "... complaints of abuse by law enforcement agencies did not conduct any known inquiries that resulted in members of the security forces being held accountable for abuses."
Zimbabwe: "Security forces were rarely held accountable for abuses."

Clearly it is and has been the position of the U.S. that the ICCPR treaty establishes individual citizen rights for people within their own countries, including the United States; *judicially enforceable rights*.

This position is supported and confirmed by the U.S. *verbatim report* to the U.N. by Matthew Waxman, Head of the U.S. Delegation, U.N. Human Rights Committee. Mr. Waxman states the U.S. recognizes the requirement to provide individual U.S. citizen rights in U.S. territory under the treaty.

> It is the long-standing view of my government that applying the basic rules for the interpretation of treaties ... establishes that States Parties are required to respect and ensure the rights in the Covenant only to individuals who are BOTH within the territory of a State Party and subject to its jurisdiction ... and I quote, "within its territory and subject to its jurisdiction." 2006 WL 2007216

Both Mr. Waxman's statement and the Department of State's Congressional Report are consistent with defense counsel's superiors at the Department of Justice (DOJ). On 16 December 2009, it is clear that the DOJ held the same view, which has not been recanted. In a statement before the Subcommittee on Human Rights and the Law Committee on the Judiciary, U.S. Senate, Mr. Thomas E. Perez, Assistant Attorney General for the DOJ, presented a statement at the hearing entitled "*The Law of the Land: U.S. Implementation of Human Rights Treaties*."

> **"The International Covenant on Civil and Political Rights**, adopted by the U.N. General Assembly in 1966, and ratified by the United States Government in 1992, proclaims that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, **justice** and peace in the world." This recognition is **at the heart** of the civil rights movement and of the civil rights law enforcement program **headed by the Department of Justice"** (emphasis added).

Mr. Perez also stated:

> "... that within the Department of Justice, the Criminal Division and the National Security Division share the commitment of the Civil Rights **Division to conduct our activities in a manner that is consistent with the human rights treaties discussed above.**" (emphasis added)

Said treaties including the ICCPR treaty. These statements made by defense counsels superior, viz. the Assistant Attorney General for the DOJ, contradicts defense counsel's position. Defense counsel provides no evidence that this position has changed and insubordinately and in bad-faith presents to the Court a position contrary to his superior.

Consistent with the ICCPR treaty, the U.S. has long held that the ICCPR treaty provides no rights to non-Americans or to Americans whose treaty rights are violated in non-U.S. territory. Both of the cases discussed by the District Court and all but two of the cases mentioned by the defendant are cases, which are irrelevant (FRE 401) to this case. They are NOT probative to decision making regarding remedies for a U.S. citizen in U.S. territory whose ICCPR rights have been violated. The only cases presented by defense counsel which have any bearing on this case, are the two cases focusing on declaration 1, which as discussed supra, (1) has no legal effect upon domestic law, (2) does not change the treaty obligations to American citizens, (3) does not limit U.S. obligations, given that the necessary legislation was in place at the time of treaty ratification (supra) to provide for domestic effect of law, (4) is not binding on the U.S. Courts, (5) does not change the understandings, reservations or Major Provision of the ICCPR treaty (6) and therefore are irrelevant (FRE Rule 401) to this case, (7) misleading (FRE Rule 403) and obfuscating. The district court only refers to *Cornejo* and *Sosa* in its decision to dismiss. Neither of these cases is applicable to the ICCPR treaty as both involved Mexican nationals, not U.S. citizens. These cases are therefore irrelevant (FRE Rule 401) and misleading (FRE Rule 403) in considering the ICCPR treaty. They demonstrate further court error in dismissal of this case and subsequent failure to grant the MSJ with SUFs, default and default judgment (infra). The cases presented by the defendant included:

CASES INVOLVING NON-U.S. CITIZENS. [NOT RELEVANT.]

a. *Cornejo v. County of San Diego*, 504 F.3d 853 (9th Cir. 2007).
Mexican national and the Vienna Convention, which (infra) does not provide individual treaty rights.

b. *Medellin v. Texas*, 552 U.S. 491 (2008).
Mexican national and the Vienna Convention, which (infra) does not provide individual treaty rights.

c. *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).
A Mexican national and the Alien Tort Statute and Federal Tort Claims Act.

d. *Padilla-Padilla v. Gonzales*, 463 F.3d 972 (9th Cir. 2006).
Aliens petitioned under Board of Immigration Appeals (BIA).

e. *Martinez-Lopez v. Gonzales*, 454 F.3d 500 (5th Cir. 2006).
Alien petitioned for review from order of the Board of Immigration Appeals

f. *Guaylupo-Moya v. Gonzales*, 423 F.3d 121, 136 (2d Cir. 2005).
Alien denied waiver under the Illegal Immigration Reform and Immigrant Responsibility Act.

g. *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242 (11th Cir. 2005).
Guatemalan labor unionists sued under Alien Tort Act and Torture Victim Protection Act.

CASES INVOLVING NON-U.S. TERRITORY. [NOT RELEVANT.]

a. *Igartua-De La Rosa v. U.S.*, 417 F.3d 145 (1st Cir. 2005).
Puerto Rico a Commonwealth and not in U.S. jurisdiction.

DIFFERENT ISSUES COMPLETELY UNRELATED TO AMERICAN CITIZENS SEEKING RIGHTS IN AMERICAN JURISDICTION. [NOT RELEVANT.]

a. *Whitney v. Robertson*, 124 U.S. 190 (1888).
This case addresses the effect of statutory changes to a treaty. Not the subject of this case.

b. *Robertson, Collector, etc.*, 112 U.S. 580, 598 (1884).
What defendant refers to as the "Head Money Cases" Like *Whitney v. Robertson*, this case has to do with statutes passed following a treaty, which changes the treaty. Again, not applicable to this case.

c. *Islamic Republic of Iran v. Boeing* Co., 771 F.2d 1279 (9th Circ. 1985).
This involves Executive Order and the country of Iran and an American aircraft manufacturer; not U.S. citizens.

CASES INVOLVING DECLARATION ONE. [*PRE-RATIFICATION DECLARATION .*]

a. *Rotar v. Placer County Super. Ct.*, CIV S07-0044 DFLEFBP, 2007 WL 1140662 (E.D. Cal. 2007) report and recommendation adopted, CIV-S07-0044DFLEFBPS, 2008 WL 4463787 (E.D. Cal. 2008).
Plaintiff seeks to bring a claim under 42 U.S.C. § 1983 for violations of his constitutional rights. There is a mention of ICCPR and declaration 1 *referring to White* (infra) case.

b. *White v. Paulsen*, 997 F. Supp. 1380 (E.D. Wash. 1998).
Former prisoners sued physician, alleging in part that they were subjected to nonconsensual medical experimentation (radiation) while in custody of State of Washington, in violation of international law's prohibition of crimes against humanity. *Since Rotar is based upon this case, this is the only actual case presented by defendant, which considers an American citizen in U.S. territory.*

This case has been discussed (supra) and emphasizes the actual *intent* of the ratifying nation States.

> The Ninth Circuit has expressly stated that its subordinate courts must look to relevant "contextual factors," including: the purposes of the treaty and the objectives of its creators .... Of these ... "it is the first factor that is critical to determine whether an executive agreement is self-executing, ..." ("if the parties' intent is **clear from the treaty's language courts will not inquire into the remaining factors.**") (emphasis added) *White v. Paulsen*, 997 F. Supp. 1380, 1385-86 (E.D. Wash. 1998)

Defendant cites thirteen (13) cases, with eleven (11) being completely irrelevant (FRE 401) to this case, further demonstrating bad-faith and obfuscatory efforts on the part of defendant and defense counsel. Of the remaining two (2) cases, one simply refers to the other case, leaving a single (1) case (*White*) for discussion. *White* is based upon a pre-ratification declaration, which as already discussed has no legal effect and does not bind the courts.

If it is the *intent* to make a treaty non self-executing, it must be so stated *within the treaty itself*, the *understandings*, or the *reservations*. Declarations (1) are NOT part of the treaty, (2) do NOT change the intent of the treaty, (3) its effect under domestic law, (4) nor bind the courts. It is truly unconscionable to the plaintiff as a physician, research scientist and grant reviewer for HHS-HRSA, that if in fact *White* was medically experimented upon as the facts indicate, that following *Tuskegee* and other atrocities conducted on U.S. citizens under U.S. Government control, that such actions are not seen to violate the ICCPR Civil rights of the involved U.S. citizens occurring on U.S. soil. The imbalance between a declaration, which is NOT binding upon U.S. courts, the law or the treaty itself, and the acts so conducted in *White*, is incredulously reminiscent (Shades of Mengele) of actions taken by the German Government against its citizens from 1939-1945 and the failure of German Courts. This was the very reason for enacting the ICCPR treaty to begin with (supra).

The importance of distinguishing between U.S. citizens and non-citizens cannot be overemphasized. Aliens do not have U.S. Constitutional, Statutory or Treaty rights and U.S. citizens do not have legal rights in other countries. In addition to Waxman's report (supra), another recent case in the District of Columbia in July of 2013 established the difference between cases involving U.S. citizens and non-citizens and the Courts recognition of ICCPR treaty rights. Here Justice Kessler points out that she lacks jurisdiction to act *only because* the plaintiff is an alien citizen.

> [N]o court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the **detention,** transfer, **treatment,** trial, or **conditions of confinement** of an **alien** (emphasis added). *Dhiab v. Obama*, CIV.A. 05-1457 GK, 2013 WL 3388650 (D.D.C. 2013)

Justice Kessler also keenly points out that individual rights have been violated in this case, which she would have acted upon under Article 7 of the ICCPR treaty, had the petitioner been a U.S. citizen.

> ...the Court feels just as constrained now, as it felt in 2009, to deny this Petitioner's Application for lack of jurisdiction. The Court also feels constrained, however, to note ...Petitioner has set out in great detail ... force-feeding of prisoners violates Article 7 ... International Covenant on Civil and Political Rights *Dhiab v. Obama*, CIV.A. 05-1457 GK, 2013 WL 3388650 (D.D.C. 2013)

Justice Kessler specifically addressed Article 7 of the ICCPR treaty, further supporting the execution of the ICCPR treaty and treaty rights for U.S. citizens in the Federal District of Columbia. The Court went on to reprimand Obama for violating the ICCPR rights of the prisoner, which could not be addressed by the Court due to jurisdictional limitation only; not a failure of the treaty to be executable. Such is NOT the case here! Here, plaintiff IS a U.S. citizen, filing for indemnification in a U.S. Court, within U.S. jurisdiction. There is an *actual duty* of the courts to examine government actions in cases involving U.S. citizens in U.S. territory, consistent with the terms and violations of the ICCPR treaty. *Here a U.S. military tribunal has also recognized ICCPR treaty rights.*

> A trial of Mr. Hicks in either of these forums would likely have met the procedural requirements of U.S. law as stated in the ICCPR ... and provides remedies for the accused if the government violates those procedural rights.
>
> ... nothing in U.S. law that relieves this commission from the responsibility of providing the procedural safeguards **required by U.S. law as stated in the ICCPR**... an accused's procedural safeguards at trial set forth in these treaties the U.S. has ratified apply to a military commission **just as they do to trials in federal court** (emphasis added) ....
>
> The commission has the power and **duty** (emphasis added) to examine the actions of the government in this case, and formulate a remedy ... *Title: U.S. of Am.*, 2004 WL 3088501 (D.O.T.C.A.B. Oct. 23, 2004)

Again, it is the relationship of a citizen to his/her nation State, which are key to ICCPR treaty rights.

> The Court's "first focus interpreting the ICCPR is its plain language." *Duarte-Acero*, 208 F.3d at 1285 (citations omitted). Article 2(1) of the ICCPR defines to which individuals the signatory state must give these rights: Each State Party to the present Covenant undertake to respect and to ensure to all individuals *within its territory and subject to its jurisdiction* the rights recognized in the present Covenant ....
> Moreover, as the Government correctly notes, the Eleventh Circuit's recent interlocutory opinion provides some guidance in interpreting this provision. In *Duarte-Acero*, the Circuit stated that the provisions of the ICCPR "**are to govern the relationship between an individuals and his state**....(emphasis added) In other words, the ICCPR is concerned with conduct that takes places [sic] within a state party. *Duarte-Acero*, 208 F.3d at 1286 (11th Cir. 2000)

The present case involves a U.S. citizen within U.S. territory with legislation implemented to give the ICCPR treaty domestic effect in accord with the U.S. Constitution.

> On September 8, 1992, the United States became party to the ICCPR. As Defendants correctly point out, a properly ratified treaty is the supreme law of the land. U.S. Const. art VI, § 2, cl. 2." ... *U.S. v. Benitez*, 28 F. Supp. 2d 1361, 1363 (S.D. Fla. 1998) *aff'd sub nom. U.S. v. Duarte-Acero*, 208 F.3d 1282 (11th Cir. 2000)

and again in *Duarte-Acero*:

> On September 8, 1992, the United States, ... became a party to the ICCPR, at which time the treaty became, coexistent with the United States Constitution and federal statutes, the supreme law of the land. *U.S. v. Duarte-Acero*, 208 F.3d 1282, 1284 (11th Cir. 2000)

The Eleventh Circuit further held that *the legislative history and ratification* of the ICCPR treaty clearly shows a guarantee of civil and political rights for individuals within their own countries.

> Moreover, as the Government correctly notes, ... In other words, the ICCPR is concerned with conduct that takes places [sic] within a state party." *Duarte-Acero*, 208 F.3d at 1286. ...**This construction is reinforced if the legislative history of the ratification of the ICCPR by the Senate is examined**. *See U.S. Sen. Exec. Rep. 102-23*, 31 I.L.M. 645, 648 (102d Cong, 2d Sess, 1992). The Senate Executive Report states that the ICCPR "**guarantees a broad spectrum of civil and political rights, rooted in basic democratic values and freedoms, to all individuals *within the territory or under the jurisdiction of the States Party*.**" Id. (**emphasis added**). *U.S. v. Duarte-Acero*, 132 F. Supp. 2d 1036, 1041 (S.D. Fla. 2001) aff'd, 296 F.3d 1277 (11th Cir. 2002)

These decisions have not been overturned, questioned or considered vague *by any court*.

Of the only two cases presented by the defendant considering an American citizen in U.S. territory, *Rotar* and *White*, neither was mentioned by the District Court as a reason for dismissing the case and neither has appeared before the Ninth Circuit. *Rotar* simply refers to *White*, while *White* simply refers to declaration 1, which is neither law, changes the treaty nor is binding on the courts under domestic law. The *White* opinion as discussed supra emphasizes the intent of the treaty language. The INTENT of the *parties* when ratifying the ICCPR treaty signed by the President of the United States, was and remains CLEAR! Declaration 1 does not and CANNOT change the intent of the treaty, the meaning of the treaty, the understandings, reservations or Major provisions of the ICCPR treaty. The post-ratification documents clearly stipulate domestic effect of law was in place by ratification of the ICCPR treaty, making it self-executing by definition.

As stated passim a declaration has NO binding effect upon a court and the U.S. Government has stated on the record that the treaty was not ratified until the necessary legislation was in place to give the treaty full effect under domestic law; viz. the Civil and Political rights of individuals within their own nation states. The U.S. courts and the Asst. A.G. for the DOJ have added to the position of the U.S. State Department; viz. that the ICCPR treaty provides for U.S. citizen remedial rights when violation of the ICCPR treaty has occurred in U.S. jurisdiction. The court erred in dismissing the case, stating there were no U.S. citizen rights under the ICCPR treaty based upon *Cornejo* and *Sosa*.

d. The ICCPR treaty provides remedies for U.S. Citizens, when their ICCPR Civil and/or Political Rights have been violated in U.S. territory.

The understandings and reservations of the ICCPR treaty do NOT limit the remedies of U.S. citizens, whose rights under the ICCPR treaty have been violated. One need not be a scholar of Constitutional Law, International Law or Treaty Law to distinguish between the Vienna Convention, (which defendant uses to infer (supra) there are no rights or remedies available to U.S. citizens under the ICCPR treaty) and the ICCPR treaty itself. Clearly, the Vienna Convention does not establish individual rights.

> "Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States," (Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961)

The defendant's use of such Vienna Convention cases to refute U.S. citizen rights under the ICCPR treaty, shows either an unreasonable, reckless, or deceptive bad-faith approach to reviewing and submitting cases for consideration, consistent with defendants bad-faith already partially discussed supra.

By *contrast* the ICCPR treaty Preamble clearly articulates what the entire treaty is about; viz. *individual citizen rights*. The *intent* of those reading and signing this treaty is unquestionable.

ICCPR PREAMBLE -- The States Parties to the present Covenant

> Considering that, in accordance with ...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice ...,
>
> Recognizing that these rights derive from the inherent dignity of the human person,
>
> Recognizing that, ... the ideal of free human beings enjoying civil and political freedom and ... can only be achieved if ... everyone may enjoy his civil and political rights, ...,
>
> Considering the obligation ... promote ...respect ... observance of, human rights and freedoms,
>
> Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive ... rights recognized in the present Covenant,

The defendant has submitted no evidence that the United States has amended the ICCPR treaty or its *intent*. Hence the ICCPR treaty remains intact as ratified, which according to the Fourth Report submitted from the U.S. Department of State (passim), was ratified only after it was determined that all necessary legislation was in place to provide for domestic effect of law, providing for individual U.S. citizen rights and remedies as provided for by the treaty.

Plaintiff has brought to the Court's attention the necessary documents, statutes, reports, et cetera, which have demonstrated that the *understandings* and *actions* taken by the U.S., affirm that many of the legislative requirements were deemed to already existed by 2 April 1992 and that all necessary legislation existed by 8 June 1992 at the time of treaty ratification, consequently making the ICCPR treaty self-executing by definition. That having been proven, it follows that the *rights* of U.S. citizens follow the plain language (The Congressional *Understanding*) of the treaty and that it is the Courts Constitutional obligation to guarantee and protect plaintiff's rights.

> ... not self-executing. ... rests on a shaky foundation. Firstly, in *Medellin*, the Supreme Court was dealing with the Vienna Convention and not the ICCPR, ... does not demonstrate that the Supreme Court intended to express a view as to whether the ICCPR, in particular, is or is not self-executing.[26] The Supreme Court,...did not engage in an analysis of either the ICCPR's text or it history, ... did not inquire into the post-ratification understanding of the signatory nations as to whether the ICCPR is self-executing. ... did not, however, present a comparable analysis with respect to the ICCPR because this was not an issue before the Court. ....It is the courts and not other branches of government that, upon examining a treaty's text (or when its meaning is not apparent from the text, its history), must determine whether the treaty creates individual rights .... *Igartua v. U.S.*, 654 F.3d 99, 108-09 (1st Cir. 2011)

Hence, *Medellin's* interpretation of the ICCPR treaty was flawed, not only because it was not about a U.S. citizen, but also because it addressed a treaty (viz. the Vienna Convention), which did not provide for individual rights. The post-ratification ICCPR documents were never considered. Post-ratification documents have clearly established that the terms and subject of the treaty itself is to provide individual treaty rights. The ICCPR treaty is substantively different from the Vienna Convention. Again, considerable effort has been made to get the court to look at (1) the FTCA or (2) the Vienna Convention or (3) to confuse *declaration* with *reservation*, *understanding* or treaty *intent*.

> 122. ....Whether treaty provisions give rise to individually enforceable rights in U.S. courts depends on a number of factors, including the **terms**, structure, history and **subject of the treaty**. (emphasis added) (Common Core Document of the U.S.A.: Submitted with the Fourth Periodic Report of the USA to the United Nations Committee on Human Rights concerning the International Covenant on Civil and Political Rights. 30 December 2011)

As has been demonstrated, the Vienna Convention does not implement individual rights. In contrast, the Preamble and even the very title of the *International Covenant on Civil and Political Rights* (ICCPR) treaty, clearly and boldly establishes this treaty is about human rights and specifically the individual rights of people living in the nation states that ratify this treaty.

To determine if such rights exist for U.S. citizens, the language of the treaty, ALL the legislative history, reports made to Congress, including those by the DOJ and the record of the United States, as required by its periodic reports concerning the ICCPR, must ALL be taken into account. It is the failure to do this, which has resulted in so much harm, injustice and error to date. These records show that U.S. citizens have substantive, procedural and remedy rights under the ICCPR treaty, consistent with what the Founding Fathers intended when they established the *Supremacy Clause*. The Court erred in that (1) the ICCPR treaty was ratified by the Senate of the United States *only after the Senate had determined that all necessary legislation already existed (supra) to give legal effect with rights defined by the treaty itself*, (2) the treaty was signed by the President of the United States but not ratified until the necessary legislation was in place to give legal effect to the treaty, (3) making it self-executing by definition and (4) the law of the land under the *Supremacy Clause* of the United States Constitution, to which (5) the court has the obligation to enforce U.S. citizen rights. The Court additionally erred in failing to find for the plaintiff's MSJ with SUFs, default and default judgment against defendant (infra).

The United States of America through its District Court for the Northern District of Nevada has denied plaintiff his ICCPR treaty rights by *procedural actions contrary to law*. Having been found guilty in Federal court and being in Federal custody while having committed no crimes, plaintiff filed suit for indemnification under the ICCPR treaty. The proofs for lack of crimes were sufficiently established in both the MSJ with SUFs and the administrative documents, discussed passim. Defendant has NEVER denied plaintiff's actual innocence nor disputed these documents. Subsequent motions and statutory time limits for doing so have long passed. Specifically rights and remedies under the ICCPR treaty include but are not limited to the following.

> Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (*International Covenant on Civil and Political Rights (Ratified 8 June 1992), Article 2(3)*)
>
> All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. *Id*, Article 14(1)
>
> ... the person who has suffered punishment as a result of such conviction **shall be compensated** according to law, ... *Id*, Article 14(6)
>
> No one shall be held guilty of any criminal offense ... any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed.... *Id*, Article 15(1)
>
> The Courts have specifically noted that legislative history clearly establishes U.S. citizen rights, enforceable in U.S. courts.
> Further, the conclusion that the ICCPR creates individual rights, enforceable in the courts of the United States, is abundantly clear **from the negotiating history of the Treaty**. (emphasis added) *See generally* Bossuyt, *supra* note 34. Illustrative of this is the Report of the Commission on Human Rights, 5th Session (1949), 9th Session (1953) .... *Igartua v. U.S.*, 626 F.3d 592, 630-31 (1st Cir. 2010)

It has been and remains the position of the United States Government that ICCPR treaty remedies in the United States applies only to U.S. citizens within U.S. jurisdiction. In fact, on 22 May 2012, less than two years ago, the United States again emphasized individual U.S. citizen rights under article 2(1).

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals ... its jurisdiction **the rights recognized in the present Covenant** (emphasis added),.... [Human Rights Comm., Fourth Periodic report: United States of America, ¶505, U.N. Doc. CCPR/C/USA/4 (May 22, 2012) available at http://daccess-ddsny.un.org/doc/ UNDOC/GEN/G12/429/66/PDF/ G1242966.pdf?OpenElement

Neither *Benitez* nor *Duarte-Acero* have been overturned or even questioned and neither is considered vague. Furthermore they are both in full agreement with the Fourth Periodic Report (passim) and other federal reports and documents discussed. The Federal Government through multiple statements, documents and actions have clearly established on both the U.S. and World records, that the necessary legislation is and has been in place to establish domestic effect of law for the ICCPR treaty in keeping with the provisions of the treaty and the *Supremacy Clause* of the U.S. Constitution. There is no question the ICCPR treaty legislation satisfied the *necessary and proper* requirements and consequently is self-executing by definition with remedies available to U.S. citizens in U.S. courts within U.S. jurisdiction. This case is not about (A) the FTCA, (B) declarations, which have no effect upon the treaty or the courts, (C) the Vienna Convention or (D) any other obfuscating (FRE 403) issue. It is about a U.S. citizen having ICCPR treaty rights violated in U.S. territory, for which the U.S. Courts are obligated to provide indemnification, independent of the origin of that violation.

Respectfully submitted as written testimony to be included in the hearing record before the Senate Judiciary Subcommittee on Constitutional, Civil Rights and Human Rights on 9 December 2014. Specifically, that the USA has signed and ratified the ICCPR and that it is self-exerting as a treaty which pursuant to the US Federal Government has the necessary legislation in place to provide for domestic effect of law.

Richard Max Fleming, M.D., J.D.

United Nations Third Annual Forum on Business and Human Rights
2-3 December 2014

Statement of the Indigenous Peoples Caucus conducted on 30 November in Geneva, Switzerland

Presented by Bettina Cruz

Thank you, Mr. Chairman. The representatives of indigenous peoples from various regions of the planet, meeting in caucus on 30 November 2014, hereby make the following statements:

1. We urge the United Nations Working Group on Business and Human Rights, as well as the States, to act in consistency with all international conventions, treaties and standards relating to indigenous peoples' rights when formulating the National Action Plans.

2. We reaffirm, as a minimum standard, the United Nations Declaration on the Rights of Indigenous Peoples and the outcome document of the World Conference on Indigenous Peoples, adopted by the General Assembly on 22 September 2014,[1] and particularly paragraphs 3, 4, 16, 20, 21 and 24, as well as the studies and recommendations of the Expert Mechanism on Indigenous Peoples relating to the Guiding Principles.

3. We present to the Working Group and to this Forum the following recommendations with regard to the duty of States to protect, the responsibility of businesses to respect, and the urgent need to ensure effective access to comprehensive remedy:

A. On the Duty of the State to Protect:

4. With respect to the right to free, prior and informed consent of indigenous peoples, States must commit themselves to refrain from issuing regulations and laws that restrict it. They must also adapt their domestic legislation consistent with international standards and commitments currently in effect concerning the rights of indigenous peoples.

5. States must safeguard the life of indigenous peoples and protect them from all kinds of threats. It is urgent that they suspend the production and export of toxic agro-chemicals and pesticides, as well as prohibiting their use in the lands, territories and water sources of indigenous peoples. In this regard, we reaffirm the recommendation of the Permanent Forum on Indigenous Issues of May 2014 to conduct a legal review of the Rotterdam Convention. Likewise, we urge States to prevent the expansion of monoculture plantations and the use of genetically-modified organisms when there is

[1] A/RES/69/2

a risk of impacting lands, territories and waters of indigenous peoples, as well as to prohibit open-pit metal mining, the use of mercury, "hydraulic fracturing"[2] techniques and the drying of water systems to support extractive activities.

6. States should ensure the carrying out of independent studies on the environmental, social, cultural, spiritual and human rights impacts of projects that may affect the lives or ways of life of indigenous peoples.

7. We express our concern about the increase in criminalization of those defending the rights of indigenous peoples around the world. States must take all necessary measures to protect the rights of indigenous peoples, including our right to defend our rights; they must also pressure businesses to respect this right.

8. States must respect and protect the economic activities of indigenous peoples within and outside of their territories, without criminalizing them and without imposing burdensome discriminatory taxes. Indigenous peoples have the right to develop their own businesses, and indigenous entrepreneurs should have a strong presence in future discussion forums and activities of the Working Group. We also recommend to them the realization of a Global Summit of Indigenous Businesses.

B. On the Responsibility of Businesses to Respect:

9. When indigenous peoples have given their free, prior and informed consent, businesses must ensure prior and adequate payment of compensation guarantees to indigenous peoples before initiating their activities. Businesses must explain clearly the extent of the benefits expected in order to ensure that these are equitably shared with those peoples. Businesses that do not contribute to improving the quality of life and living conditions of indigenous peoples should not be authorized to operate in their territories; and if they are found operating there, their licenses should be revoked.

10. The United Nations Working Group on Business and Human Rights should further elaborate the analysis of compliance with due diligence on the part of businesses, particularly with respect to the rights of indigenous peoples and international standards for their protection.

11. Businesses should refrain from making use of their economic and political power to co-opt local indigenous leadership, cause ruptures in the communities' social fabric, or foster confrontations among brothers of the communities themselves or with neighboring communities.

12. Businesses should contribute to ensuring the independence of the judiciary as well as access to justice on the part of victims of human rights violations. In the case of

[2] Fracking

indigenous peoples in post-conflict regions, businesses must respect jurisprudence, submit to the judicial system and avoid use of media strategies that encourage violence in the communities.

C. On Access to Remedy:

13. States should ensure access to justice for victims of human rights violations. Promoting access to justice requires strengthening the independence of the judiciary and providing the necessary resources for supporting the victims. We express our profound concern about acts of sexual and reproductive violence and excessive use of force against members of indigenous communities committed by state and non-state agents in support of the businesses.

14. National action plans should include the legal responsibility of parent companies for the participation of their affiliates or subsidiaries in rights violations of indigenous peoples. They should also include the implementation of extraterritorial jurisdiction when victims do not attain justice in their own countries.

15. Businesses should implement mechanisms for comprehensive remedy involving public recognition and the sincere request for forgiveness for all the damage caused to indigenous peoples.

16. In addressing remedy in the national plans, the traditional judicial institutions of indigenous peoples should be taken into account, considering that these can contribute positively to resolving disputes, attaining appropriate remedy and promoting reconciliation.

17. The Working Group should ensure the full and effective participation of indigenous peoples in the formulation of measures to guarantee access to remedy, including national action plans. The next Annual Forum on Business and Human Rights should include a specific item on access to remedy for indigenous peoples.

18. The Working Group should oversee a follow-up study on the report produced by the Secretary General's Special Representative John Ruggie, submitted to the General Assembly on 25 May 2011, on principles for responsible contracts. The study should focus on the importance of due diligence in contracts in order to avoid perverse situations whereby indigenous peoples, in the legitimate protection of their rights, decide to withhold their consent and businesses, in retaliation, demand compensation from the States in investment arbitration tribunals.

D. On the Role of Other Actors:

19. Multilateral, governmental and non-governmental international organizations should act in consistency with, and contribute to the fulfillment of, the obligations

legally in effect of the States with regard to indigenous peoples, including the recommendations of the United Nations Expert Committees, Regional Human Rights Systems and the Universal Periodic Review.

E. Concluding Comments:

20. The Indigenous peoples caucus regrets that this United Nations Third Forum on Business and Human Rights has taken a step back in the promotion of opportunities for our participation in the official event. We ask the Working Group to include the indigenous peoples as a permanent item on the agenda of all future forums.

21. Finally, the indigenous peoples caucus wishes to express its solidarity with the Mexican people and adopts as its own their demand for the safe return of the forty-three students of Ayotzinapa who were kidnapped by members of the Mexican police. The caucus asks that the case be investigated, pursued and prosecuted, and that those responsible be punished. **They were taken away alive; we want them returned alive.**

GREETINGS TO December 9 hearing - State of Civil and Human Rights in the United States. MY NAME IS KHALID AMEENULLA KOLLIKKATHARA. I AM A USA CITIZEN. I AM BEING TORTURED BY GOVERNMENTS OF USA/UNITED ARAB EMIRATES/SAUDI ARABIA. SAUDI ARABIA AND UAE ARE BEING SOLD TORTURE EQUIPMENTS TO THEM FROM THE USA GOVERNMENT. THE MIDDLE EASTERN DICTATORS ARE DESPOTS WITH NO HUMAN RIGHTS OR ETHICS VALUES WHATSOEVER. THEY DO NOT ALLOW NGO'S SUCH AS HUMAN RIGHTS WATCH AND AMNESTY INTERNATIONAL, WHO ARE NOT ALLOWED TO SET UP BRANCHES OR OFFICES IN THE UNITED ARAB EMIRATES/SAUDI ARABIA/GCC, WHERE THERE ARE DICTATORSHIPS WHO KNOWINGLY AND WANTONLY VIOLATE ALL HUMAN RIGHTS AND FREEDOMS.

YOU HAVE MY FULL PERMISSION TO USE THIS EMAIL AND COPY AND REDISTRIBUTE AS YOU SEE FIT, AS PART OF THE HEARINGS ON December 9 hearing - State of Civil and Human Rights in the United States

ALL MY HUMAN RIGHTS HAVE BEEN VIOLATED AS MENTIONED IN THE UN UNIVERSAL DECLARATION OF HUMAN RIGHTS, http://www.un.org/en/documents/udhr/,

ALL MY RIGHTS HAVE BEEN VIOLATED ACCORDING TO Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx

ALL MY CIVIL AND HUMAN RIGHTS IN THE UNITED STATES IS BEING VIOLATED BY THE FOLLOWING PATENTS and I am being TORTURED AND HARASSED by THE following technologies:

Hearing system
US 4877027 A

Abstract

Sound is induced in the head of a person by radiating the head with microwaves in the range of 100 megahertz to 10,000 megahertz that are modulated with a particular waveform. The waveform consists of frequency modulated bursts. Each burst is made up of ten to twenty uniformly spaced pulses grouped tightly together. The burst width is between 500 nanoseconds and 100 microseconds. The pulse width is in the range of 10 nanoseconds to 1 microsecond. The bursts are frequency modulated by the audio input to create the sensation of hearing in the person whose head is irradiated.

http://www.google.com/patents/US4877027

http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnetahtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=4,877,027.PN.&OS=PN/4,877,027&RS=PN/4,877,027

Apparatus and method for remotely monitoring and altering brain waves
US 3951134 A

Abstract

Apparatus for and method of sensing brain waves at a position remote from a subject whereby electromagnetic signals of different frequencies are simultaneously transmitted to the brain of the subject in which the signals interfere with one another to yield a waveform which is modulated by the subject's brain waves. The interference waveform which is representative of the brain wave activity is re-transmitted by the brain to a receiver where it is demodulated and amplified. The demodulated waveform is then displayed for visual viewing and routed to a computer for further processing and analysis. The demodulated waveform also can be used to produce a compensating signal which is transmitted back to the brain to effect a desired change in electrical activity therein.

http://www.google.com/patents/US3951134

http://patft.uspto.gov/netacgi/nph-Parser?Sect2=PTO1&Sect2=HITOFF&p=1&u=/netahtml/PTO/search-bool.html&r=1&f=G&l=50&d=PALL&RefSrch=yes&Query=PN/3951134

Communication system and method including brain wave analysis and/or use of brain activity
US 6011991 A

Abstract

A system and method for enabling human beings to communicate by way of their monitored brain activity. The brain activity of an individual is monitored and transmitted to a remote location (e.g. by satellite). At the remote location, the monitored brain activity is compared with pre-recorded normalized brain activity curves, waveforms, or patterns to determine if a match or substantial match is found. If such a match is found, then the computer at the remote location determines that the individual was attempting to communicate the word, phrase, or thought corresponding to the matched stored normalized signal.

http://www.google.com/patents/US6011991

http://patft.uspto.gov/netacgi/nph-Parser?Sect2=PTO1&Sect2=HITOFF&p=1&u=/netahtml/PTO/search-bool.html&r=1&f=G&l=50&d=PALL&RefSrch=yes&Query=PN/6011991

IT IS MY FIRM BELIEF THAT THESE PATENTS OR EQUIPMENTS USING THESE PATENTS MENTIONED ABOVE OF PSYCHOTRONIC WARFARE ARE BEING USED BY SAUDI ARABIAN ROYAL FAMILY MEMBERS ON ME WHO DRIVE LICENSE PLATES 3 VLT KSA, 2 BDX KSA, WHO LIVE AT BURJ AL MAJAZ BUILDING, SHARJAH UNITED ARAB EMIRATES, AND ARE ABLE TO TRACK ME INSIDE THE USA AND WORLDWIDE, THRU SATELLITES, USING THE AFOREMENTIONED PATENTS ABOVE: Hearing system, US 4877027 A; Apparatus and method for remotely monitoring and altering brain waves, US 3951134 A; Communication system and method including brain wave analysis and/or use of brain activity, US 6011991 A. THE USA GOVERNMENT SHOULD BE HELD LIABLE AND RESPONSIBLE FOR SELLING THESE MINDCONTROL PSYCHOTRONIC WARFARE EQUIPMENTS TO THE SAUDI ARABIAN GOVERNMENT AND ITS SAUDI ARABIAN ROYAL FAMILY MEMBERS. I DEMAND THAT THE USA SENATE OPEN HEARINGS INTO THIS ILLEGAL SALE OF TORTURE EQUIPMENTS TO THE SAUDI ARABIANS. MY FOIA REQUEST INTO MY HARASSMENT WAS DENIED BY ODNI OFFICE OF DEPARTMENT OF NATIONAL INTELLIGENCE BASED ON IT BEING CLASSIFIED. IT IS MY UNDERSTANDING THAT THE USA GOVERNMENT HAS FULL KNOWLEDGE OF MY TORTURE AND IS UNWILLING TO DECLASSIFY DOCUMENTS RELATING TO MY TORTURE, BEING SPIED UPON, PSYCHOTRONIC WARFARE, REMOTE NEURAL MONITORING, ELECTRONIC HARASSMENT, GANGSTALKING, VOICE TO SKULL, WITH THE AID OF PATENTS: Hearing system, US 4877027 A; Apparatus and method for remotely monitoring and altering brain waves, US 3951134 A; Communication system and method including brain wave analysis and/or use of brain activity, US 6011991 A.

BY USING THESE EQUIPMENTS, THEY ARE VIOLATING MY HUMAN AND CIVIL RIGHTS IN THE USA.

Legislation and treaties regarding torture

Torture is illegal and punishable within and outside U.S. territorial bounds.

Bill of Rights

torture is a punishment falls under the cruel and unusual punishment clause of the Eighth Amendment to the United States Constitution.

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"

The U.S. Supreme Court has held since at least the 1890s that punishments that involved torture are forbidden under the Eighth Amendment.

Domestic legislation

An act of torture committed outside the United States by a U.S. national or a non-national now within the U.S. is punishable under 18 U.S.C. § 2340. The definition of torture used is as follows:
1."torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;
2."severe mental pain or suffering" means the prolonged mental harm caused by or resulting from - (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality;

In 2004, the Immigration and Nationality Act was amended to make aliens who, whilst abroad, have committed torture, extrajudicial killings, or particularly severe violations of religious freedom, inadmissible to the United States, and therefore deportable.

Prohibition under International Law
Torture in all forms is banned by the 1948 Universal Declaration of Human Rights (UDHR), which the United States participated in drafting. The United States is a party to the following conventions (international treaties) that prohibit torture: the American Convention on Human Rights (signed 1977) and the International Covenant on Civil and Political Rights (signed 1977; ratified 1992). International law defines torture during an armed conflict as a war crime. It also mandates that any person involved in ordering, allowing and even insufficiently preventing and prosecuting war crimes is criminally liable under the command responsibility doctrine.

UN Convention Against Torture

Main article: UN Convention Against Torture

The United States is a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which originated in the United Nations General Assembly on December 10, 1984, and signed by the President Ronald Reagan on April 18, 1988. Ratification by the Senate took place on October 27, 1990.
Restricting the definition of "cruel, inhuman or degrading treatment or punishment" to "the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution".
Restricting acts of torture to the following list: "(1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or

application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality."

NOT ONLY AM I BEING TORTURED BY THE USA GOVERNMENT AND ITS ALLIES SAUDI ARABIA/UNITED ARAB EMIRATES AND ALL THEIR OTHER ALLIES, MY PRIVACY IS BEING INVADED AS WELL. YOU CAN READ ABOUT PRIVACY VIOLATIONS AND THE LAWS OF PRIVACY HERE:

http://en.wikipedia.org/wiki/Privacy_laws_of_the_United_States

Modern tort law[edit]

In the United States today, "invasion of privacy" is a commonly used cause of action in legal pleadings. Modern tort law includes four categories of invasion of privacy:[6]
Intrusion of solitude: physical or electronic intrusion into one's private quarters
Public disclosure of private facts: the dissemination of truthful private information which a reasonable person would find objectionable
False light: the publication of facts which place a person in a false light, even though the facts themselves may not be defamatory
Appropriation: the unauthorized use of a person's name or likeness to obtain some benefits

Intrusion of solitude and seclusion[edit]

Intrusion of solitude occurs where one person intrudes upon the private affairs of another. In a famous case from 1944, author Marjorie Kinnan Rawlings was sued by Zelma Cason, who was portrayed as a character in Rawlings' acclaimed memoir, Cross Creek.[7] The Florida Supreme Court held that a cause of action for invasion of privacy was supported by the facts of the case, but in a later proceeding found that there were no actual damages.

Intrusion upon seclusion occurs when a perpetrator intentionally intrudes, physically, electronically, or otherwise, upon the private space, solitude, or seclusion of a person, or the private affairs or concerns of a person, by use of the perpetrator's physical senses or by electronic device or devices to oversee or overhear the person's private affairs, or by some other form of investigation, examination, or observation intrude upon a person's private matters if the intrusion would be highly offensive to a reasonable person. Hacking into someone else's computer is a type of intrusion upon privacy,[8] as is secretly viewing or recording private information by still or video camera.[9] In determining whether intrusion has occurred, one of three main considerations may be involved: expectation of privacy; whether there was an intrusion, invitation, or exceedance of invitation; or deception, misrepresentation,

or fraud to gain admission. Intrusion is "an information-gathering, not a publication, tort...legal wrong occurs at the time of the intrusion. No publication is necessary".[10]

Restrictions against the invasion of privacy encompasses journalists as well:

"The First Amendment has never been construed to accord newsmen immunity from torts or crimes committed during the course of newsgathering. The First Amendment is not a license to trespass, to steal, or to intrude by electronic means into the precincts of another's home or office".[10][11]

Public disclosure[edit]

Public disclosure of private facts arises where one person reveals information which is not of public concern, and the release of which would offend a reasonable person.[12] "Unlike libel or slander, truth is not a defense for invasion of privacy."[8] Disclosure of private facts includes publishing or widespread dissemination of little-known, private facts that are non-newsworthy, not part of public records, public proceedings, not of public interest, and would be offensive to a reasonable person if made public.[10]

False light[edit]

Main article: False light

False light is a legal term that refers to a tort concerning privacy that is similar to the tort of defamation. For example, the privacy laws in the United States include a non-public person's right to privacy from publicity which puts them in a false light to the public; which is balanced against the First Amendment right of free speech.

False light laws are "intended primarily to protect the plaintiff's mental or emotional well-being".[13] If a publication of information is false, then a tort of defamation might have occurred. If that communication is not technically false but is still misleading then a tort of false light might have occurred.[13]

The specific elements of the Tort of false light vary considerably even among those jurisdictions which do recognize this tort. Generally, these elements consist of the following:
A publication by the defendant about the plaintiff;
Made with actual malice (very similar to that type required by New York Times v. Sullivan in defamation cases);
Places the plaintiff in a false light; and
Highly offensive (i.e., embarrassing to reasonable persons)[13]

Thus in general, the doctrine of false light holds:

"One who gives publicity to a matter concerning another before the public in a false light is subject to liability to the other for invasion of privacy, if (a) the false light in which the other was placed would be

highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in a reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed."[14]

For this wrong, money damages may be recovered from the first person by the other.

At first glance, this may appear to be similar to defamation (libel and slander), but the basis for the harm is different, and the remedy is different in two respects. First, unlike libel and slander, no showing of actual harm or damage to the plaintiff is usually required in false light cases, and the court will determine the amount of damages. Second, being a violation of a Constitutional right of privacy, there may be no applicable statute of limitations in some jurisdictions specifying a time limit within which period a claim must be filed.

Consequently, although it is infrequently invoked, in some cases false light may be a more attractive cause of action for plaintiffs than libel or slander, because the burden of proof may be less onerous.

What does "publicity" mean? A newspaper of general circulation (or comparable breadth) or as few as 3–5 people who know the person harmed? Neither defamation nor false light has ever required everyone in society be informed by a harmful act, but the scope of "publicity" is variable. In some jurisdictions, publicity "means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge."[15]

Moreover, the standards of behavior governing employees of government institutions subject to a state or national Administrative Procedure Act (as in the United States) are often more demanding than those governing employees of private or business institutions like newspapers. A person acting in an official capacity for a government agency may find that their statements are not indemnified by the principle of agency, leaving them personally liable for any damages.

Example: If someone's reputation was portrayed in a false light during a personnel performance evaluation in a government agency or public university, one might be wronged if only a small number initially learned of it, or if adverse recommendations were made to only a few superiors (by a peer committee to department chair, dean, dean's advisory committee, provost, president, etc.). Settled cases suggest false light may not be effective in private school personnel cases,[16] but they may be distinguishable from cases arising in public institutions.

Appropriation of name or likeness[edit]

Main article: Personality rights

Although privacy is often a common-law tort, most states have enacted statutes that prohibit the use of a person's name or image if used without consent for the commercial benefit of another person.[citation needed]

Appropriation of name or likeness occurs when a person uses the name or likeness of another person for personal gain or commercial advantage. Action for misappropriation of right of publicity protects a person against loss caused by appropriation of personal likeness for commercial exploitation. A person's exclusive rights to control his or her name and likeness to prevent others from exploiting without permission is protected in similar manner to a trademark action with the person's likeness, rather than the trademark, being the subject of the protection.[8] Appropriation is the oldest recognized form of invasion of privacy involving the use of an individual's name, likeness, or identity without consent for purposes such as ads, fictional works, or products.[10]

"The same action – appropriation —can violate either an individual's right of privacy or right of publicity. Conceptually, however, the two rights differ".[10]

Constitutional basis for right to privacy[edit]

Federal[edit]

Although the word "privacy" is actually never used in the text of the United States Constitution,[17] there are Constitutional limits to the government's intrusion into individuals' right to privacy. This is true even when pursuing a public purpose such as exercising police powers or passing legislation. The Constitution, however, only protects against state actors. Invasions of privacy by individuals can only be remedied under previous court decisions.

The Fourth Amendment to the Constitution of the United States ensures that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized".

The First Amendment protects the right to free assembly, broadening privacy rights. The Ninth Amendment declares that the fact that a right is not explicitly mentioned in the Constitution does not mean that the government can infringe on that right. The Supreme Court recognized the Fourteenth Amendment as providing a substantive due process right to privacy. This was first recognized by several Supreme Court Justices in Griswold v. Connecticut, a 1965 decision protecting a married couple's rights to contraception. It was recognized again in 1973 Roe v. Wade, which invoked the right to privacy to protect a woman's right to an abortion, and in the 2003 with Lawrence v. Texas, which invoked the right to privacy regarding the sexual practices of same-sex couples.

California[edit]

Article 1, §1 of the California Constitution articulates privacy as an inalienable right.

CA SB 1386 expands on privacy law and guarantees that if a company exposes a Californian's sensitive information this exposure must be reported to the citizen. This law has inspired many states to come up with similar measures.[18]

California's "Shine the Light" law (SB 27, CA Civil Code § 1798.83), operative on January 1, 2005, outlines specific rules regarding how and when a business must disclose use of a customer's personal information and imposes civil damages for violation of the law.

California's Reader Privacy Act was passed into law in 2011. The law prohibits a commercial provider of a book service, as defined, from disclosing, or being compelled to disclose, any personal information relating to a user of the book service, subject to certain exceptions. The bill would require a provider to disclose personal information of a user only if a court order has been issued, as specified, and certain other conditions have been satisfied. The bill would impose civil penalties on a provider of a book service for knowingly disclosing a user's personal information to a government entity in violation of these provisions.[19]

Florida[edit]

Article I, §23 of the Florida Constitution states that "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."[20]

Montana[edit]

Article 2, §10 of the Montana Constitution states that "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest".[21]

THEY ARE ABLE TO READ MY BRAIN AND REBROADCAST ON WORLDWIDE SATELLITE LOUDSPEAKERS, THEY CALL THEM VOICE OF GOD WEAPONS, PSYCHOTRONIC WEAPONS, WITH HELP AND AID OF PATENTS:

Hearing system, US 4877027 A;

Apparatus and method for remotely monitoring and altering brain waves, US 3951134 A;

Communication system and method including brain wave analysis and/or use of brain activity, US 6011991 A.

THESE ARE VIOLATIONS OF TORTURE AND PRIVACY LAWS. I EXPECT YOU AT THE HEARING TO HEAR MY TESTIMONY THROUGH THIS EMAIL, AND YOU AT THE December 9 hearing - State of Civil and Human Rights in the United States AND THE USA GOVT MUST WORK TO CORRECT THIS MISTAKE ASAP, AS A RESPONSIBLE GOVERNMENT ACCOUNTABLE TO ME WHO IS PART OF THE USA CITIZENRY. THE USA IS A GOVT OF THE PEOPLE, BY THE PEOPLE, FOR THE PEOPLE.

I HAVE ATTACHED MY USA FLORIDA DRIVER'S LICENSE, AND ALSO THE PHOTOS OF THE LICENSE PLATE OF MY ATTACKERS, WHO LIVE AT BURJ AL MAJAZ BUILDING, SHARJAH, UNITED ARAB EMIRATES, AT LOCATION ON GOOGLE MAPS: 25.323162, 55.385878. ADDITIONAL GENERAL INFORMATIONS CAN BE FOUND AT: WWW.FREEDOMFCHS.COM, WWW.PEOPLECOOKER.COM, WWW.STOPEG.COM, WWW.STOPOS.INFO, JESSE VENTURA CONSPIRACY THEORY EPISODES BRAIN INVADER AND DEATH RAY, DR. ROBERT DUNCAN'S BOOKS PROJECT SOULCATCHER AND THE MATRIX DECIPHERED,

http://www.washingtontimes.com/news/2014/sep/2/us-technology-transfer-paves-way-for-uae-france-sp/

http://rt.com/news/france-uae-satellite-deal-220/

http://thoughtlessness23.blogspot.com/2010_11_01_archive.html

http://www.dailymotion.com/video/x18uyto_conspiracy-theory-with-jesse-ventura-brain-invaders_shortfilms

http://www.dailymotion.com/video/x18tfq4_conspiracy-theory-with-jesse-ventura-death-ray_shortfilms

http://www.bibliotecapleyades.net/scalar_tech/esp_scalartech12.htm

https://www.congress.gov/bill/107th-congress/house-bill/2977

AS A SIDENOTE, PLEASE DO YOUR BEST TO STOP AIDING AND ARMING MIDDLE EASTERN DICTATORS (SAUDI ARABIA, UNITED ARAB EMIRATES, GCC, ETCETRA) AS THEY HAVE ABSOLUTELY NO RESPECT FOR ANY HUMAN RIGHTS WHATSOEVER. AS YOU CAN SEE IN THESE COUNTRIES THEY DONT EVEN ALLOW AMNESTY INTERNATIONAL, OR HUMAN RIGHTS WATCH. THEIR RECORD ON HUMAN RIGHTS IS ABYSMAL, AND CAN BE COMPARED TO THE WORST HUMAN RIGHTS VIOLATIONS IN HUMAN HISTORY, COMPARABLE TO ADOLF HITLER, POL POT, ETC. THE MIDDLE EASTERN DICTATORS ARE PART OF THE PROBLEM ERODING AMERICAN CIVIL LIBERTIES AND HUMAN RIGHTS GLOBALLY. IF YOU CAN REMEMBER BALSAM NABULSI, AS YOU CAN SEE THE MIDDLE EASTERN DICTATORS HAVE NO RESPECT FOR AMERICANS IN GENERAL.

http://www.hrw.org/news/2013/06/27/uae-reports-systematic-torture-jails

I MYSELF WAS TORTURED IN A UNITED ARAB EMIRATES JAIL BY BEING SOLITARY CONFINED FOR INAPPROPRIATELY REACTING TO MY TORTURE, I WAS KEPT IN SOLITARY CONFINEMENT IN UNITED

ARAB EMIRATES AND THREATENED WITH ONE YEAR SOLITARY CONFINEMENT WITHOUT ACCESS TO THE OUTSIDE WORLD. FOR JOKINGLY SENDING AN INAPPROPRIATE EMAIL AS A RESPONSE TO BEING TORTURED BY PATENTS MENTIONED ABOVE. SO I HAVE FIRST HAND EXPERIENCE OF THEIR SOLITARY CONFINEMENT FACILITIES AT THE DUBAI POLICE HEADQUARTERS. THEY DISAPPEAR PEOPLE AND KEEP THEM THERE WITHOUT INFORMING ANYONE. ANYONE CAN BE ARRESTED ARBITRARILY BY UAE SECURITY FORCES AND THEN WILL NOT BE ALLOWED TO MAKE A SINGLE TELEPHONE CALL TO THE OUTSIDE WORLD OF THEIR WHEREABOUTS FROM A UNITED ARAB EMIRATES SOLITARY CONFINEMENT PRISON CELL, NO VISITS ARE ALLOWED FROM ANYONE INCLUDING USA CONSULAR OFFICIALS TO THE SOLITARY CONFINEMENT CELLS IN UAE. THEY DO NOT GIVE BATHROOM BREAKS. THE UAE/SAUDI ARABIA/GCC SHOULD NOT BE THE ALLIES OF THE USA BECAUSE THEY DESTROY AMERICAN LIVES AND VALUES.

http://en.wikipedia.org/wiki/Issa_bin_Zayed_Al_Nahyan

Written Statement
of the

American Psychological Association
At a Hearing

"The State of Civil and Human Rights in the United States"

U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

December 9, 2014

The 132,000 members and affiliates of the American Psychological Association (APA) thank Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee on the Constitution, Civil Rights, and Human Rights for the opportunity to submit testimony for the hearing entitled "*The State of Civil and Human Rights in the United States.*" APA is the largest scientific and professional organization representing psychology in the United States and is the world's largest association of psychologists. Comprising researchers, educators, clinicians, consultants, and students, our association works to advance psychology as a science, a profession, and as a means of promoting health, education, and human welfare.

Introduction

APA has long been committed to advancing civil and human rights and to ensuring that bias based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language and socioeconomic status is eliminated. To that end, our association has issued policy statements, filed amicus briefs, and supported federal policies that aim to eliminate discrimination, reduce the impact of social stigma and prejudice, and support civil and human rights. APA welcomes the opportunity to highlight some of our efforts on pressing civil and human rights concerns and to present an evidenced-based perspective on related policy issues.

Psychological research provides insights into many areas of civil and human rights that can inform policy development. One of the earliest applications of psychological research to address civil and human rights focused on the effects of segregated schools on African American children. In the 1940's and 1950's, Drs. Kenneth and Mamie Clark found that segregation harmed African American children and led to feelings of inferiority.[i] Their work influenced lower court rulings and was cited in the Brown v. Board of Education decision finding school segregation unconstitutional. Chief Justice Warren stressed these findings in his opinion: "To separate them [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone."[iiiii]

Modern day psychological research continues to wield significant influence. Some of APA's current applications of research to inform federal civil and human rights policies include:

- The protection of children and youth in juvenile justice and child welfare settings, including protection from violence, adequate mental health and physical health treatment, and

protection from cruel and unusual punishment in sentencing (i.e., the consideration of the death penalty and life imprisonment).

- Ensuring that children and youth in juvenile justice, child welfare, and educational settings are treated equitably, and have developmentally-appropriate behavioral health treatment.
- Contributing to the welfare of individuals with disabilities and those with mental illness, providing psychological evidence to support the position that involuntarily-committed patients of mental institutions who were deprived of adequate treatment were being deprived of liberty without due process.
- Providing psychological evidence regarding whether individuals with intellectual disabilities possess adequate culpability to be subject to the death penalty.
- Based on psychological research, joining with disability, veterans and civil rights groups calling on the U.S. Senate to ratify the UN Convention on the Rights of Persons with Disabilities.
- Combatting prejudice, stereotypes and discrimination of ethnic and racial minorities, through research on the psychological underpinnings of racial discrimination and racial profiling. APA issued a report "Dual Pathways to a Better America: Preventing Discrimination and Promoting Diversity" that clearly explains the nature of prejudice and offers tools to mitigate its effects.
- Contributing research evidence on how diversity in education benefits both majority and minority groups. Psychological research has found that: a) underrepresentation of minority groups can inhibit academic performance, foster prejudice and hinder cognitive function; and, b) subconscious racial bias can interfere with the effective education of nonminority students.
- Applying psychological research to policies on the equal rights for women, including education, employment, civil rights, preventing violence against women. Psychological research contributes relevant information on current policy initiatives on workplace fairness, sexual harassment and violence on college campuses, and human trafficking.
- Ensuring that public policy reflects scientific findings on human sexual orientation. APA has applied psychological research to the civil and human rights of all individuals regardless of sexual orientation. APA has filed amicus briefs that oppose the criminalization of homosexuality and discrimination based on sexual orientation and gender identity in education, employment, and in military service. APA continues to provide research evidence to inform civil rights issues such as federal protections against employment discrimination and the right to marry.

Psychological research is particularly relevant to this hearing's focus. For over fifty years, psychology has studied the nature of prejudice and stereotypes and their impact on shaping human actions, emotions, and judgments. Psychological research has also explored how to mitigate the influence of prejudice and stereotypes on human and organizational behaviors. Thus, psychological research can inform our understanding of racial profiling, police-community relations, criminal justice policies, educational policies, employment discrimination, and workforce policies. By providing tools for

change, as well as evidence-based analysis, psychological research can play a role in advancing civil and human rights.

Additionally, the psychological research literature clarifies the negative effects of prejudice, discrimination and perceived discrimination on mental and physical health.[iv] Perceived discrimination produces significantly heightened stress responses and is related to participation in unhealthy behaviors and nonparticipation in healthy behaviors. Additionally, increased stress due to violence, harassment and other factors can contribute to poor mental and physical health in minority communities.

Given the recent events and public concern regarding racial tensions and police-community relations, this testimony will now highlight the relevant psychological literature on prejudice and police/community relations, including: a) the nature of bias, prejudice, and stereotyping, including implicit prejudice; b) evidence-based strategies for bias reduction, and c) policy strategies to enhance civil rights.

Research on Bias, Prejudice and Stereotyping

Understanding Prejudice

Prejudice is commonly defined as an unfair negative feeling or attitude toward a social group or a member of that group. Stereotypes are overgeneralizations about a group or its members that are factually incorrect and excessively rigid and are a set of beliefs that accompany prejudices.[v] Overt expressions of prejudice have declined in the United States over the last fifty years; however, contemporary forms of prejudice continue to exist in more subtle and nuanced forms. There is substantial psychological research demonstrating that even well intentioned and non-prejudiced people have biases that are unconscious and these are considered to be a human attribute, termed "implicit" bias.[vi] Implicit biases are beliefs (stereotypes) and feelings (prejudice) that are activated without intent and control and are often outside of conscious awareness and with limited conscious control. For example, Dr. Jennifer Eberhardt (Stanford University) found that simply viewing an African American man's face made people (including police officers) more likely to "perceive" a gun that wasn't there.[vii] Dr. Phillip Atiba Goff's (UCLA) research showed that police officers and others saw African American boys -- as young as 10 -- as older and less innocent than white boys the same age.[viii] A recent research study found that white subjects who saw pictures of African American

voters were more likely to express support for voter ID laws than those who did not see such an image, or saw an image of a white individual, indicating that voter ID laws may become influenced by racial stereotypes.[ix]

Evidence-Based Strategies for Bias Reduction

There are different evidence-based approaches to reducing prejudice. The more explicit form of prejudice can be reduced by providing educational strategies that improve knowledge and appreciation of other groups, including counter-stereotypic information about group members.[x] Implicit prejudice is more complex to address, as many individuals who endorse egalitarian, non-prejudiced views may be shaped by unconscious stereotyped attitudes. In many instances, revealing implicit prejudices to the individual can lead to self-knowledge and personal change,[xi] however, positive intergroup contacts, under certain conditions, can reduce prejudice more broadly than individual interventions. Activities that are sanctioned by authorities, increase personal acquaintance, have egalitarian norms, and encourage cooperative intergroup interactions toward mutual goals have been shown to reduce implicit prejudices.[xii] Such activities are common in certain work environments, but can also be created through community activities, including community-police partnerships.

Not all intergroup contacts with different groups lead to positive outcomes. Some studies indicate that certain types of contacts can reaffirm stereotypes.[xiii] Interpersonal interactions that leave an individual uncomfortable, angry, and scared or reaffirm stereotypes can increase prejudice. This research can help explain the potential negative effects of conflict-oriented police-community interactions. Police-community interactions that focus on crime prevention, such as command and control approaches or "stop and frisk policies," may reaffirm stereotypic beliefs on both sides. Other interactions such as policy-community partnerships encouraged by the Community Oriented Policing Office (COPS) of the Department of Justice (e.g., athletic leagues) can decrease stereotypes.

Policy Strategies to Enhance Civil Rights[xiv]

Psychological research can also provide direction for law enforcement efforts to reduce crime and increase community trust. In recent years, there have been repeated instances of violent conflicts between police and civilians, most frequently involving police officers and young minority men. These events reflect a conflictual relationship between the police and the public that is characterized

by mutual mistrust. The police are suspicious of the people they deal with on the street, while members of the public have low levels of trust in the motives of the police. This is particularly true of the members of minority groups, who are found to be 20-30% less likely than Whites to indicate that they have confidence in the police.[xv]

Puhlic distrust of the police is important because research shows that low trust leads to high conflict. People on the street who mistrust the police are more likely to push back against police authority, to become angry and confrontational, and to engage in verbal and physical combat with police officers rather than accept police authority. Police officers who distrust the public are more likely to engage in tactics of domination and intimidation backed by the threat or use of force, which then can escalate tension and heighten the likelihood of violent confrontation and conflict. The events in Ferguson reflect the consequences of a general climate of mistrust in the police that is commonly found in minority communities. Similar events can and have occurred in any number of American cities.

Public mistrust of the police has been reinforced in recent years as the "broken windows" view of policing has gained ascendancy. Under this approach, the police seek to maintain order by focusing upon confronting, questioning, searching, and arresting large numbers of civilians on the street who are committing minor crimes. The broken windows model of policing justifies the widespread practice of repeatedly stopping, questioning, frisking, and often detaining and arresting members of the community, in particular the African-American community, in an effort to reduce crime. The police in many cities have dropped any pretext of stopping only those who are actually involved in criminal activity, however minor. Instead, they repeatedly stop innocent community residents on the streets and through their actions create fear, which they believe deters criminal behavior.

While the police defend their current practices as necessary, these practices have not been shown to lower the rate of crime. Research shows that a key factor shaping whether people obey the law is whether they trust the law and legal authorities. Studies of the police indicate that whether people break the law and commit crimes is more strongly shaped by whether people trust the police than by whether people believe that they are likely to be caught and punished if they break the law. Distrust also makes controlling crime more difficult because it lowers the willingness of community members to help the police solve crimes or identify criminals. In the absence of trust, events of this type too

often escalate to violence. Lacking faith in the intentions of the authorities, people give in to expressions of frustration and anger. As was demonstrated in Ferguson, it is difficult to foster trust after such events have occurred, if the police have not worked to develop relationships and build trust in advance.

How can the police build trust? A number of studies consistently show that the most important factors related to public evaluations of the police are whether they believe that the police are exercising their authority fairly.[xvi] This means that police are not making decisions about who to stop based upon race; that they are willing to listen to people when they stop them; that they apply the law consistently and without prejudice; and that they take time to explain the reasons for their actions. Most importantly, the police need to treat people in the community with respect and courtesy.

Going forward, psychological research indicates that effective strategies to prevent events such as those that occurred in Ferguson, MO, include: collaborative police-community partnerships, procedurally fair applications of the law, community outreach activities, including community education; recruitment strategies to ensure that the police department reflects the demographics of the community, and training to reduce police and community stereotypes.

These policies are present in community oriented policing, which exemplifies a philosophy that addresses public safety by promoting organizational strategies that support systematic collaborative partnerships to engage in problem solving. This approach stresses law enforcement activities such as community outreach, communication, and participation. These types of activities emphasize police and community partnerships and dialogue. The COPS program is an excellent example of this approach and provides grants to states, local governments, and tribal authorities to implement these policies. The DOJ Community Relations Service (CRS) helps local communities address community conflicts and tensions arising from differences.

Recommendations

The APA recommends that the following policies be adopted at both the state and federal level to enhance law enforcement and community relations, improve public safety, and reduce the risks of violence and escalation of aggression that can emerge from the militarization of law enforcement.

- Encourage the development of community-driven responses that empower communities with limited resources to advocate for the resources they need, including improved policing and more accountability (e.g., citizen representation on review boards);

- Implement community-based policing nationwide and train law enforcement personnel on how stereotypes, including implicit bias, affect their and others' perceptions and decisions;

- Require law enforcement departments that receive supplies and military equipment to implement community-based policies, procedural justice initiatives, and training on bias-free policing;

- Provide support to Department of Justice initiatives such as COPS and CRS;

- Collect complete data at the federal level on all police shootings and on the racial/ethnic makeup of citizens involved in incidents, such as "stop-and-frisk," to better understand these issues.

In closing, knowledge gained from psychological research can inform public policies to improve the lives of all Americans and protect and enhance human rights. APA and the psychological community stand ready to work with Congress to advance civil and human rights.

For further information or questions, please contact Judith M. Glassgold, PsyD, Associate Executive Director, Government Relations, Public Interest Directorate (jglassgold@apa.org, 202-336-6104).

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Testimony Submitted by Paula Wolff, Director of the Illinois Justice Project

The State of Civil and Human Rights in the United States
Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

Dec. 9, 2014

Chairman Durbin and members of the Subcommittee, thank you for the opportunity to submit testimony about the "State of Civil and Human Rights in the United States." My testimony will focus on the progress made in Illinois – Senator Durbin's and my home state – and the progress yet to come.

My name is Paula Wolff, and I am Director of the Illinois Justice Project, a nonprofit advancing human and civil rights through criminal justice reform and promoting development, advocacy and education about policies that make communities safer and break the cycle of crime and violence. Established in 2014 as a legacy project of Metropolis Strategies, the Illinois Justice Project is a supporting organization of the Chicago Community Trust and an affiliate of The Commercial Club of Chicago.

Sen. Durbin and other Illinois delegation members supporting rational and fair justice system reforms share much of the credit for the advancements in Illinois. They have recognized and addressed the systemic problems that have led to overincarceration, untenably high recidivism and wasteful spending that does not improve public safety. While justice reform is cost-effective and improves the safety of our community, resources are needed upfront to provide treatment for substance abuse, family counseling, reentry services, and other local steps to reduce incarceration and recidivism.

The Second Chance Act grants have gone a long way in improving public safety and helping state and local leaders realize the returns possible when funding is available to help local communities meet rehabilitation needs.

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A Supporting Organization of The Chicago Community Trust

We also are proud of Senator Durbin's leadership in shining a bright spotlight on the effects of solitary confinement and excessively long prison sentencing for non-violent drug crimes. It's time to enact the Smarter Sentencing Act, sponsored by Sen. Durbin and Sen. Mike Lee, and end one-size-fits-all sentencing that does not allow judges to take into account the details of each individual's case and has contributed to distrust and lack of respect for the criminal justice system.

Although our adult prisons in Illinois remain crowded and many of the men and women incarcerated in Illinois would have a better chance at rehabilitation – and at far less cost to taxpayers -- in community settings, Illinois has made great strides in improving conditions at some prisons, supported the diversion of men and women from unnecessary incarceration and has returned more non-violent offenders to productive lives in their home communities.

Illinois has been especially successful in reducing the numbers of incarcerated youth – a drop in the last decade from an average daily population of about 1,500 to fewer than 800 today. This reduction has been achieved through a drop in the youth crime rate and expansion of diversion programs like Redeploy Illinois, publicly supported and highlighted by the senator. The decline also can be attributed to state and local leaders who recognize that children most definitely are different from adults, should be treated differently and have a great capacity to change their behaviors through counseling, mental health therapy and other services assisting them in their home communities.

Youth prisons in Illinois are slowly moving toward a rehabilitative model with less use of solitary confinement, safer conditions inside the prisons, more and better assessment of the mental health needs of the youth and a system of aftercare aimed at helping the youth and the youth's family succeed after incarceration. Those policy changes have been aided by reform of our expungement laws and raising the age of juvenile court jurisdiction. A revitalized Illinois Juvenile Justice Commission has helped policymakers make decisions based on improved data and research of best practices throughout the nation.

Redeploy Illinois has been a proven success, which Sen. Durbin has seen in personal visits to some of our sites. Begun as a demonstration pilot in 2005, Redeploy Illinois has expanded to 42 counties, which receive state funding for local services in exchange for a pledge to reduce the number of youth sent to state prisons by at least 25 percent.

Because of the success of the juvenile Redeploy Illinois, the state started an Adult Redeploy Illinois program with similar incentives to reduce the numbers of men and women going to state prisons. Adult Redeploy Illinois has grown from five initial pilot sites in early 2011, to the current 18 sites implementing 19 programs covering 34 Illinois counties.

By measuring performance of programs and redirecting spending to proven evidence-based programs to improve public safety, Illinois is becoming both tough and smart on crime. That is progress, but the work is not finished. We need adult and juvenile Redeploy Illinois at work in all of the 102 counties in Illinois. We need to reserve our prisons to those offenders who pose a real threat to public safety or are unresponsive to rehabilitation efforts. We need to give judges the ability to make sentencing decisions based on the facts before them and not on a mandated sentencing structure. We need to do more to help formerly incarcerated individuals find and keep jobs and raise their families. We need to continue to educate policymakers and citizens about cost-effective, proven approaches to crime reduction.

Thank you for the opportunity to submit this testimony. We are honored to use this opportunity to underscore the impressive work of this Committee and what it has meant to Illinois. We are especially proud to acknowledge the leadership of Senator Durbin, to whom we – and the residents of Illinois – are grateful.

Medical Whistleblower Advocacy Network

Dr. Janet Parker DVM

Written Statement for the Record

The State of Civil and Human Rights in the United States

Hearing Before the Senate Judiciary Subcommittee on the

Constitution, Civil Rights, and Human Rights

December 9, 2014

Protection of Human Subjects: Human subject research includes experiments and observational studies in basic biology, clinical medicine, nursing, psychology, and all other social sciences. The Nuremberg Code and the related Declaration of Helsinki delineates what is considered ethical conduct for human subjects' research and forms the basis for the US Code of Federal Regulations - Title 45 Volume 46 (The Common Rule). The Federal Policy for the Protection of Human Subjects or the "Common Rule" was codified in separate regulations by 15 Federal departments and agencies. The United States Department of Health and Human Services (HHS) regulations 45 CFR part 46 governs all federally-funded research in the United States. The United States Constitution should constrain the use of individuals in non-consensual experimentation, including non-consensual medical treatment and experimentation. Specifically, the Fifth and Fourteenth Amendments proscribe deprivation of life, liberty or property without due process of law. the Fourth Amendment proscribes unreasonable searches and seizures (including of a person's body), and the Eighth Amendment proscribes the infliction of cruel and unusual punishment. Federal law also prohibits non-consensual clinical investigations of medical products on human subjects in the U.S., and in foreign clinical investigations when the data are to be used to support drug or device approvals. Control of pharmaceutical and device products is vested by statute in the Food and Drug Administration (FDA) within HHS. The involvement of human beings in such research is prohibited unless the subject or the subject's legally authorized representative has provided prior informed consent, with only very limited exceptions. A waiver of informed consent by the Institutional Review Board is supposed to be granted only in circumstances where the research presents no more than minimal risk to subjects, and the waiver will not adversely affect subjects' rights and welfare. Human experiments have been performed in the United States which have been considered unethical, and were often performed illegally without the knowledge, consent, or informed consent of the test subjects. Vulnerable populations such as children, mentally disabled persons, prisoners, persons already suffering from disease or injury, financially disadvantaged, immigrants, or from a racial minority population were targeted for use by researchers. Research can be disguised as "treatment" but instead actually be a harmful or deadly experiment done without the patient's knowledge or informed consent to treatment. Numerous court cases have been brought regarding psychiatric forced drugging and the lack of informed consent.

Informed Consent: Informed consent is consent obtained freely, without threats or improper inducements, and after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient. Engaging in an informed-consent process between a clinical doctor and a patient should be an essential part of the standard of care in medicine. Informed consent is a process, not just a formality, and engaging in that process is of the essence of good medical care. Information must be provided to the patient in a timely manner and in accordance with the accepted standard of practice among members of the profession with similar training and experience. A health care professional may be legally liable if a patient does not give "informed consent" to a medical

procedure and it results in harm to patient even if the procedure is properly performed. Adequate informed-consent process is not just a risk management process, it is good medical practice. Informed consent should define risks and potential benefits, but also take into consideration alternative treatments. Informed consent is an agreement to do something or to allow something to happen, made with complete knowledge of all relevant facts, such as the risks involved. There is a general right for all human persons to be free of inhuman treatment and individuals also have the legal right to privacy under international human rights law. International human rights case law supports the concept that individuals do have the legal right to decide whether a proposed medical treatment will be performed on them. The human right to decide one's own treatment does not disappear just because it is more convenient or financially more beneficial for the caregivers or for the family members of the individual to force treatment. This right to decide to refuse treatment is a human right we all enjoy. Mental health treatment under human rights law should be the same as other treatments in regards to consent to treatment. But it is a sad fact that this right has not necessarily been consistently protected and thus through our mental health systems extended to people with mental disabilities. Patients need to have the intellectual capacity to understand basic information about their diagnosis and proposed treatment. Correspondingly doctors have a responsibility to communicate the information in terms the patient can understand and to make efforts to be available to answer questions the patient may have. Skepticism by the patient in such circumstances does not mean that the person does not have capacity to make treatment decisions. Even if the patient, due to their disability, cannot believe the doctor's diagnosis that doesn't mean that the patient does not have capacity to make treatment decisions. Essentially, people have the right to make treatment decisions under Principle 19 of the UN's "Principles for the Protection of Persons with Mental Illness." Because those with mental health disabilities are often detained, this then often automatically leads to forced treatment. This does not necessarily need to happen. It is not theoretically inconsistent with confining someone in a psychiatric facility, but still leaving them with the authority to decide treatment decisions. No treatment should be provided except in emergency situations until a determination of capacity has been made through a judicial hearing for treatment decisions. The hearing must be by an independent arbiter, and be judicial in character. In addition there must be a right of the patient to return for re-consideration of the situation at regular intervals. A hearing to determine incapacity is required. Persons, who are lacking capacity, are often institutionalized and over-medicated. These psychiatric medications may adversely affect the individual's quality of life and even shorten the person's life expectancy. Thus it is important that over-medication minimized, the views of the patient are considered and the quality of life issues explored. So an effective means of reviewing the treatment plans is important.

Human Rights of Wards of the Court: Wards of the court have surrogate decision makers for both legal and medical decisions, thus wards are prevented even from effective appeal to the Judge or even to their US Congressmen/Congresswomen. In the U.S.A. the guardianship system offers few procedural protections, and has spawned a profit-driven professional guardianship industry that often enriches itself at the expense of society's most vulnerable members—the mentally ill. A majority of jurisdictions do not require personal visits to the incapacitated individual. Financial resources are transferred to the guardians, thus leaving the individuals with diminished capacity, in complete dependency on the guardians' decisions. According to a study in the Los Angeles Times, more than half of all guardianship petitions filed by professional guardians in Southern California between 1997 and 2003 were granted by the courts on an emergency basis. Of these emergency appointments, 56 percent were granted without notice to the proposed ward, 64 percent before an attorney was selected to represent the ward, and a stunning 92 percent before an otherwise mandatory court investigator's report. The courts are being swamped with new applications for guardianship– many of them under the

guise of emergency guardianship, thus allowing medical proxy decision makers to make legal decisions about patients in many cases without notifying the patient or the patient's family. Emergency placements are prone to abuse by the professional guardianship industry and professional guardians making financial decisions for their own self-interest. Professional guardians know how to manipulate the medical and court system to use procedural loopholes of the emergency guardianship procedure to gain legal and financial control over the ward's rights and assets and total control over the ward's medical care. For profit "professional" guardians are allowed to be compensated from their wards' accounts for the services they provide, and many have seized the economic opportunity presented by the incapacity of others by making a business of acting as a guardian. They have cooperative business financial relationships with a variety of service providers such as doctors, hospitals, lawyers, courts and government agencies responsible for mental health care. By the time the family realizes what is happening legally behind closed doors, the legal process is already completed and guardianship has been granted by the court. Without ever talking to the patient or the family, Judges are making life changing decisions about these proposed wards. Thus the ward, who has the most to lose in these proceedings has often little or no input, in addition family members may not even be appraised of the court proceedings until after emergency guardianship has been already established – thus depowering them to act as advocates for their family member. A Los Angeles Times investigation similarly uncovered numerous instances of egregious abuse by guardians where evidence of abuse was already in the courts' own files. Nearly 75 percent of America's courts do not have a computerized data system to track guardianship cases and identify problems. Nearly 20 percent of courts do not require annual accounting of a ward's finances. Among courts that do collect such information, more than one third do not have an official who is designated to verify the content of the guardians' reports, and less than 20 percent verify every report. In more than 40 percent of courts, no one is assigned to visit individuals under guardianship to determine if they are being abused or financially exploited. Judges often out of expediency grant the guardian complete powers over a ward despite the principle of limited guardianship. It is important that the guardian stands for the human rights of the ward not for compliance with the hospital or doctors' wishes. Judges accept without question the written documents submitted by the medical proxy decision makers, without questioning their financial and sometimes pharmaceutical research related motives. Judges should instead make sure that they do true substantial judicial due diligence and insist that wards are transported to the court or that in some manner direct face-to-face communication is established with the Judge. Judges need to question whether a drug that is not approved by the FDA needs to be used on a ward of the court – especially in light of growing evidence of adverse effects, lack of evidence of efficacy and successful litigation against the drug manufacturer. Forcing wards of the court to take medications that are "off-label" – not approved for that use by the FDA, is tantamount to human experimentation on the vulnerable wards of the court. The ward has no legal ability to sue the pharmaceutical company for any harm he/she suffers even long-term disability, torture or even death result. Given that these drugs are expensive, have potentially severe side effects, and have limited evidence supporting their effectiveness off-label, they should perhaps be used with greater caution.

Human Rights of Children: Persons with mental health challenges still retain their human rights to informed choice in care, participation in family life and deserve respect for their human dignity. Children have fundamental human rights, even if they do have a mental disability. Parents have a fundamental right to decide what medical treatment is appropriate for their own children. Coerced mental health screening programs have no place in a free society, neither does coerced medication. Under universal screening programs, many children receive stigmatizing diagnoses that handicap them for the rest of their lives. The Medication Algorithms proposed by the pharmaceutical industry have

resulted in many thousands of children being medicated by expensive, ineffective, and often dangerous drugs. Children and young people have limited or no ability to make their own medical choices. Parents and guardians often are not given full information about treatment options. In the foster care system parents lose custody of their children and the children are not permitted to refuse treatment or have any meaningful input into the treatment they receive. Thus in the U.S.A we have a system of institutionalized injustice to minors entrusted to the Foster Care system. Coming from backgrounds of abuse and trauma, these emotionally vulnerable young people are exposed to physical, emotional, psychological and sexual abuse that often occurs in youth psychiatric facilities. Often these young people have committed no crime, but are detained against their will, and decisions about their care is made based on the type of health insurance they have (public or private), rather than their health needs. In the U.S. institutions are often overcrowded, poorly maintained. This is both unjust and discriminatory. Not surprisingly foster children exposed to such situations are unable to adjust to independent living when they reach adulthood and end up in large numbers in the U.S. prison system as adults. In addition, the pharmaceutical industry's successful marketing of drugs to this captive population of children has led to children as young as two years old given mood stabilizers and antipsychotics even before they are even able to speak. It is estimated that over 8 million children are drugged in the U.S.A. with 1,300 deaths due to this practice.

Human Rights of Minorities: Experts admit that mental health diagnoses are inherently subjective. Even according to the 1999 "Mental Health: A Report of the Surgeon General," there are serious conflicts even in the medical literature about the definitions of mental health and mental illness. These very definitions are rooted in subjective value judgments that vary across cultures and are subject to bias and prejudice. Mental illness is based on behaviors observed by others and subjective reporting, while physical illness is able to be objectively measured by verifiable physical signs. Because of inherent subjectivity and lack of objective verification, it's all too easy for a psychiatrist to label disagreement with political and/or social beliefs to be a mental disorder. Thus mental illness is commonly diagnosed in minority groups with greater frequency– possibly because of personal bias and cultural differences. But it is also evident that minorities have less access to, and availability of, mental health services. There is an inequality in the U.S.A., racial and ethnic minorities collectively experience a greater disability burden from mental illness than do whites. Minorities receive less care and poorer quality of care. Drug-metabolizing enzymes found primarily in the liver (CYP450) are a major determinant of therapeutic drug response. There are well - established differences between Caucasians, Black populations and Asians in regards to how they metabolize neuroleptic drugs. African Americans and Asians have slower metabolic rates compared with Caucasians. Common clinical practice, supported by controlled clinical studies has led to a reduction in dosage recommendations for many antidepressants and neuroleptics for these ethnic groups. (Bradford & Kirlin 1998)

Human Rights of Veterans: The Veterans Administration was paying for medication "off-label" that was not effective or safe. Although Risperdal® (risperidone), which is a second generation anti-psychotic drug, is approved to treat severe mental conditions such as schizophrenia and bipolar disorder, the US Veterans Administration doctors were prescribing the drug "off-label" to treat Post Traumatic Stress Disorder or PTSD. But a study by Veterans Administration researchers published in the Journal of the American Medical Association concluded, "Treatment with risperidone compared with placebo did not reduce PTSD symptoms."

Effects of Psychiatric Medications: Psychiatric medications have unpleasant and sometime irreversible side effects that make them extremely undesirable to patients. These side effects include: vomiting, erectile dysfunction, difficulty concentrating, anxiety, dry mouth or excessive salivation,

depression, feeling tired all the time, sleep disturbances or nerve damage. Patients can have coherent and valid reasons for refusing medication. Many patients have rational reasons for rejecting treatment and concerns about the severe and potentially life-threatening side effects of psychotropic medications. Serious side effects include tardive dyskinesia, neurololeptic malignant syndrome, and akathisia. In addition chronic use of these medications can lead to Parkinson's disease symptoms, chronic psychosis, as well as early death. Many patients wish to discontinue their medication and need competent medical help to do so.

According to the National Institute of Neurological Disorders and Strokes of the National Institutes of Health, antipsychotic drugs can cause neuroleptic malignant syndrome, a life-threatening neurological disorder. Additionally, the National Institutes for Mental Health ("NIMH") has found that long-term use of antipsychotic medications can cause tardive dyskinesia, a potentially incurable and disfiguring condition that causes muscle movements a person cannot control. For long-term psychiatric patients the chance of contracting tardive dyskinesia from psychotropic drugs is approximately one in four. The published rate for tardive dyskinesia among people who stay on the older drugs is approximately 3-5% per year - if you stay on these medications, for ten years, the risk of developing TD is 50%. (Dr. Grace E. Jackson MD 'What Doctors May Not Tell You About Psychiatric Drugs' Public Lecture, UCE Birmingham June 2004)

One of the most common side effects of antipsychotic drugs is a condition known as ***akathisia***, which is marked by uncontrollable physical restlessness and agitation and by interminable pacing, shaking of arms and legs, foot bouncing, and anxiety or panic. When this side effect occurs it is often mistaken for symptoms of mental illness itself. Then even more antipsychotic medication is administered due to a psychiatrist's erroneous perception that the signs of akathisia are actually symptoms of disease, with increased medication the patient's agitation and panic therefore increase. The opposite type of side effect is ***akinesia***, which is typified by drowsiness and the need to sleep a great deal. This effect is appreciated by those wishing to chemically restrain patients and prevent their moving around or demanding care in the middle of the night. This also allows caretakers to ignore patient's various medical problems and use ever increasing amounts of drugs to achieve the desired ends. This is not treatment of the underlying disease but instead forced drugging for the convenience of the caretakers. In addition, polypharmacy, which is the prescribing for a single person of more than one drug of the same chemical class (such as anti-psychotics), is widely practiced despite little empirical support, and can result in serious adverse reactions and intensified side effects and can lead to early death. Persons, who are lacking capacity, are often institutionalized and over-medicated. This not only adversely affects the individual's quality of life and but can even shorten the person's life expectancy. There is a lot of research that indicates that there is decreased life expectancy for persons taking neuroleptic medication. One study by Joukamaa published in the British Journal of Psychiatry in 2006 followed 99 people diagnosed schizophrenic for 17 years. The study found that if the person received even one neuroleptic drug there was an increased risk of dying by 3 fold (35% died). If given 3 neuroleptic drugs that increased the risk of dying in 17 years by 7 fold (57% died). Thus it is important that over-medication minimized for all mental health patients.

Off-Label Use of Psychiatric Drugs: Once a drug has been approved by the Food and Drug Administration (FDA), clinicians are free to prescribe it as they see fit. Because there often is not the same level of high -quality clinical research demonstrating the safety and efficacy of these drugs for non–FDA-approved indications, the benefits of such off-label use are usually unclear. "Off-label" use of anti-psychotic medications is common, particularly among the elderly and children/adolescents. In the United States, the medical community is focused on profits and market forces have resulted in

psychiatric medications prescribed for patients who are dependent in some way to the social welfare system. Psychiatric medications for schizophrenia alone cost the US taxpayer 3.5 million dollars a day. Pharmaceutical companies have spent huge amounts of money to lobby the US Congress for legislation that will minimize their legal risk and maximize their profits. The medical professionals, doctors, nurses, hospital social workers, pharmacists, and therapists are all financially dependent on the profit making aspect of medicine for their economic livelihood. This has resulted in a high rate of prescription of psychiatric medications for "off-label" use in the absence of good evidence of effectiveness. Once a drug has been approved by the FDA, clinicians are free to prescribe it as they see fit. Because there often is not the same level of high-quality clinical research demonstrating the safety and efficacy of these drugs for non–FDA-approved indications, the benefits of such off-label use are usually unclear. Given that these drugs are expensive and have serious side effects (Including: weight gain, diabetes mellitus, tardive dyskinesia, and extrapyramidal symptoms), their off-label use may represent significant risk and cost with undemonstrated clinical benefit. "Off-label" use of anti-psychotic medications is common, particularly among the elderly and children/adolescents. Medicaid is the primary payer for patients with schizophrenia in the United States, with over a third of individuals with schizophrenia receiving their care through state Medicaid programs. The cost of anti-psychotic medications has been rapidly escalating and now makes up a considerable share of Medicaid prescription drug programs. The public financing for anti-psychotic medications has been roughly equally divided between Medicaid and Medicare. It is estimated that Medicaid currently pays for more than 70% of all the antipsychotic prescriptions in the United States. In 2008, Medicaid spent $3.6 billion on antipsychotic medications, up from $1.65 billion in 1999, according to Mathematica Policy Research, which analyzes Medicaid data for HHS. Medicaid spends more on antipsychotics than on any other class of drugs. In one study of data from the Medicaid programs of 42 states from 2003 they found a considerable degree of off-label use of these drugs, with 57.6% of patients who were given anti-psychotic medications having no visit with a diagnosis of either schizophrenia or bipolar disorder during the year. (Leslie 2012) The FDA initiated regulatory actions to address reports of increased suicide rates on these psychiatric medications. One of these actions was to require a black box warning label for the new anti-depressants that warned of increased risk for violent tendencies, including suicide, caused by these medications.

Off-Label Promotion/Deceptive Marketing of Psychiatric Drugs: The practice of marketing drugs for purposes not backed by science is called "off-label promotion." The Food and Drug Administration which regulates prescription drugs and has not adequately regulated the "off-label" promotion of Risperdal by Johnson & Johnson Pharmaceutical Co. and its Janssen subsidiary. The FDA was aware of grave concerns regarding its safety and clear indication that it is not effective for the conditions it is prescribed for. Johnson & Johnson-Janssen's "off-label" promotion of Risperdal through Teen Screen was targeted to young adolescent boys. Johnson & Johnson's subsidiary-Janssen strategically marketed Risperdal-a drug designated for narrow use in the treatment of schizophrenia, into a $34 billion dollar profit making drug, with a 97% profit rate. (Applbaum 2012) This antipsychotic drug, Risperdal cost 40-50 times as much as the first generation antipsychotics. Risperdal is a second generation antipsychotic (SGA). Their marketing strategy caused the drug to be used preferentially to older generic versions of antipsychotic medications (FGA-first generation antipsychotics). Doctors are encouraged or pressured to treat their patients with the newest, most expensive drugs and they are discouraged from using the cheaper generic medications. The newer drugs often did not have extensive clinical trials before their "off-label" use, therefore the full dangers of the medication and possible adverse side effects were often unknown or not reported. Research studies delineating concerns for the newer drugs' safety and efficacy were suppressed. The Food and

Drug Administration sent warning letters sent to Janssen which questioned the company's marketing claims that its drug was superior to first generation antipsychotics or safer. Instead the pharmaceutical industry bypassed governmental safeguards and medical review by using political pressure on select governmental officials. When oral Risperdal was headed to be off patent and generic forms of it would have become available. Jansen promoted its long-acting version of Risperdal–Consta injectable to be recommended in the Texas Medical Algorithm Project (TMAP). (Rosenheck et al 2011) Marketing of Consta was focused on hospital inpatients because it is rare for stable patients to be switched to a different drug once they are discharged from the hospital. Patients were switched while still in the hospital to the still patented injectable Risperdal while still in the hospital before discharge. The pharmaceutical industry spent and continues to spend millions on lobbying Congress to effect changes in legislation favorable to the pharmaceutical industry's bottom line including changes in the Medicaid Act 2003. These changes allowed the federal government to pay through Medicaid for psychiatric drugs used for "off-label" (extra -label) uses. What may appear as a consensus of medical approval is a carefully planned marketing effort to influence medical decisions on mental health care. Among the many marketing strategies used by the pharmaceutical industry are: 1) One-to-one detail marketing to doctors and professionals 2) Continuing education seminars and sponsorship 3) Pharmacy specific advocacy groups 4) Ghost-writing of "scientific" articles and dissemination of unsupported "medication algorithms" 5) Direct-to-consumer advertising 6) Intense legislative lobbying 7) Suppression of research findings through control of research findings and research grantees 8) Illegal marketing of psychotropic drugs for off-label purposes 9) Bribing state officials with cash payments to add atypical antipsychotics on Medicaid formularies. The National Alliance on Mental Illness (NAMI) provides pharmaceutical grassroots political support and distributes pharmaceutical educational materials used to support and expand off-label use of patented psychiatric drugs.

The New Freedom Commission on Mental Health: The controversial New Freedom Commission on Mental Health was established by the 43rd U.S.A. President, George W. Bush, with Executive Order 13263 of April 29, 2002. The Commission was established to conduct a comprehensive study of the U.S. A. mental health service delivery system and make recommendations based on its findings. The Commission issued its report on July 22, 2003. President Bush has instructed 25 federal agencies to develop a plan to implement the Commission's recommendations. In 2004, Congress appropriated $20 million to finance the recommendations of this New Freedom Commission on Mental Health. Congress also passed the Garrett Lee Smith Memorial Act that included $7 million for suicide screening and tens of millions more for Substance Abuse and Mental Health Services Administration and its Center for Mental Health Services. The No Child Left Behind Act already included $5 million for Mental Health Integration. This was a part of a federal plan to subject all children to mental health screening in school and during routine physical exams. This was an effort to force millions of kids to undergo psychiatric screening whether their parents' consent or not. The New Freedom Commission on Mental Health recommended increased use of pharmaceutical interventions despite the Food and Drug Administration (FDA) objections.

Texas Medication Algorithm Project (TMAP): The Texas Medication Algorithm Project or TMAP was described as a thinly veiled proxy for the pharmaceutical industry, which pursued profits by recommending more psychotropic medication interventions. TMAP had been created in 1995 while President Bush was governor of Texas. It formed as an alliance of individuals from the University of Texas, the pharmaceutical industry, and the mental health and corrections systems of Texas. The New Freedom Commission on Mental Health used TMAP as a blueprint and began to recommend screening of American adults for untreated mental illnesses and children for emotional disturbances. The commission, using the Texas Medication Algorithm Project (TMAP) as a blueprint, subsequently

recommended screening of American adults for possible mental illnesses, and children for emotional disturbances. The primary purpose was to recommend implementation of TMAP based algorithms on a nationwide basis. The strategy behind the commission was developed by the pharmaceutical industry, and the goal was to identify all those with suspected disabilities who could then be provided the newer psychoactive drugs. The pharmaceutical industry's marketing concept behind Texas Medication Algorithm Project (TMAP) was to standardize treatment through the imposition of a strict algorithm. Mental health care has evolved into a revolving door between state mental hospitals and prisons, where patients flow through these facilities and leave with prescriptions for the medications they were treated with while institutionalized. Most of these patients will rely on Medicaid or Medicare to pay for the drugs. Forcing prisons and state mental hospitals and other community mental health centers to prescribe medications based on a pharmaceutical industry marketing model permits "patient recruitment and retention" in pharmaceutical industry terms. This has been translated to clinical marketing terms emphasizing client compliance to the treatment regime and adherence to a particular drug.

Financially responsible governmental policy regulators and governmental agencies attempted to put in place cost containment measures which were meant to limit the escalating seemingly unlimited cost of psychiatric medications now borne by the US taxpayer. State legislatures started drafting measures that would permit them to regulate prescription drug prices for state employees, Medicaid recipients, and the uninsured. Like managed care plans, they were creating formularies of preferred drugs. One such cost containment measure was the requirement that a "consumer" can only receive a specific service or treatment if the service/medication is first screened and approved by the paying insurance company. The Medication Algorithm Project (MAP) was instituted, so that "prior authorization" requirements by Medicaid would not prevent customers from buying expensive newer psychiatric medications that had just been patented In 1995, as part of a marketing strategy, the pharmaceutical industry started to push for Medication Algorithm Project guidelines that would dictate what medications would be prescribed. The Texas Medication Algorithm Project (TMAP) is a decision-tree medical algorithm that gives guidelines for what medications to prescribe. Political pressure was applied on state decision makers to have these guidelines implemented within state of Texas Mental Health and Mental Retardation guidelines which would thus make it difficult for state Medicaid auditors to make decisions outside these guidelines. With state issued guidelines, doctors didn't need to worry about choosing which medication is most effective, but instead just go by the MAP chart. Pharmaceutical industry representatives suggested which drugs should be the first, second, third, choice. All the doctor needs to do is prescribe the drugs in that order, if the first doesn't work, the doctor prescribes the second on the list. Doctor's don't need to research the newer drugs and determine what is best for a particular patient - they just prescribe according to the list recommended by the state agency MAP chart. The legal malpractice risk of making a wrong choice is then transferred to the state agency which has legal immunity and thus the choices are already made by pharmaceutical industry representatives. If an adverse event happens (i.e. suicide or murder) the doctor can legally fall back on the fact that the state agency recommended his prescription choice. This has also opened the door to prescription authority extended to physician assistants and nurse practitioners, who do not have the same extensive medical training that is required for an M.D. The use of a Medication Algorithm meant that the legal risk of a malpractice claim was lowered to almost nil, shifting legal responsibility to the state which has legal immunity. This meant decreased malpractice insurance costs for these less qualified medical practitioners. The drug companies involved in financing and/or directly creating and marketing TMAP include: Janssen Pharmaceutica, Johnson & Johnson, Eli Lilly, and Austrazeneca, Pfizer, Novartis, Janssen-Ortho-McNeil, GlaxoSmithKline, Abbott, Bristol Myers Squibb, Wyeth-

Ayerst Forrest Laboratories and U.S. Pharmacopeia. The pharmaceutical industry repressed clinical research information about adverse events, while paying university professors and other respected medical professionals to ghost write articles favorable to their products. Doctors can be unduly swayed by pharmaceutical company promotional messages which are spread through supposedly neutral continuing educational events and written material. The Texas Medication Algorithm Project (TMAP) was supported by state governmental authorities and has been imported to other states such as Pennsylvania and TMAP currently impacts mental health care in at least 17 states. (Healy 2006, 2008) Doctors stopped using their discretionary options and instead started to prescribe according to the MAP chart because of legal ramifications of not practicing the "standard of care." The Medication Algorithm Project (MAP) was created by the pharmaceutical industry leaders as a marketing tool with little valid scientific research to back MAP recommendations. In reality, the FDA was pressured to overlook clear dangers of medications in the MAP model and to continue to allow drugs to be sold to vulnerable patients with serious and even fatal adverse effects. Research into the dangers of the increased use of psychiatric medications recommended by the MAP has been suppressed.

Allan Jones was the former investigator in the Commonwealth of Pennsylvania Office of Inspector General (OIG), Bureau of Special Investigations. As a human rights defender and medical whistleblower, Alan Jones, investigated for the Office of Inspector General of FDA. He delivered a scathing report on the fraudulent behavior of the pharmaceutical industry and its political control over both legislation and regulatory functions. OIG Investigator Allen Jones' report indicated that key administrative governmental regulatory employees in Pennsylvania were closely aligned to drug manufacturers. These officials working in cooperation with pharmaceutical industry insiders manipulated the regulatory agencies to turn a blind eye to the excessive profits of the pharmaceutical companies and to permit wholesale marketing at taxpayers' expense of psychotropic drugs. (Jones, Allen, "Introduction to the documents on Big Pharma Corruption in Research & Clinical Trials," Revised January 20, 2004 http://psychrights.org/)

In addition to pressuring medical professionals to prescribe these medications, the pharmaceutical industry has put a great pressure and influence on the American Psychiatric Association Task Force which writes the Diagnostic and Statistical Manual of Mental Disorders (DSM), the manual of mental health diagnoses. These changes in the DSM will increase the number of persons diagnosed with mental illness. (Carey 2012) The new manual the DSM V that is just now coming out has been written with the strategic marketing pharmaceutical industry objectives in mind. Therapists and clinicians use the DSM IV to do their billing codes, and thus their ability to get paid is based on how they comply with the diagnostic guidelines in the DSM IV. Allen Frances, MD, who chaired the DSM–IV Task Force, voiced considerable concern for the implications of the new edition. The newer version of the diagnostic manual, the DSM V is now being boycotted in protest by many mental health stakeholders, psychiatrists, clinical psychologists, therapists and psychiatric social workers. (Carney J 2012)

Adverse Effects of Neuroleptic/Anti-psychotic Medications: These neuroleptic and anti-psychotic medications can have profound negative effects including what could be called "inner torment" or what is called clinically akathisia. ***Akathisia*** is one of the most common side effects of antipsychotic drugs and causes uncontrollable physical restlessness and agitation and by pacing, shaking of arms and legs, foot bouncing, and anxiety or panic. When this side effect occurs it is often mistaken for symptoms of mental illness itself and then the psychiatrist's erroneous assumption will lead to even more anti-psychotic medication being administered. With the subsequent increased dosage, the patient's agitation and panic therefore increase, leading to a terrible feeling of inescapable physical and mental turmoil, this sometimes leads to acts of violence. When patients are confronted with such feelings of

restlessness, agitation, and incoherent thoughts caused by the psychiatric medications they often have racing thoughts of violence even suicide. This is why these medications carry a Food and Drug Administration black box warning label stating that they can cause violent thoughts, actions and even suicide. Neuroleptic adverse reactions are related to behavioral changes such as akathisia. In the late 1970's, akathisia was formally recognized and known to be a predisposing factor to violence. (Keckich 1978) These neuroleptic medications are highly addictive and the brain becomes dependent on them for normal functioning and thus withdrawal can have serious symptoms including irritability and agitation. Thus suddenly going off these medications can make patients extremely emotional, agitated, less inhibited, suicidal and even violent. During a patient's withdrawal period, any perceived untoward disrespectful attitudes or verbal communications can trigger violence. Neuroleptic Induced Akathisia (NIA) can lead to violence, including mass murder, as was seen in the Columbine Shooting, when Eric Harris while on Luvox murdered his classmates.

Political Pressure to Influence Legislation: No mental health profession and no professional activity is safe from the $200 billion pharmaceutical industry financial and political influence. The largest growing portion of that market is now psychiatric medications which are highly profitable products but of dubious benefit. Pharmaceutical companies spend a majority of their funds in marketing rather than research and development. Financial and political power allows the pharmaceutical industry to push their legislative agenda through Congress, influence regulatory actions of the FDA, and to control research at academic medical centers. Public research institutions funded by tax dollars are doing the basic research for the drugs, but the actual clinical trials are funded privately by the drug companies. Off-label drug use clinical data is used to expand FDA approval to additional diagnoses. In order to make patented drugs look better than they really are clinical research trials are rigged. Government granted exclusive marketing rights are extended for years by protective and aggressive industry lawyers. They also flood the market with copycat drugs of the same general class of drugs that cost a lot more than the drugs they mimic, but really are no more effective. The pharmaceutical industry has found that clinical safety trials are costly to perform. Instead they have sifted their emphasis to political pressure on targeted government officials to sway public policy decision making and thus be able to use federal tax dollars to pay for "off-label" use of welfare recipients as their human subjects. Controlling the decisions of the medical proxy decision makers is therefore their focus rather than making sure that medications are approved by the FDA as safe and effective. The pursuit of the almighty dollar often overshadows corporate responsibility to the public. Annually, the pharmaceuticals industry spends nearly twice as much on marketing as it spends on research and development. According to the Center for Public Integrity the pharmaceutical and health products industry has spent more than $800 million in federal lobbying and campaign donations at both federal and state levels in the past seven years. (PublicIntegrity.org) The Supreme Court Decision, Citizens United v. Federal Election Commission has now even further extended the pharmaceutical companies influence over policy makers through unbridled secret contributions to 501 c 4 organizations which then can lobby legislators on behalf of the pharmaceutical industry. Individual citizens of the U.S.A., especially persons with mental disabilities, cannot compete with equal lobbying actions to the pharmaceutical industry. Indeed, many with mental health diagnosis are actually stripped of their right to vote and even their right to petition their elected representatives for issues crucial to their human rights. Surrogate decision makers often controlled by the medical proxies make voting decisions for the wards and thus vote pro-pharmaceutical interventions. The human rights of wards are lost in this political exercise of power. Today the pharmaceutical industry has unprecedented ability to spread money to influence thinking, mental health practice, and policy making. We need to impose

The State of Civil & Human Rights in the United States
Statement for the Record: Hearing before the Senate Judiciary Subcommittee, December 9, 2014

A Joint Submission to the Senate Judiciary Subcommittee on the Constitution, Civil and Human Rights

The Responsibility of the U.S. Government to Investigate Cases of Civil Rights Murders to Ensure Due Process and Equal Protection Under the Law

Submitted Jointly by:

1. **Coalition for the Peoples' Agenda**, Chairman & Convener Rev. Dr. Joseph E. Lowery
   Our Mission is to improve the quality of governance, to help create a more informed and active electorate and to have responsive and accountable elected officials.
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2 **Southern Christian Leadership Conference,** President Sen. Charles Steele and National Board Chairman, Dr. Bernard Lafayette Jr. SCLC was established in 1957 and elected Dr. Martin Luther King, Jr. as its first President. Nonviolent mass action was adopted as the cornerstone of strategy.

3 **Cold Case Justice Initiative at Syracuse University College of Law,** Co-directors, Professor Paula Johnson and Professor Janis McDonald. CCJI conducts investigations and research on unresolved cases and serves as a clearinghouse for sharing and receiving information on active cases. The CCJI insists on vigilant attention to unresolved racially motivated killings and continuing issues of racial justice.

Endorsed by:

National Association for the Advancement of Colored People, Rev. Dr. Francys Johnson
Georgia Association of Black Elected Officials, Rep. Tyrone Brooks, Active Veteran, SCLC
Georgia Peace & Justice Coalition, Kevin Moran Coordinator

Executive Summary and Introduction

The passage of the Emmett Till Unsolved Civil Rights Crime Act ("the Act") introduced on February 8, 2007 by Representative John Lewis (GA) and Senator Christopher Dodd (CT), with multiple bi-partisan co-sponsors, including then Senator Barack Obama (IL), provides enforcement powers, direction and funding necessary to achieve its objectives. The Act was signed into law by President George W. Bush in October 2008. However, the United States Government has failed to fully implement the Emmett Till Unsolved Civil Rights Crime Act of 2007. The law instructs the FBI, and other entities within the United States Department of Justice, to "(1) ***expeditiously investigate*** unsolved civil rights murders, due to the amount of time that has passed since the murders and the age of potential witnesses; and (2) provide all the resources necessary to ***ensure timely and thorough investigations*** in the cases involved". The Act also instructs the Attorney General to designate a Deputy Chief in the Criminal Section of the

Civil Rights Division, to coordinate the implementation of the law and further authorized appropriations of up to $10 million each year from 2008 until 2017 to be allocated to further this mandate. However, no Attorney General has requested the entire $10 million **per year** authorized in the Act. In fact, no joint task forces or concerted federal and local law enforcement agencies have engaged in a serious effort to identify, or account for, all of those who disappeared, or who were killed prior to December 31, 1969. There has never been a full accounting of all of the individuals who were killed or disappeared during that period.

Although the legislative history of the Emmett Till Act includes a list of 70 "Forgotten" individuals whose killers remain at large, Congress never intended for this to be the entire list of victims of unsolved civil rights era killings. The Southern Poverty Law Center created the "Forgotten" list as a partial list of those individuals discovered by the Center, but they too, never intended it to be a complete list. In December 2012, the Cold Case Justice Initiative at Syracuse University provided the Department of Justice and the FBI a list of 196 additional names of individuals discovered by the Cold Case Justice Initiative law students. These were "suspicious killings" that took place during the time period covered by the Emmett Till Act. The list included fifty suspicious law enforcement killings of young Black men. Since that time the Cold Case Justice Initiative has discovered another one hundred "suspicious killings" and continues to discover more.

Annually the "Moore's Ford Bridge Lynching Movement", a joint action of the Southern Christian Leadership Conference and its affiliate, the Georgia Association of Black Elected Officials, reenacts the last mass lynching in the United States. The lynchings of the Malcolms and the Dorseys took place at the Moore's Ford Bridge in Monroe, Georgia on July 25, 1946. The Coalition for the Peoples' Agenda and the Georgia Peace & Justice Coalition support this remembrance. Many of those submitting this report have been chilled by the horror of the reenactment. Our members have visited the grave sites and commiserated with decedents of those murdered. They have met with disillusioned African-Americans, who seek justice in order to begin the process of reconciliation. Though individuals responsible for the murders are believed to still live, no one has been prosecuted. Such a culture of impunity continues to cause fear, distrust and intimidation. The proclaimed equal protection of the law, as set forth in articles 2 and 7 of the Universal Declaration of Human Rights and the 14th Amendment to the Constitution of the United States of America, is an unrealized dream.

These crimes were committed not just against the victims, but against our society. The Emmett Till Unsolved Civil Rights Crime Act of 2007 was intended to serve as a tool for communities such as Monroe, Georgia, to confront past wrongs, determine guilt, and seek to acknowledge responsibility, as well as impose a penalty commensurate with the wrongdoing. With such acts comes the possibility of healing, accountability, and restorative justice. From Monroe, Georgia to Ferguson, Missouri and Staten Island, New York African Americans seek justice to begin the process of reconciliation.

The Southern Christian Leadership Conference's 2013 Resolution Call for Immediate Action to Enforce the Unfulfilled Promise of the Emmett Till Unsolved Civil Rights Crimes Act speaks to the national outrage over the failure of the government of the United States of America to ***conduct timely and thorough investigations*** of Civil Rights murders, as stipulated in the Emmett Till Unsolved Civil Rights Crime Act of 2007.[i]

Likewise, the NAACP resolution "Emmett Till Unsolved Civil Rights Crime Act", provides the foundation for this report's recommendations. This resolution was ratified by the National Board of Directors on October 19, 2013 and is now the Official Policy of the National Association for the Advancement of Colored People.[ii]

The historic context is found in the Senate Committee on the Judiciary's Report to accompany Senate Bill 535 Emmett Till Unsolved Civil Rights Crime Act.[iii]

Likewise, documentation of the U.S. Attorney General's failure to implement the Emmett Till Unsolved Civil Rights Crime Act during this four year period is contained in the Attorney General's 2010[iv] and 2014[v] Reports to Congress pursuant to the Emmett Till Civil Rights Crime Act of 2007.

The directors and researchers of the Cold Case Justice Initiative at Syracuse University College of Law provided the documentation and analysis of the government of the United States of America's failure to fully implement and fund the Emmett Till Unsolved Civil Rights Crime Act as required by law.[vi]

Concerns Regarding the Thorough and Expeditious Investigation of Civil Rights Murders

As recent cases confirm, unsolved murders pose some of the most important and vexing law enforcement challenges facing our nation. For far too long, racially motivated violence has divided communities and terrorized American citizens.

These violent and discriminatory crimes tear at the fabric of our democracy. The Fourteenth Amendment guarantees equal protection under the law. The Federal Government, in particular, has traditionally been the guardian of last resort for our nation's most vulnerable inhabitants. Yet, African-American citizens were not protected for much of our history. Countless African- Americans and civil rights workers, involved in the struggle for equality, were murdered or randomly killed in deliberate acts of racial intimidation.

The brutal murder of Emmett Till was one of the most infamous acts of racial violence in American history, yet his killers were never punished. Like Emmett Till, hundreds of other Americans of this era suffered a similar fate. According to the Southern Poverty Law Center, at the Emmett Till Unsolved Civil Rights Crime Act: Joint Hearing on H.R. 923 before the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties, ``The killers in most of the cases have not been prosecuted or convicted, and today, there are many cases that still cry out for justice." The Cold Case Justice Initiative at Syracuse College of Law, among other groups, continues to discover victims of unsolved racially motivated crimes.

The Emmett Till Unsolved Civil Rights Crime Act was intended to address racial injustices before they become permanent scars on our democracy. Passage of this legislation was expected to provide for a sustained, well-coordinated, and well-funded effort to investigate and prosecute racially motivated murders that occurred on or before December 31, 1969. This bill designates an official within the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), respectively, with the responsibility to coordinate the investigation and prosecution of civil rights violations that occurred prior to 1970, and that resulted in a death. Congress recognized the urgent need for this measure. Given the advanced age of defendants and potential witnesses, only a small window of opportunity exists to

investigate and prosecute these crimes. It will soon be too late to right these wrongs and to ensure equal justice in our criminal justice system.

Congress so far has failed to conduct oversight hearings of the work of the Department of Justice in implementing the Emmett Till Unsolved Civil Rights Crimes Act. Many of the families complain that they have never been interviewed by the FBI or DOJ and yet their loved one's investigation has been closed. Witnesses also complain that they have not been interviewed. Of the 122 names on the FBI/DOJ list of cases to investigate, all but a small number have been closed.

Emmett Till's death left an indelible mark on America. The public images of his mutilated body in an open casket, and the fact that no convictions occurred, stirred our nation's conscience. The racial violence commonplace in the American South became known to the world, and generated a widespread public outcry across America. Emmett Till's murder also inspired the modern civil rights movement. Just three months after the Till murder trial, Rosa Parks was arrested for protesting segregation laws. In the next twenty years, Americans of all races, genders, and ages would risk their lives fighting for civil rights.

Emmett Till's murder did not stand in isolation. It is one horrendous example of a legacy of widespread racially motivated violence. Historically, anti-civil rights violence was widespread throughout the nation. According to legal historians, more than 100 violent incidents in the South, connected to civil rights activity, occurred between January 1, 1955 and May 1, 1958. The majority of this violence occurred in the form of bombing homes, schools, and churches. In the city of Birmingham, Alabama, between 1955 and 1963, local African-Americans were targets of twenty-one bombings, all of which went unsolved.

The exact number of unsolved racially motivated murder cases that occurred before the 1970s remains unknown. Many of these killings were never fully investigated, and in some cases, law enforcement officials were involved in the killings or subsequent cover-ups. In many cases, such as the murder of Emmett Till, suspects were brought to trial only to be set free by sympathetic white juries.

The FBI, in 2007, began investigating or considering investigating 102 killings that occurred before the 1970s. Of these, 94% (96 incidents) are in the Southeast, 4% (4 incidents) are in the West, and 2% (2 incidents) are in the Northeast. Mississippi comprises the most significant percentage of unsolved civil rights cases at 42% (43 incidents). Of the remaining states with investigations or assessments for investigations, 17% (17 incidents) are in Alabama, 13% (14 incidents) are in Georgia, 7% (7 incidents) are in Louisiana, 4% (4 incidents) are in Texas, 12% (3% for each state, with each state having 3 incidents each) are in North Carolina, South Carolina, Florida, and Tennessee, 2% (2 incidents) are in Arkansas, and 3% (1% for each state, with each state having 1 incident) are in Ohio, Kentucky and New York. These figures do not include the 196 names discovered by the Cold Case Justice Initiative at Syracuse University College of Law. The Department of Justice has not responded to the Cold Case Justice Initiative at Syracuse University College of Law or anyone else on the 196 "suspicious killings" turned over to them in December 2012.

In recent years, law enforcement officials at the federal, state and local level have made sporadic efforts to solve some of the crimes that were ignored, at the time, by law enforcement. According to press reports, since 1989, 29 pre-1970s racially motivated cases have been reopened, leading to 29 arrests and 23 convictions.

Despite these prosecutions and convictions, much work remains to be done. The Southern Poverty Law Center provided the Senate Committee on the Judiciary's Report to accompany Senate bill 535, titled Emmett Till Unsolved Civil Rights Crime Act, with a list of 74 "forgotten persons." These citizens were victims of racially motivated violence prior to the 1970s. Twenty-three of the deaths commemorated on the Civil Rights Memorial in Montgomery, Alabama have not been brought to justice. In 13 of the 40 deaths noted on the Civil Rights Memorial, no one has ever been brought to trial. In 10 of the 40 deaths, defendants were either acquitted by all-white juries or served only token prison sentences. This was never intended to be a complete list, but only a beginning of the effort to be conducted by the FBI and the Department of Justice. Further investigation into the identification of additional new cases has not been a priority of the Department of Justice, despite the Emmett Till Act.

The purpose of the Emmett Till Act was to provide the families of victims, murdered prior to the 1970s for racially motivated reasons, with long awaited justice. The perpetrators of these crimes have remained at liberty into old age, sometimes gloating publicly about the murders. Although some civil rights-era murderers have been prosecuted and convicted since 1989, no prior legislation had provided the federal and state governments with the necessary resources to find most of the perpetrators of these crimes and bring them to justice. Doing so becomes increasingly difficult with the passage of time, as sources of new evidence dry up, witnesses age, and memories fade. The window of time to render justice in these cases is closing. Although it is painful for families to revisit the nightmares of the past, many families of victims have been instrumental in generating momentum to re-open investigations.

In Senate hearings, Dr. Myrlie B. Evers Williams, spouse of Medgar Evers, who was assassinated in 1963, urged Congress not to forget that family members of the persons murdered are also victims. "They are human beings who must survive the loss of their loved ones and all that that entails, the emotional Hell that never completely disappears; the nightmare of the bloody crime scene; the sounds of terror; the firebombs; the sound of gunfire; missing that person's love, care and guidance; the loss of financial support and so much more."

Investigating and prosecuting old civil rights cases also serves a broader societal purpose. Many of these horrendous crimes were not just the results of criminal acts of private individuals, but were a consequence of government actors who were complicit in the misconduct. The state and federal governments also bear responsibility for the racial climate that allowed individual racially motivated hate crimes to flourish. Investigating and prosecuting these cases vindicates the state interest in the equal protection of criminal and civil rights law, and restores the legitimacy of the criminal justice system upon which our democracy depends.

Although the FBI played an important role in investigating and successfully prosecuting a few civil rights-era murders between the 1990s and 2007, in the past it withheld files from the press and state authorities. FBI Director Robert Mueller has acknowledged that, ``many murders during the civil rights era were not fully investigated, were covered up or were misidentified as accidental death or

disappearance." For example, the FBI had investigated the church bombing at the Sixteenth Street Baptist Church extensively at the time it occurred in 1963, and had focused its attention on four local Klansmen with long histories of violence. Despite possessing secret tape recordings that implicated the suspects, FBI Director J. Edgar Hoover closed the case in 1968 without bringing charges. The case remained closed until U.S. Attorney Doug Jones reopened it in the mid-1990s. The family and local U.S. Attorney were able to successfully prosecute three of these individuals over thirty years later. Mr. Jones discovered there was significant evidence that the FBI had not shared with Alabama Attorney General William Baxley during the Chambliss prosecution, including recordings made by a listening device placed near Blanton's kitchen sink, as well as tapes secretly recorded by Klan informant Mitchell Burns during drinking binges with Cherry and Blanton. Armed with this evidence, and with the help of the family and investigative reporters, Mr. Jones secured convictions for Blanton in 2001 and Cherry in 2002.

Likewise, J. Edgar Hoover was informed, in a personal letter from the lead FBI Case Agent on the Moore's Ford Bridge lynching case in Monroe, Georgia, of Governor Eugene Tallmadge's suspected complicity in the crime. Confirmed eyewitness testimony, provided by the local Assistant Police Chief Ed Williamson, was not included in the final five hundred page summary report.[vii] The release of complete FBI files to state and local authorities, as well as the press and the families involved, is crucial to resolving racially motivated crimes.

Indeed, Martin Luther King Jr.'s letter "Kick Up Dust," published by the Editor, *Atlanta Constitution on* 6 August 1946, when he was a Morehouse College sophomore, is a response to the Moore's Ford Bridge Lynchings. He wrote, "We want and are entitled to the basic rights and opportunities of American Citizens: the right to vote and equality before the law."[viii]

For decades Americans have lived out their lives in the towns and cities where the crimes occurred, often encountering the perpetrators in daily life. For some, that continual interaction with persons whom they knew had committed heinous acts, must have been a constant source of intimidation, even if nothing was said directly. For others, knowledge of the crime and the failure of communal action to impose consequences on the actors, was the denial of the seriousness of the event, a diminishment of civil society.

In other words, these crimes were committed not just against the victims, but against our society. This bill serves as a tool for communities to confront past wrongs, determine guilt, seek to acknowledge responsibility, and impose a penalty commensurate with the wrongdoing. With such acts comes the possibility of healing and restorative justice.

In furtherance of this legislation's goal of bringing the perpetrators of racially motivated murders to justice, the DOJ and state and local law enforcement should consider--but not be limited to--victims who fit at least one of these criteria: (1) persons murdered because they were active in the civil rights movement; (2) persons killed by organized hate groups, as acts of terror aimed at intimidating Blacks and civil rights activists.

It is imperative to bring murderers to justice, even if several years or decades have passed since these heinous crimes were committed. Doing so brings truth, closure, healing, and reconciliation to the affected families, friends, communities, and our nation as a whole. Although it is painful for families to

revisit the nightmares of the past, many families of victims have been instrumental in generating momentum to re-open investigations.

Congress intended for this bill to demonstrate our national commitment to restorative justice. During the era of massive resistance, racial extremists used racial violence to deny African-Americans the basic rights of citizenship, including the right to vote, to obtain an education, to obtain a job, and to enjoy access to public accommodations.

Though some legal issues remain, federal and state murder prosecutions, although identical in their respective elements, were separate offenses for purposes of the Sixth Amendment, because they were violations of the laws of two separate sovereigns. (See Avants, 278 F.3d at 514 finding federal jurisdiction under 18 U.S.C. Sec. Sec. 1111 and 1112.) Likewise, federal statutory authority includes the federal kidnapping statute used in *United States v. Seale*.

The Emmett Till Unsolved Civil Rights Crime law instructs the FBI and other entities within the United States Department of Justice, to "(1) ***expeditiously investigate*** unsolved civil rights murders, due to the amount of time that has passed since the murders and the age of potential witnesses; and (2) provide all the resources necessary to ***ensure timely and thorough investigations*** in the cases involved."

The Emmett Till Bill also instructs the Attorney General to designate a Deputy Chief in the Criminal Section of the Civil Rights Division to coordinate the implementation of the law. The Bill further authorized appropriations of up to $10 million each year from 2008 until 2017 to be allocated to carry out this mandate.

However, no Attorney General has requested the entire $10 million authorized in the Act; and no joint task forces or concerted federal and local law enforcement agencies have engaged in a serious effort to identify, or account for, all of those who disappeared or who were killed prior to December 31, 1969; and

In the 2010 Attorney General's Second Annual Report to Congress, only two new cases were added to the list for "review", which then numbered 109 "matters" constituting 122 victims. Of these 109 cases identified as being "open", the United States Department of Justice closed 14 within six months of the Act's passage. In the ensuing three years the Department opened only these two additional cases discovered by the Cold Case Justice Initiative at Syracuse College of Law, but closed 89 cases, wherein the identified suspects were deceased or the cause of death was determined not to be racially motivated. The fact that leaders of the KKK in the local Klan organization ordered many of these deaths was not considered to be relevant to criminal prosecutions for murder, even where local homicide laws included such actors as principals to the crime.

The 2014 Attorney General's Fifth Annual Report to Congress indicates that after closing 75% of the cases, the Department only has 20 open cases remaining on its list.

The Annual Reports from 2010 to 2014 to Congress, made by the United States Justice Department contain lengthy and repetitive summaries of actions taken, and successes achieved, prior to the Act and very little description of thorough investigation of existing cases since the implementation of the Act. The reports fail to evidence specific law enforcement field investigative activities seeking to identify individuals who disappeared or were killed during this time period. In the case of the Moore's Ford Bridge lynching there has not been any further action, with respect to the apparent complicity of former FBI Director J. Edgar Hoover, in the cover-up implicating then Georgia Governor Eugene Tallmadge. Also, U.S. Senator Richard B. Russell, as well as U.S. Senator Strom Thurmond, and other state and local officials are alleged to have been involved in suppressing the investigation.

Civil Rights leaders from across have expressed their concerns. They share the understanding that many potential witnesses were unable to come forward immediately after the killings, because of the threats to them or their families if they identified the killers, or revealed important information; that many of these individuals have been willing to come forward in recent years, but some have been rebuffed when contacting the FBI, or their testimony devalued; and that in almost all cases, over-reliance on earlier FBI reports is insufficient as an investigation intended by the scope of the Emmett Till Act.[ix]

The Southern Christian Leadership Conference officials are aware that some of these closed cases were not fully investigated, witnesses who knew the facts were not interviewed, and family members were not interviewed or even contacted in some instances, until an FBI agent hand-delivered a letter, informing that family member that the case had been closed.[x]

Congress had authorized the appropriation of 2 million dollars annually in grant money to state and local law enforcement, as well as 1.5 million dollars to Community Relations Services of the U.S. Department of Justice, to assist with collaboration between law enforcement agencies and local communities in the investigation of these crimes. The local agencies have not been informed that these, or any funds, are available to them to investigate and prosecute these suspects on state homicide charges. However, no statute of limitations exists for state homicide. The 2014 Attorney General's Fifth Annual Report to Congress reports "no funding has been appropriated for grants under the Till Act, and the Department has received no applications for grants from state or local law enforcement agencies under the Till Act."

The Georgia Coalition of Black Elected Officials sent letters to the Honorable Patrick J. Leahy, Chairman, United States Senate Committee on the Judiciary, and the Honorable Bob Goodlatte, Chairman House Committee on the Judiciary on April 17, 2014. These letters called for congressional hearings on the Department of Justice's noncompliance with the mandates of the Emmett Till Unsolved Civil Rights Crime Act. The law instructs the FBI, and other entities within the United States Department of Justice, to "(1) ***expeditiously investigate*** unsolved civil rights murders, due to the amount of time that has passed since the murders and the age of potential witnesses; and (2) provide all the resources necessary to ***ensure timely and thorough investigations*** in the cases involved." [xi] A reply has yet to be received.

The exact number of unsolved racially motivated murder cases that occurred before the 1970s remains unknown. The Cold Case Justice Initiative at Syracuse University, School of Law provided the Department of Justice with a list of 296 victims. The CCJI, among other groups, continues to discover victims of

unsolved racially motivated murders. Many of these killings were never fully investigated, and in some cases, government officials, or federal, state and local law enforcement officials were involved in the killings or subsequent cover-ups. The U.S. government has a responsibility to investigate these cases to ensure due process and equal protection under the law

Recommendations:

We call upon the U.S. Attorney General to fully implement the Emmett Till Unsolved Civil Rights Crime Act, including but not limited to:

(1) Immediately establish task forces of federal and state law enforcement to ***expeditiously and thoroughly investigate***, not just review, unsolved civil rights killings.

(2) Immediately seek allocation of resources from the Congressional Appropriations Committee for the necessary appropriations funds already authorized by the Act.

(3) Advocate for monetary support, and involvement of local law enforcement agencies and civil rights groups, in the attempts to identify and investigate these unsolved civil rights era killings, as contemplated by the Act.

(4) Reopen all cases where a paper review of old investigatory files represent the sole means of a current investigation.

(5) Provide unedited files to the families of all closed cases, through expedited Freedom of Information Act (FOIA) requests.

(6) Appoint an independent federal prosecutor to coordinate the full accounting, investigation and prosecution of cases under the Act.

(7) Provide for oversight hearings, by the appropriate Congressional committees, of the on-going activities of the United States Department of Justice and FBI in fulfilling the mandate of the Act.

(8) Appoint a Presidential Commission of Civil Rights Leaders, such as Rev. Joseph E. Lowery, Rep. Tyrone Brooks, and Rev. Francys Johnson and from groups, such as the Cold Case Justice Initiative at Syracuse University, to investigate the past failure to implement and fully fund the Act, and to monitor compliance with the Act.

(9) Extend the Act to include killings that occurred prior to 1980

(10) Proactively, advocate for the reauthorization of the Emmett Till Unsolved Civil Rights Crime Act of 2007, for an additional ten years, to begin on its expiration at the end of the fiscal year in 2017.

End Notes:

[i] SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE'S 2013 RESOLUTION CALLING FOR IMMEDIATE ACTION TO ENFORCE THE UNFULLFILLED PROMISE OF THE EMMETT TILL UNSOLVED CIVIL RIGHTS CRIMES ACT
https://mail.google.com/mail/u/0/?ui=2&ik=57b76f569a&view=att&th=148666a8e6c78b49&attid=0.5&disp=safe&zw

[ii] RESOLUTIONS RATIFIED BY THE NATIONAL BOARD OF DIRECTORS UNDER ARTICLE IX, SECTION 1 OF THE CONSTITUTION OF THE NAACP 2013
the NAACP calls upon the U.S. Attorney General to fully implement the Emmett Till Unsolved Civil Rights Crime Act
http://naacp.3cdn.net/33592b969e7f20d1de_lxm6b3g1l.pdf

[iii] EMMETT TILL UNSOLVED CIVIL RIGHTS CRIME ACT, June 22, 2007. Mr. Leahy from the Committee on the Judiciary, United States Senate submitted the following
R E P O R T [To accompany S. 535]
http://www.gpo.gov/fdsys/pkg/CRPT-110srpt88/html/CRPT-110srpt88.htm

[iv] THE ATTORNEY GENERAL'S SECOND ANNUAL REPORT TO CONGRESS PURSUANT TO THE EMMETT TILL UNSOLVED CIVIL RIGHTS CRIME ACT OF 2007, MAY 13, 2010
http://www.justice.gov/crt/about/crm/documents/COLD_CASE_REPORT_2010.pdf

[v] THE ATTORNEY GENERAL'S FIFTH ANNUAL REPORT TO CONGRESS PURSUANT TO THE EMMETT TILL UNSOLVED CIVIL RIGHTS CRIME ACT OF 2007, JANUARY 2014
http://www.justice.gov/crt/about/crm/documents/tillreport5.pdf

[vi] The Cold Case Justice Initiative (CCJI) at Syracuse University (SU) played a substantial role in drafting the NAACP & SCLC 2013 annual national convention resolutions calling for the U.S. Attorney General to fully implement the Emmett Till Unsolved Civil Rights Crime Act
http://www.syr.edu/coldcaselaw/announcements1/ccji-naacp-resolution.html

[vii] The Associated Press as it appeared in USA TODAY on June 15, 2006
http://usatoday30.usatoday.com/news/nation/2007-06-15-georgia-lynching_N.htm

[viii] "Kick Up Dust," Martin Luther King Jr. Letter to the Editor, *Atlanta Constitution*6 August 1946 when he was a Morehouse College sophomore regarding Moore's Ford Bridge Lynching.
https://mail.google.com/mail/u/0/?ui=2&ik=57b76f569a&view=att&th=148666a8e6c78b49&attid=0.6&disp=inline&safe=1&zw

[viii] Georgia Coalition of Black Elected Officials Letter Calling for Congressional Hearingshttps://mail.google.com/mail/u/0/?ui=2&ik=57b76f569a&view=att&th=148666a8e6c78b49&attid=0.2&disp=safe&zw

The State of Civil and Human Rights in the United States

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

December 9, 2014

Statement for the Record

Thomas Nolan, EdD

The Police and the Constitution

Recent events in Ferguson, Missouri; Staten Island, New York; and Cleveland, Ohio have brought the perilous disconnect between domestic law enforcement practitioners and the communities that they police into a worrisome and troubling focus. That grand juries hearing evidence in both Staten Island and St. Louis County have failed to bring indictments against police officers who killed unarmed African American men, Eric Garner and Michael Brown—both suspected of committing only minor crimes—is cause for grave concern regarding the ability of our criminal justice system to ensure equal protection under the law as well as compliance with the provisions of the Constitution that guarantee civil rights and civil liberties to all. Grand juries that fail to return indictments against police accused of wrongdoing, which too often results in the deaths of men of color, as a matter of common practice conveys unspoken yet unequivocal support for police practices that are routinely violative of the First, Fourth, and Fourteenth Amendments to the Constitution.

Tacit messages conveyed to me during my 27 years as a Boston police officer and lieutenant were these: That the provisions of the Constitution pertaining to freedom of speech, freedom of assembly, freedom of the press, search and seizure, probable cause, due process, and equal protection (among other provisions), could be disregarded and dispensed with as obstacles to "street justice." Criminal justice system failures and injustices, such as what is arguably the failure of the grand jury process in both Missouri and New York, do little to counter the widespread perception, held most closely by the police themselves, that law enforcement officers are held to a much different standard of legal culpability than ordinary

citizens. Grand juries are typically populated with people who have had little if any exposure to the vagaries of the experiential world of the police or the police subculture, and may glean what understanding they do have from the popular culture and the mainstream media. They may believe that the day-to-day experiences of law enforcement officers are fraught with ever-present danger, peril, and violence. That the police themselves do little if anything to dispel this commonly understood yet wholly inaccurate myth may contribute to the emergence of this criminal justice double standard. The double standard exists where an unarmed African American teenager can be shot and killed with impunity by police for the crime of jaywalking, or where the police can choke an African American man to death for the crime of selling untaxed cigarettes.

The due process and equal protection clauses of the Fourteenth Amendment to the Constitution are unequivocal in requiring that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." Yet those engaged in domestic law enforcement operations, particularly in communities of color, too often believe that the "process" that plays out in the streets of our communities supersedes the mandates of the Constitution. The exoneration and vindication that prosecutors and juries unfailingly grant to the police when they kill unarmed African American men confirms this Constitutional and criminal justice system duality: The police may occasionally make costly mistakes, but if the cost is the life of a black man at the hands of a white police officer, the cost is one that the criminal justice system is prepared to bear. In the eyes of many, that is exactly what has

caused the justice system to become criminal.

The Demise of Community Policing

The mid 1980s through the early 2000s saw a shift in the philosophy of domestic policing in the United States from one that embraced rapid response to 911 calls for service and an omnipresent, ubiquitous police imprint, to one that endorsed principles of so-called "community policing" or "problem oriented policing." These policing philosophies advocated partnerships between the police and the communities that they served in a collaborative effort to identify problems and issues unique to a particular community and to propose solutions to these particular problems that both the police and the community "stakeholders" could work toward resolving. Under community policing principles, community residents were seen as "co-producers" of strategies to address quality-of-life issues that both community residents and the police agreed were in need of law enforcement and community intervention. Partnerships were forged between the police and community residents to solve problems and to prevent crime. Community policing was the mantra of policing in the United States throughout the latter part of the 20th century and many attribute the sharp reduction in the rates of violent crime during the 1990s to the successful implementation and adoption of the philosophies of community and problem-oriented policing.

Even though most domestic law enforcement agencies nationwide still publicly embrace community-policing principles as their operational philosophy in 2014, it is clear that the demise of community policing began with the terrorist attacks on the World Trade Center towers and the Pentagon on September 11, 2001.

Police in the United States quickly morphed into the front line shock troops in the domestic war on terrorism. Partnerships with the community, co-producers and collaborators in shared community betterment were all quickly overrun and superseded by what law enforcement saw as an unprecedented threat requiring all available police, and now military resources.

The Militarization of the Police

Beginning in 1990 and 1991 with the passage of the National Defense Authorization Act, Congress authorized the Department of Defense, through the Defense Logistics Agency (DLA), to transfer surplus military equipment to domestic law enforcement agencies for their use in fighting the so-called "War on Drugs" in what became known as the "1033 Program." The belief at the time was that law enforcement agencies in the United States faced an unprecedented threat from heavily armed drug cartels and drug distributors that could only be countered by equipping police with military-grade weapons and vehicles. Since its inception, the 1033 Program has distributed over $5.1 billion worth of equipment to over 8,000 law enforcement agencies. In 2013 alone, $450 million worth of equipment was distributed to local, state, and county agencies.

In the aftermath of the terrorist attacks on September 11, 2001, and in the years that followed, domestic law enforcement operations in the United States began a strategic shift toward tactical initiatives that endorsed and supported more militarized responses to routine police activities. Much of the militarization of domestic law enforcement has been facilitated and supported by the federal government through DLA's 1033 Program as well as the Department of Homeland

Security (DHS) "Homeland Security Grant Program" (HSGP) and the Department of Justice (DOJ) Edward Byrne Memorial Justice Assistance Grant (JAG) program. The 1033 Program provides police agencies with M-16 and M-14 rifles, bayonets, night-vision goggles, military aircraft, tactical vehicles—such as Bearcats and Mine-Resistant Ambush Protected (MRAP) vehicles—and military watercraft. The HSGP and JAG funding allows police departments to purchase tactical weapons, military uniforms, less-lethal weapons, body armor, and SWAT equipment, all contributing in large part to the militarization of civilian law enforcement in the United States.

It has become commonplace in the United States during the first and second decades of the 21st century to see police officers dressed in Battle Dress Uniforms (BDU) or other military-type uniforms that were designed for use during actual combat operations and military engagement with an enemy during war. Modified M-16 and M-4 rifles are standard patrol long guns in many police departments across the country. Tactical, military vehicles are routinely used in SWAT deployments and crowd control incidents. City police and state highway patrol agencies now frequently use unmarked black SUVs with blacked out windows, such as those used by the United States Secret Service, the FBI, and the DEA.

Dressing police as soldiers and equipping them with military weapons and body armor, having these officers perform routine patrol activities in fortified and armored vehicles, and sending these officers into our communities to engage an enemy causes them to adopt the mentality of warriors and the trope of soldiers engaged in a war on the battlefield. The battlefields have become our communities and we are the enemy. As any soldier will readily admit: On the battlefield there is

no Constitution, and enemies do not have civil rights or civil liberties. These are the casualties that we are taking in our communities and neighborhoods. Our new policing paradigm: the "Homeland Security Police."

The Militarization of the Police: The Boston Marathon Bombing

On April 15, 2013, two bombs were detonated near the finish line of the Boston Marathon, killing three spectators and injuring over 260 others. The response of the law enforcement community to this attack was without precedent in contemporary United States history and included thousands of police officers, both on-duty and off-duty, from all over New England, as well as federal agents of the FBI, ATF, DHS, CIA, and others. Additionally, 19,000 National Guard troops moved into the city to assist in the search for the bombing suspects, who were identified from surveillance photos taken on Boylston Street as Tamerlan and Dzhokhar Tsarnaev.

Governor Deval Patrick ordered residents to remain in their homes and to "shelter in place," a term ordinarily used in reference to remaining indoors during a chemical or biological weapons attack in order to avoid contamination. Reports of the law enforcement response at the time of the bombing attack characterized it as "mayhem" and "chaos." The police, dressed in military uniforms, equipped with military long rifles, dogs, body armor, and driving heavily militarized vehicles, cordoned off a twenty square block section in the town of Watertown and parts of the city of Cambridge, and conducted warrantless house-to-house searches of hundreds of homes, often ordering residents out of their homes at gunpoint. These warrantless searches of homes were conducted in clear violation of the Fourth Amendment to the Constitution, and to date there has been no public accounting for

or explanation from the police in their riding roughshod over the unequivocal mandates contained in the Fourth Amendment. No law enforcement official has provided any rationale or justification for the decision to dispense with the provisions of the U.S. Constitution in the search for the surviving bombing suspect, who was found hiding in a boat after a resident called 911 and reported seeing a hand moving the boat's covering. Officers converging on the boat fired hundreds of rounds into the vessel and the suspect, Dzhokhar Tsarnaev, was found to be unarmed.

The police response to this horrific incident was so fearsome, menacing, frightening, and intimidating, that voices objecting to the warrantless searches or questioning Fourth Amendment and other Constitutional issues fell silent, lest they be labeled unpatriotic or terrorist sympathizers. For 108 hours in Boston, chaos and mayhem were the (dis)order of the day, and the Fourth Amendment to the Constitution was shelved as the police morphed into the military, and civil rights and civil liberties were struck down with the butt of an M-16 rifle. No one was surprised and few objected when a year later, for the running of the 2014 Boston Marathon, the police announced that they would be conducting searches—warrantless searches—of anyone carrying a backpack on the street in the vicinity of the marathon finish line.

The Militarization of the Police: Events in Ferguson, Missouri

On August 9, 2014, Ferguson, Missouri police officer Darren Wilson shot and killed an unarmed African American teenager, Michael Brown, after an altercation following Officer Wilson's ordering Brown to refrain from jaywalking. That Brown

was unarmed and that his body lay on the ground for over four hours infuriated residents of St. Louis County, and they took to the streets in protest. The law enforcement response to the largely peaceful protests was a hyper-exaggerated, hysterical, and highly militarized juggernaut. Thousands of police officers from Ferguson and surrounding municipalities, the St. Louis County Police Department, the St. Louis Metropolitan Police Department, as well as troops of the Missouri National Guard, were assembled in Ferguson to meet the threat posed by several hundred largely peaceful and unarmed protesters.

The law enforcement footprint was monolithic: Police dressed as soldiers stood atop gun turrets in Bearcat and Mine-Resistant Ambush Protected (MRAP) military vehicles pointing M-16 and M-4 rifles at unarmed protesters. Police used Long-Range Acoustic Devices (sonic sound cannons developed for military defense), and fired upon protesters using rubber bullets, tear gas (banned by the Geneva Conventions for use during war), smoke bombs and grenades, stun grenades, wood bullet projectiles, pepper pellet rounds, and beanbag rounds. For most people in the United States, and the world, this was the first glimpse into the newly emergent and highly militarized "homeland security" police, resplendent in their military uniforms and gear, riding in their fortified MRAP vehicles, flying above in their military aircraft, while shooting, gassing, deafening, bombing, and stunning members of the community who were engaging in constitutionally protected activities. The police in Ferguson, Missouri roundly trounced the First Amendment guarantees of freedom of speech, freedom of assembly, freedom to petition government for redress, as well as freedom of the press. These constitutionally protected freedoms were ignored

and trampled by police forces that had adopted a highly militarized posture and response to a situation that was wholly the result of police misconduct: The excessive force that caused the death of Michael Brown, the secrecy and lies in the aftermath of the shooting, and the unilateral suppression of civil rights and civil liberties and the First Amendment to the Constitution.

Those of us who remember the Chicago police riot at the 1968 Democratic National Convention or the May 4, 1970 shooting deaths of four students at Kent State University by the Ohio National Guard may have thought that the days of law enforcement repression of those engaged in activities protected by the Constitution was a phenomenon studied in history books as a legacy of the bad old days. The increased militarization of the over 17,000 police forces in the United States reminds us that we must remain vigilant and that we must continue to interrogate those in law enforcement who arrogate the authority to interpret the Constitution and to impose arbitrary limitations to our civil rights and civil liberties.

Written Testimony of Rev. Dr. C. Welton Gaddy, President of Interfaith Alliance
Submitted to
The Senate Judiciary Committee,
Subcommittee on the Constitution, Civil Rights and Human Rights

For the Hearing Record on "The State of Civil and Human Rights in the United States"
December 9, 2014

On behalf of the Interfaith Alliance, a national organization committed to defending religious freedom whose membership comes from over 75 different religious traditions, I would like to thank Chairman Durbin and the members of the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights, for the opportunity to submit this statement for the record. On a personal note, as I prepare to step aside from the helm of Interfaith Alliance at the end of this month, I welcome this final chance to share my thoughts with this Subcommittee.

As I reflect on my 16 years as president of Interfaith Alliance, there is no issue I look back on with more pride in our accomplishments than our work to prevent hate crimes. I applaud the fierce dedication to this issue displayed by so many members of this committee, and I urge you to continue your many achievements to combat hate-motivated violence in the 114th Congress.

I began my tenure at Interfaith Alliance just months before Matthew Shepard's brutal murder in Laramie, Wyoming. Witnessing that tragedy, and watching the rhetoric from the Religious Right that followed, it became clear to us at Interfaith Alliance that violence had been done to more than just Matthew alone. A crime had been committed against every lesbian, gay, bisexual or transgender person in America; a crime had been committed against anyone who was perceived as different – racial minorities, religious minorities, women, people with disabilities and many others. Something had occurred that threatened our Constitution's promise of equality and freedom.

It was also clear that more people than just those who perpetrated the violence were implicated in this brutal attack. There is a culture of hate that is kept alive in American society by specific groups, certain voices in the media and sadly, even community leaders. While we are not all members or targets of these movements, we are all a part of a nation filled with the fear and insecurity they create.

This realization led a truly inspiring collection of organizations to come together and take up the fight to pass powerful hate crimes prevention legislation. Interfaith Alliance worked with religious groups from every different faith, with LGBT groups and racial justice groups, and people representing every identity imaginable joined forces to help pass legislation that would strengthen training and education around hate crimes, help the government collect statistics on hate crimes and hate groups, and increase penalties for violence that targeted an entire community. We were

proud to be part of the early stages of advocating for legislation that ultimately became the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, championed by so many of you and ultimately passed by this committee and Congress in 2009.

For my organization and for me personally, this legislation stood not only as a way to honor and make meaningful the deaths of people like Matthew Shepard and James Byrd Jr., but as a testament to the enduring strength of religious freedom in America. When this legislation was initially proposed, the Religious Right tried to scare Americans into thinking that the federal government would lock up preachers who taught their beliefs about human sexuality, violate the freedom of churches, and target conservative anti-gay religious communities.

Of course, hardly any of this happened. In implementing hate crimes legislation, our law enforcement agencies have proven remarkably adept at distinguishing between legally protected speech and religious practice and acts of hate and violence. Moreover, the implementation of this law has done significant work to protect the rights of religious communities across the country, for we cannot have freedom to worship without the freedom from fear of violence and hate. This fact has demonstrated what many of us have always known, that civil rights and religious freedom are never mutually exclusive and that we are all strengthened by increased protections against hate-motivated violence.

There is, however, considerable work left to be done to implement and strengthen the Hate Crimes Prevention Act – and this Subcommittee cannot afford to consider this legislation simply as a past accomplishment. We must all continue our work to ensure that this law protects as many people as possible, that its required reporting remains strong and that it continues to effectively connect law enforcement with communities in need.

Every civil rights initiative I have had the honor to work on has gone through the same evolution: as our knowledge of the issues confronting different segments of our society grows, we understand that our laws, guidance and training need to be updated. Law enforcement and advocacy communities saw this need to evolve in recent years when it became apparent that many people who were mistakenly identified as Muslim were the victims of hate violence in our nation's recent wave of anti-Muslim bigotry. The initial parameters of the Hate Crimes Prevention Act's data collection had no way of capturing the full picture of this violence, but advocates, law enforcement, and political leaders worked together to update our policies to include collecting data about violence against Arab-Americans, South Asians and Sikhs. The members of this Subcommittee must remain vigilant in understanding the changing needs of communities who live in fear of hate-motivated violence and work to ensure that everyone is protected by this important legislation.

However, none of the rules for data collection are significant if police departments around the country continue to dramatically underreport hate crimes in their

jurisdictions or fail to report them at all. Too many cities and jurisdictions claim that no hate crimes occur on their watch, or that the crimes that do occur are not worth reporting to the federal government – the stories we hear from people across the country show that this simply is not true. This Subcommittee and the Department of Justice must explore creative ways to work with police departments and encourage them to accurately report the hate crimes that occur in their communities. This law cannot be fully effective until every community fully participates in its enforcement.

Improving this data collection is just one of the ways that this Subcommittee and the federal government must engage with local police departments to ensure that officers and departments are properly equipped to enforce this law. The training and education that the DOJ has already undertaken have been laudable, but they must be continued – and continuously updated.

The deaths of Michael Brown, Eric Garner and Tamir Rice, and the demonstrations that have followed in their wake, have illustrated the deep divide between law enforcement and racial and religious minorities across the country. Investment in the prevention and prosecution of hate crimes can be a powerful way for law enforcement to build bridges with the communities they serve. Doing this well could show that law enforcement will go out of its way to protect the safety of at-risk communities and that the government does indeed recognize that all lives matter. As this Subcommittee considers other mechanisms necessary to rectifying the divide between police and certain communities, I urge you to make strong hate crime protections a core part of this work.

I had the privilege to speak with Matthew Shepard's parents when the Hate Crimes Prevention Act was signed and to speak with them again this year on the fifth anniversary of its passage. I know that it means so much to them that their son's legacy has led to increased rights and protections for so many people across America. As we transition to the next Congress, it is incumbent on this Subcommittee to ensure that Matthew's legacy and the legacies of so many others continue to be honored through the urgent work to prevent hate-motivated violence.

November 20, 2014

Dear Members of Congress:

As clergy and faith leaders who serve diverse faith communities across the United States, we write to share our strong support for the Voting Rights Amendment Act of 2014 (H.R. 3899/S.1945) and urge its swift passage by both chambers of Congress before the end of this year.

The teachings of our respective faiths may diverge on issues of theology and practice, but all speak clearly of the imperative to pursue justice and treat each and every human being with dignity and respect. We are united in standing up for those most at risk of having their voices silenced at the ballot box. We are inspired to do what we can to protect the right of each individual to play a role in shaping the future of our cities, towns, states and nation. What is at stake in this fight is the very nature of our society, whether we can truly call ourselves a democracy in which each citizen can cast a vote to choose our leaders and shape the direction of our country.

Many people of faith proudly fought for the Voting Rights Act (VRA) of 1965, which took historic steps to prohibit the discriminatory voting practices that denied and abridged the rights of so many in our communities. The Supreme Court's 2013 decision in *Shelby County v. Holder*, which stripped critical protections for voters in striking down a key provision of the VRA, reminds us that our work is far from complete.

In that decision, Chief Justice Roberts called upon Congress to update the Voting Rights Act. Every day that passes without Congressional action brings new voting procedures, unreported at best, and outright discriminatory at worst. Although Congress failed to act in time for this election, the need is no less urgent. Now is the time pass this critical legislation and stop discriminatory voting practices wherever they occur.

Voting rights legislation has long been—and continues to be—a shining example of bipartisan unity. We urge you to support the Voting Rights Amendment Act of 2014 (H.R. 3899/S.1945) and see that its modern, commonsense provisions are swiftly enacted. Thank you for your consideration.

Sincerely,

Rabbi Joel N. Abraham, Scotch Plains, NJ, Reform Judaism
Rabbi Susan Abramson, Burlington, MA, Reform Judaism
Rabbi Ruth Abusch-Magder, San Francisco, CA, Reform Judaism
Rabbi Ruth Adar, San Leandro, CA, Reform Judaism
Rabbi Seth Adelson, Great Neck, NY, Conservative Judaism
Rabbi Jon Adland, Canton, OH, Reform Judaism
Sister Elizabeth Ahrens, St. Louis, MO, Catholic
Rabbi Aaron Alexander, Los Angeles, CA, Conservative Judaism
Rabbi Stephanie Alexander, Charleston, SC, Reform Judaism
Sister Carol Allan, Chicopee, MA, Catholic
Bishop Oliver Allen, Atlanta, GA, United Progressive Pentecostal Church
Rabbi Morris Allen, Mendota Heights, MN, Judaism
Rev. Jeffrey Allen, Charleston, WV, United Methodist Church
Rabbi Adam Allenberg, Santa Monica, CA, Reform Judaism
Rev. Carol Allman-Morton, Northampton, MA, Unitarian Universalist
Rabbi Thomas Alpert, Franklin, MA, Reform Judaism
Rabbi Alana Alpert, Detroit, MI, Judaism
Sister Sharon Altendorf, San Antonio, TX, Roman Catholic
Rabbi Joel Alter, New York, NY, Conservative Judaism
Rev. Dr. Brian Ammons, Asheville, NC, Baptist
Rev. Scott Anderson, Sun Prairie, WI, Wisconsin Council of Churches
Sister Mary Ellen Andrisin, Minster, OH, Roman Catholic
Cantor Dana Anesi, White Plains, NY, Conservative Judaism
Rabbi Camille Angel, San Francisco, CA, Reform Judaism
Rabbi Batsheva Appel, Tucson, AZ, Reform Judaism
Rev. Shayna Appel, Milford, NH, United Church of Christ & Unitarian Universalist Association
Rabbi Victor Appell, Metuchen, NJ, Reform Judaism
Reverend Susan Davison Archer, Greensboro, NC, Unitarian Universalist
The Rev. Dr. Charlie Arehart, Tucson, AZ, Metropolitan Community Churches
Rabbi Stephen Arnold, Hingham, MA, Reform Judaism
Sister Margaret Ann Arnold, Milwaukee, WI, Roman Catholic
Rabbi Melanie Aron, Los Gatos, CA, Reform Judaism
Rev. Charlotte Arsenault, Athens, GA, Unitarian Universalist
Rabbi Erica Asch, Hallowell, ME, Reform Judaism
Rev. Donald Ashmall, Gouldsboro, ME, International Council of Community Churches
Reverend David Aslesen, Lake Bluff, IL, United Methodist Church
Rev. Joy Atkinson, Berkeley, CA, Unitarian Universalist
Cantor Marsha Attie, San Francisco, CA, Judaism
Rev. Dr. Nathan Attwood, Prattville, AL, United Methodist Church
Rabbi Vicki Axe, Stamford, CT, Reform Judaism
Sister Rose Bahr, Wichita, KS, Catholic
Cantor Riselle Bain, Bradenton, FL, Judaism
Rabbi Ethan Bair, Reno, NV, Judaism
Rabbi Justus Baird, Princeton, NJ, Conservative Judaism
Rev. Dr. Gerritt Baker-Smith, East Stroudsburg, PA, Presbyterian Church (U.S.A.)
Rev. Dr. Elizabeth Baker-Smith, East Stroudsburg, PA, Presbyterian Church (U.S.A.)
Rabbi Adam Baldachin, Suffern, NY, Conservative Judaism
Fr. Fred Ball, Little Rock, AR, Ecumenical Catholic Communion
Sr. Linda Ballard, OSC, Woburn, MA, Catholic
Sister Bernadette Ballasty, Wilton, CT, Catholic
Rev. Obadiah Ballinger, St. Paul Park, MN, United Church of Christ
Sister of St. Joseph Rosemary Balog, Kalamazoo, MI, Catholic
Dr. Carroll Baltimore, Sr., Lorton, VA, Baptist
Rev. Anne Bancroft, West Roxbury, MA, Unitarian Universalist
Sr. Elaine Bane, Snyder, NY, Catholic

Rev. Dr. George Banks, Winston Salem, NC, African Methodist Episcopal Zion Church
Sister Jane Bannon, Brooklyn, NY, Catholic
Sister Diane Bardol, Baltimore, MD, Roman Catholic
Rev. Dr. Tim Barger, Toledo, OH, Unitarian Universalist
Rev. Steven Barnes, Newton, NC, Presbyterian Church (U.S.A.)
Rev. Erica Baron, Kingston, NY, Unitarian Universalist
Sister Bernie Barrett, Lake Providence, LA, Catholic
Sr. Margaret Barrett, San Antonio, TX, Catholic
Sister Mary Barsotti, beaverton, OR, Catholic
Rev. Dale Bartels, Chesterfield, MO, United Church of Christ
Sr. Joan Bartin, Crestwood, MO, Roman Catholic
The Rev. Dr. Jonathan Barton, Richmond, VA, Presbyterian Church (U.S.A.)
Rabbi Philip Bazeley, New Brunswick, NJ, Reform Judaism
Rabbi Shelley Kovar Becker, New York, NY, Reform Judaism
Reverend Margaret Beckman, Holden, ME, Unitarian Universalist
Rev. Paul Belhumeur, Brewster, MA, Roman Catholic
Rev. Dr. Beverlee Bell, Winterset, IA, United Methodist Church
Rabbi Marci Bellows, Massapequa, NY, Jewish Renewal
Rabbi Arnold Mark Belzer, Savannah, GA, Reform Judaism
Rabbi Philip Bentley, Hendersonville, NC, Judaism
Sister Ann Berendes, Center Moriches, NY, Catholic
Rev. Darrell Berger, New York, NY, Unitarian Universalist
Rahbi Marc Berkson, Milwaukee, WI, Reform Judaism
Rabbi Donald Berlin, St. Michaels, MD, Reform Judaism
Rabbi Donna Berman, Hartford, CT, Reform Judaism
Rabbi Saul Berman, New York, NY, Orthodox Judaism
Rabbi Marjorie Berman, Clarks Summit, PA, Reconstructionist Judaism
Rev. Paul Bernadicou, S.J., San Francisco, CA, Roman Catholic
Rev. Larry Bernard, O.F.M., Jemez Pueblo, NM, Roman Catholic
Rabbi Edward Bernstein, Boynton Beach, FL, Conservative Judaism
Cantor Jennifer Bern-Vogel, Los Angeles, CA, Reform Judaism
Sister Marlene Bertke, Erie, PA, Roman Catholic
Ms. Linda Bessom, Cambridge, MA, Roman Catholic
Rev. Sofia Betancourt, Fresno, CA, Unitarian Universalist
Rabbi Jonathan Biatch, Madison, WI, Reform Judaism
Rabbi Binyamin Biber, Silver Spring, MD, Humanistic Judaism
Reverend Elizabeth Bidgood Enders, Harrisburg, PA, Church of the Brethren
Rev. Dr. Beverly Bingle, Toledo, OH, Roman Catholic
Rev. Dr. Leonard Bjorkman, Owego, NY, Presbyterian Church (U.S.A.)
Sister Jeannette Blatz, Wilton, CT, Roman Catholic
Rabbi Barry Block, Little Rock, AR, Reform Judaism
Rahbi Barbara Block, Springfield, MO, Reform Judaism
Sister Lesley Block, Sparkill, NY, Catholic
Rabbi Steven Bob, Lombard, IL, Judaism
Sister Marian Boberschmidt, St. Louis, MO, Catholic
Rev. Beverly Boke, Providence, RI, Unitarian Universalist
Sister Judith Bonini, IHM, Monroe, MI, Roman Catholic
Rabbi Jill Borodin, Seattle, WA, Conservative Judaism
Rabbi Neal Borovitz, River Edge , NJ, Reform Judaism
Sister Clarita Bourque, New Orleans, LA, Roman Catholic
Rev. Lynn Bozich Shetzer, North Canton, OH, Presbyterian Church (U.S.A.)
Sister Victoria Brady, Anaheim, CA, Catholic
Rev. Walter Braman, Fredericksburg, VA, Unitarian Universalist
Sr. Michael Brauer, College Park, MD, Catholic
Sister Miriam Braun, Harvey, ND, Catholic
Rev. Dr. Linda Brebner, Rochester, NY, Presbyterian Church (U.S.A.)
Rev. Dr. David Breeden, Minneapolis, MN, Unitarian Universalist
Sister Constance Brennan, Yonkers, NY, Catholic
Sr. Carol Brenner, Mt. St. Joseph, OH, Catholic
Sister Ruth Brighton, Brentwood, NH, Catholic
Ms. Clarone Brill, La Crosse, WI, Catholic
Sister Cynthia Brinkman, Ellington, MO, Catholic
Rabbi Gill Brociner, New York, NY, Judaism
Rabbi Dr. Herbert Brockman, New Haven, CT, Reform Judaism
Rabbi Deborah Bronstein, Boulder, CO, Reform Judaism
Sister Virginia Brooks, Evansville, IN, Roman Catholic
Sister Anne Brotherton, Augusta, GA, Roman Catholic
Rabbi Sharon Brous, Los Angeles, CA, Judaism
Sister Megan Brown, Philadelphia, PA, Roman Catholic
Rev. Bryant Brown, Bethlehem, PA, Unitarian Universalist
Rabbi Rachel Brown, Phoenixville, PA, Conservative Judaism
Rev. Raymond Brown, Selinsgrove, PA, United Church of Christ
Sister Anna Marie Broxterman, Concordia, KS., Catholic
Rev. Dr. Orlanda Brugnola, New York, NY, Unitarian Universalist
Sister Lois Brunelle, Middletown, RI, Roman Catholic
Sister Nadine Buchanan, O.P., Columbus, OH, Catholic
Sr. Anne Buckley, Dubuque, IA, Catholic
Sister Rita Bueche, Baltimore, MD, Roman Catholic
Rev. Pat Bumgardner, New York, NY, Metropolitan Community Churches
Sister Karen Burgess, Waco, TX, Catholic
Sister Jean Burns, Latham, NY, Catholic
Ms. Ruby Burwell Lee, Chicago, IL, Evangelical Lutheran Church in America
Father Harry J. Bury, Berea, OH, Catholic
Sr. Mary Buser, Dubuque, IA, Catholic
Sister Teresa Byrne, Malone, NY, Roman Catholic
Sister Cecelia Byrnes, Bronx, NY, Catholic
Rabbi Carol Caine, Albany, CA, Reconstructionist Judaism
The Rev. Dr. E. S. Caldheck, Middletown, OH, Episcopal Church
Rev. Dr. James Calderone, Dallas, PA, Catholic
Sister Mary Ellen Caldwell, Dubuque, IA, Catholic
Sister Catherine callaghan, Greenbelt, MD, Catholic
Reverend Donald Cameron, Laguna Woods, CA, Unitarian Universalist
Rabbi Harold Caminker, Palmetto, FL, Reform Judaism
Sr. Jean Ann Campana, IHM, Monroe, MI, Catholic
Rabbi Richard Camras, West Hills, CA, Reform Judaism
Rabbi Debra Cantor, Bloomfield, CT, Conservative Judaism
Rev. Dr. Jan Carlsson-Bull, Meriden, CT, Unitarian Universalist
Sr. Barbara Carmod, San Rafael, CA, Roman Catholic
Rabbi Kenneth Carr, Lafayette Hill, PA, Reform Judaism
Sister Mary Ann Cashin, Brentwood, NY, Sisters of St. Joseph
Sr. Paula Cathcart, Detroit, MI, Catholic
Sister Lynn Caton, CSJ, North Merrick, NY, Catholic
Sister Margaret Caulson, N. Merrick, NY, Roman Catholic
Rev. John Celichowski, OFM Cap., Chicago, IL, Roman Catholic
Dr. Patricia Chaffee, Racine, WI, Catholic
Sister Donna Marie Chartraw, Mt. Angel, OR, Catholic
Rabbi Jordana Chernow-Reader, Ventura, CA, Reform Judaism
Sister Anita Chiappetta, Oak Lawn, IL, Roman Catholic
Rev. Marilyn Chilcote, Oakland, CA, Presbyterian
Sister Jeanne Christensen, RSM, Kansas City, MO, Roman Catholic
Rev. Douglas Clark, Guilford, CT, United Church of Christ
Sister Brigid Clarke, Cullman, AL, Catholic
Sr. Miriam Cleary, New Rochelle, NY, Roman Catholic
Dr. Connie E. Cochran, Harrisburg, PA, Presbyterian
Rabbi Norman Cohen, Minnetonka, MN, Judaism
Rabbi Ayelet Cohen, New York, NY, Conservative Judaism
Rabbi Michael T. Cohen, Dallas, TX, Reform Judaism
Rev. Jodi Cohen Hayashida, Auburn, ME, Unitarian Universalist
Rabbi Judy Cohen-Rosenberg, Westbury, NY, Reform Judaism
Rabbi Lauren Cohn, Johns Creek, GA, Conservative Judaism
Sister Mary Colbert, Homer Glen, IL, Roman Catholic
Sister Faith Colligan, Bayside, NY, Roman Catholic
Rev. Ruth Collins, Milford, DE, United Methodist Church
Reverend Alan Combs, Lynchburg, VA, United Methodist Church
Rabbi Neil Comess-Daniels, Los Angeles, CA, Reform Judaism
Sister Carol Conly, Keansburg, NJ, Roman Catholic
Rev. Jim Conn, Santa Monica, CA, United Methodist Church
Reverend Peter Connolly, Bowling Green, KY, Unitarian Universalist
Sister Karen Conover, San Francisco, CA, Roman Catholic

Rabbi Alan Cook, Champaign, IL, Reform Judaism
Sister Roseanne Cook, CSJ, Camden, AL, Roman Catholic
Rabbi David J. Cooper, Piedmont, CA, Jewish Renewal
Ms. Noele Cooper, Middletown, RI, Roman Catholic
Sister Marie Corr, Missoula, MT, Roman Catholic
Rabbi Laurie Coskey, San Diego, CA, Reform Judaism
The Rev. Cathryn Costa, Manassas, VA, Evangelical Lutheran Church in America
Sister Julia Costello, Rancho Palos Verdes, CA, Roman Catholic
Dr. Brad Cotton, Circleville, OH, Quaker
Rev. Lyn Cox, Baltimore, MD, Unitarian Universalist
Rabbi Jill Cozen-Harel, San Francisco, CA, Judaism
Br. Paul Crawford, Manchester, NH, Catholic
Reverend Joanna Crawford, Cedar Park, TX, Unitarian Universalist
Rabbi Menachem Creditor, Berkeley, CA, Judaism
Rahbi Jill Crimmings, Minnetonka, MN, Reform Judaism
Lay Coordinator of Pastoral CareMinistries Janet Cromer, Bethesda, MD, Unitarian Universalist
Sister Patricia J. Crother, Los Angeles, CA, Roman Catholic
Sister M. Teresa Cruz, San Antonio, TX, Roman Catholic
Rev. John Cullinan, Los Alamos, NM, Unitarian Universalist
Sister Therese Cunningham, San Benito, TX, Roman Catholic
Rev. Chuck Currie, Portland, OR, United Church of Christ
Reverend Patrice K. Curtis, Washington, DC, Unitarian Universalist
Sister Julie Cutter, New York, NY, Catholic
Sister Claire Marie Czerwiec, Chicago Ridge, IL, Roman Catholic
Cantor Galit Dadoun-Cohen, Morristown, NJ, Reform Judaism
Rev. Dan Damon, Richmond, CA, United Methodist Church
Rabbi Robin Damsky, River Forest, IL, Judaism
Rabbi Faith Joy Dantowitz, Livingston, NJ, Judaism
Elder Brooks Darrah, Chicago, IL, Presbyterian Church (U.S.A.)
Sister Maureen D'Auria, Cranford, NJ, Roman Catholic
Sister Judeana Davidson, Oakland, CA, Catholic
Reverend Clem Davis, Columbus, IN, Roman Catholic
Sister Mary Davis, Monroe, MI, Catholic
Reverend DeWayne Davis, Minneapolis, MN, Metropolitan Community Churches
Reverend Gerald Davis, Tulsa, OK, Unitarian Universalist
Sister Rosemary Davis, Springfield, PA, Roman Catholic
Rev. Leah Grundset Davis, Bristow, VA, Alliance of Baptists
Rev. Dr. F. Jay Deacon, Newport, RI, Unitarian Universalist
Sr. Charlene Del Bianco, San Diego, CA, Roman Catholic
Sister Norma Dell, Adrian, MI, Catholic
Rabbi Lisa Delson, Burlingame, CA, Reform Judaism
Sr. Gail DeMaria, Englewood Cliffs, NJ, Roman Catholic
Sister Loretta Denfeld, Little Falls, AL, Roman Catholic
Rahbi Steven L. Denker, Orange Village, OH, Reform Judaism
Rabbi Geoffrey Dennis, Flower Mound, TX, Reform Judaism
Sr. Jeanne Derer, St. Louis, MO, Roman Catholic
Ms. Claire Deroche, Flushing, NY, Unitarian Universalist
Sister Marie DesJarlais, La Crosse, WI, Catholic
Provincial Superior Judith Desmarais, SP, Seattle, WA, Catholic
Rabbi Barry Diamond, Thousand Oaks, CA, Reform Judaism
Rev. Dr. Michael Diaz, Houston, TX, Metropolitan Community Churches
Rev. Lori Dick, Claremont, CA, Metropolitan Community Churches
Pastor Thomas Dodd, Eugene, OR, Evangelical Lutheran Church in America
Ms. Mary Doering, Dubuque, IA, Roman Catholic
Sister Roxanne Dolak, Kalispell, MT, Roman Catholic
Sister Renee Domeier, St. Joseph, MN, Catholic
Fr. Marty Donnelly, Toledo, OH, Roman Catholic
Rev. Kent Doss, Mission Viejo, CA, Unitarian Universalist
Sister Ann Mary Dougherty, Emmitsburg, MD, Catholic
Rabbi Matthew Dreffin , Jackson, MS, Reform Judaism
Rabbi William Dreskin, White Plains, NY, Reform Judaism
Rabbi Ellen Dreyfus, Homewood, IL, Reform Judaism
Sister Kathleen Driscoll, New Orleans, LA, Roman Catholic
Unitarian Universalist congregation of Hillborough member Lorri Drozdyk, Rougemont, NC, Unitarian Universalist
Rev. Dr. Renee DuBose, Athens, GA, Metropolitan Community Churches
Sister Louise DuMont, Seattle, WA, Roman Catholic
Reverend Doctor Leon Dunkley, Silver Spring, MD, Unitarian Universalist
Sister Fredrica Dunn, Binghamton, NY, Catholic
Sister Grace Dunn, Niagara Falls, NY, Roman Catholic
Sister Patricia Dunne, Chicago, IL, Catholic
Sister Elizabeth Dunne, Sparkill, NY, Roman Catholic
Sister Kathleen Durkin, Wheeling, WV, Roman Catholic
Rabbi Shoshana Dworsky, St. Paul, MN, Judaism
Sister Doris Dwyer, San Antonio, TX, Roman Catholic
Brother Harold Eccles, Louisville, KY, Roman Catholic
The Rev. Jonathan Eden, Cambridge, MA, Episcopal Church
Rev. Dr. Rebecca Edmiston-Lange, Houston, TX, Unitarian Universalist
Rabbi Lisa Edwards, Los Angeles, CA, Reform Judaism
Br. Thomas Egan, Bronx, NY, Catholic
Rabbi Denise Eger, West Hollywood, CA, Reform Judaism
Rabbi H. Bruce Ehrmann, Randolph, MA, Reform Judaism
Sister Bea Eichten, Little Falls, MN, Catholic
Sister Grace M. Eidt, Brooklyn, NY, Roman Catholic
Rabbi Amy Eilberg, St. Paul, MN, Conservative Judaism
Sr. Ellen Eisenberger, Baltimore, MD, Catholic
Rabbi Bruce Elder, Glencoe, IL, Reform Judaism
Rev. Dr. Terence Ellen, Pikesville, MD, Unitarian Universalist
Elder Nancy Ellingham, Mercer Island, WA, Presbyterian
Dr. Michael Ellis, Colfax, NC, African Methodist Episcopal Zion Church
Rev. Marvin Ellison, Portland, ME, Presbyterian
Rev. Roland England, Boonsboro, MD, United Church of Christ
Sister Ann Englert, Satellite Beach, FL, Catholic
Rabbi Daniel Epstein, Spring Valley, NY, Conservative Judaism
Rabbi Patricia Ernest Hickman, Melbourne, FL, Reform Judaism
Rev. Seminarian Anna Ernst, Chicago, IL, Evangelical Lutheran Church in America
Fr. Ed Eschweiller, Greenfield, WI, Catholic
Rev. James Estes, Washington, DC, United Church of Christ
Rev. Seminarian Josh Evans, Chicago, IL, Evangelical Lutheran Church in America
Dr. Francene Evans, Aberdeen, SD, Roman Catholic
Sr. Robin Lynn Evans, OSB, Mt. Angel, OR, Catholic
Fr. Paul Ewers, MCCJ, Covina, CA, Catholic
Sister Nancy Fackner CSJ, Brentwood, NY, Catholic
Sister Marietta Fahey, San Ramon, CA, Catholic
Sister Jean Fallon, Ossining, NY, Catholic
Rev. Dr. Anita Farber-Robertson, Swampscott, MA, Unitarian Universalist
Rabbi Noah Farkas, Los Angeles, CA, Conservative Judaism
Rev. Allison Farnum, Fort Myers, FL, Unitarian Universalist
Sister Mary Elizabeth Farrell, Philadelphia, PA, Roman Catholic
Sister Judith Fay, Wantagh, NY, Roman Catholic
Rabbi Daniel Feder, Burlingame, CA, Reform Judaism
Rev. Barnaby Feder, Middlebury, VT, Unitarian Universalist
Sister Milagros Federico, Layton, UT, Catholic
Rabbi Morley Feinstein, Los Angeles, CA, Reform Judaism
Rabbi Edward Feld, New York, NY, Conservative Judaism
Cantor Devorah Felder-Levy, Los Gatos, CA, Judaism
Rabbi Cathy Felix, Teaneck, NJ, Reform Judaism
Rabbi Helene Ferris, Ossining, NY, Reform Judaism
Sister of Charity, BVM Mary Jean Ferry, Dubuque, IA, Catholic
Rabbi Michael Fessler, Poughkeepsie, NY, Reconstructionist Judaism
Sr. Mary Fineran, Flourtown, PA, Catholic
Rabbi Daniel Fink, Boise, ID, Judaism
Rabbi Brian Fink, New York, NY, Reconstructionist Judaism
Reverend Roberta Finkelstein, Westport, CT, Unitarian Universalist
Sr. Rita Fischer, La Crosse, WI, Roman Catholic

Sister Margaret Fitzer, Winnetka, CA, Catholic
Sister June Fitzgerald, Columbus, OH, Catholic
Mr. Jeffrey Fitzkappes, Chicago, IL, Evangelical Lutheran Church in America
Sister Angela Fitzpatrick, Roeland Park, KS, Catholic
Mr. Joshua Fixler, Brooklyn, NY, Reform Judaism
Deacon Raymond A. Flanders, Turlock, CA, Catholic
Sister Rosemary Flanigan, Kansas City, MO, Roman Catholic
Sister Maryann Flood, Brentwood, NY, Roman Catholic
Sr. Evelyn Flowers, Richfield, OH, Roman Catholic
Rev. Victor H. Floyd, San Francisco, Ca, Metropolitan Community Churches
Pastor Gregory Floyd, Gastonia, NC, Methodist
Bishop Yvette Flunder, Los Angeles, CA, The Fellowship of Affirming Ministries
Sr. Mary Ellen Foley, Manchester, NH, Roman Catholic
Rev. Eric Folkerth, Dallas, TX, United Methodist Church
Rev. Alicia Forde, Longmont, CO, Unitarian Universalist
Rev. Dr. Sidney Fowler, Washington, DC, United Church of Christ
The Reverend Anne Fowler, Portland, ME, Episcopal Church
Sr. Bertha Fox, Dubuque, IA, Roman Catholic
Sister Theresa Fox, New Orleans, LA, Roman Catholic
The Reverend Cynthia Frado, Northfield, MA, Unitarian Universalist
Rev. James Franck, Newark, CA, Catholic
Rev. Amy Freedman, Cambridge, MA, Unitarian Universalist
Rabbi Larry Freedman, Newburgh, NY, Judaism
Rev. Chuck Freeman, Round Rock, TX, Unitarian Universalist
Rabbi Sarah Freidson-King, Mahopac, NY, Conservative Judaism
Rev. Rock Fremont, Phoenix, AZ, United Church of Christ
Sr. Annette Frey, Uniontown, PA, Roman Catholic
Rabbi Matt Friedman, Sacramento, CA, Reform Judaism
Sister Richelle Friedman, Washington, DC, Sisters of the Presenation
Rabbi Dara Frimmer, Los Angeles, CA, Judaism
Sr. Patricia Froning, Tiffin, OH, Roman Catholic
Sister Patricia Frueh, Nerinx, KY, Loretto Community
The Rev. Audette Fulbright Fulson, Cheyenne, WY, Unitarian Universalist
Sister Kathy Fullerton, Towson, MD, Roman Catholic
Rev. Sue Gabrielson, Yarmouth, ME, Unitarian Universalist
Rev. Dr. C. Welton Gaddy, Monroe, LA, Baptist
Sister Joyce Gadoua, Cohoes, NY, Catholic
Sister Mary Gagliano, Oak Lawn, IL, Catholic
Rabbi Jeffrey Gale, Merrick, NY, Judaism
Sister Paula Gallant, Utica, NY, Roman Catholic
Rev. Robert Galloway, Corryton, TN, Metropolitan Community Churches
Rev. Jeffrey Gamblee, Staten Island, NY, Unitarian Universalist
Rev. Mary Ganz, San Francisco, CA, Unitarian Universalist
Sister Patricia Gardner, Toledo, OH, Catholic
Sister Judith Garson, New York, NY, Roman Catholic
Sr. Marie Gatza, Monroe, MI, Catholic
Sister Karen Gaube, Binghamton, NY, Catholic
Rabbi Myron Geller, Gloucester, MA, Conservative Judaism
Sr. Yvonne Gellise, Ypsilanti, MI, Catholic
Rev. Laura George, Independence, VA, Multi-faith
Sister Rita Gerardot, St. Mary-of-the-Woods, IN, Catholic
Rev. Dan Gerhard, Mount Vernon, WA, United Methodist Church
Reverend Barbara Gerlach, Washington, DC, United Church of Christ
Sister Loretto Gettemeier, Maryland Heights, MO, Catholic
Rev. Vickey Gibbs, Houston, TX, Metropolitan Community Churches
Rev. Frank Gibson, Fort Collins, CO, Presbyterian Church (U.S.A.)
Sr. Carolyn Giera, Sylvania, OH, Catholic
Sister Joanne Ginter, Chicago, IL, Catholic
Rabbi Gordon Gladstone, Springfield, NJ, Reform Judaism
Rabbi Dr. Miriyam Glazer, Los Angeles, CA, Conservative Judaism
Rabbi Gary Glickstein, Miami Beach, FL, Reform Judaism
Sister Carolyn Gloege, SCL, Billings, MT, Catholic
Sister Corinne Gmuer, SSND, Wilton, CT, Catholic
The Right Reverend Susan Goff, Richmond, VA, Episcopal Church
Rabbi Irwin Goldenberg , Forest Hills , NY, Reform Judaism
Rabbi Barbara Goldman-Wartell, Binghamton, NY, Reform Judaism
Rabbi Lynne Goldsmith, Dothan, AL, Reform Judaism
Rabbi Lisa Goldstein, New York, NY, Judaism
Rabbi Michael Goldstein, Houston, TX, Conservative Judaism
Rabbi Rosalind Golf, Reston, VA, Reform Judaism
Sister Maryann Golonka, Villa Maria, PA, Roman Catholic
Sr. Mary Ellen Gondeck, Kalamazoo, MI, Roman Catholic
Sister Brenda Gonzales, Nazareth, KY, Catholic
Sister Eileen Good, New York, NY, Catholic
Rabbi Donald Goor, Los Angeles , CA, Reform Judaism
Rabbi Dr. Marc Gopin, Rockville, MD, Judaism
Rabbi Andrew Gordon, Roslyn Heights, NY, Reform Judaism
Rabbi Seth Goren, Philadelphia, PA, Reform Judaism
Sister Laura Gormley, Santa Fe Springs, CA, Roman Catholic
Br. Michael Gosch, Chicago, IL, Catholic
Sister Marilyn Gottemoeller, St. Louis, MO, Roman Catholic
Rabbi Emma Gottlieb, Canton, MA, Reform Judaism
Sister Ave Gould, Brentwood, NY, Roman Catholic
Rabbi Steven Graber, North Woodmere, NY, Conservative Judaism
Rabbi Roberto Graetz, Lafayette, CA, Reform Judaism
Sister Marilyn Graf, Mobile, AL, Catholic
Elder Cathleen Graf, Lakewood, OH, Presbyterian
Rabbi Joshua Grater, Pasadena, CA, Conservative Judaism
The Rev. Dr. Paula Gravelle, Watervliet, NY, Evangelical Lutheran Church in America
Pastor Aaron Gray, Denver, CO, United Methodist Church
Reverend Robin Gray, Tallahassee, FL, Unitarian Universalist
Rev. Caspar Green, Jay, NY, American Baptist
Rev. Dr. Donald Green, Pittsburgh, PA, Evangelical Lutheran Church in America
Rabbi Irving Greenberg, Bronx, NY, Orthodox Judaism
Rabbi Fred Greene, Roswell, GA, Reform Judaism
Cantor Kay Greenwald, Mountain View, CA, Reform Judaism
Rabbi Gary Grene, Douglaston, NY, Conservative Judaism
Rabbi Nicki Greninger, Lafayette, CA, Judaism
Sister Patricia Griffin, Dubuque, IA, Catholic
Rev. Carolyn Grohman, Rochester, NY, Presbyterian Church (U.S.A.)
Sister S. James Marie Gross, Dubuque, IA, Roman Catholic
Rev. Clyde Grubbs, Revere, MA, Unitarian Universalist
The Rev. Dr. J. Bennett Guess, Cleveland, OH, United Church of Christ
Sister Mary Cecile Gunelson, O'Fallon, MO, Catholic
Reverend Barbara Gunsel, Hanover, PA, United Church of Christ
Dr. David P. Gushee, Atlanta, GA, Baptist
Rabbi Steve Gutow, New York, NY, Reconstructionist Judaism
Rabbi Fred Guttman, Greensboro, NC, Reform Judaism
Rabbi Debra Hachen, Jersey City, NJ, Reform Judaism
The Rev. Debra W. Haffner, Westport, CT, Unitarian Universalist
Sister Nancy Hagenbach, Philadelphia, PA, Catholic
Rabbi Laurie Hahn Tapper, Redwood City, CA, Conservative Judaism
Rev. Jann Halloran, Parker, CO, Unitarian Universalist
Sister Mary Hamilton, Philadelphia, PA, Roman Catholic
Rabbi Eytan Hammerman, Harrison, NY, Conservative Judaism
The Rev. Jack H. Haney, Fairhaven, MA, Episcopal Church
Sr. Joyce Hanks, New Orleans, LA, Catholic
Sister Rosaleen Hanlon, Orange, CA, Catholic
Rabbi Dr. Katherine Hans Von Rotes schild zitler, San Francisco, CA, Judaism
Mrs. Sally Hanson, Chicago, IL, Evangelical Lutheran Church in America
The Reverend Barbro Hansson, Brattleboro, VT, Unitarian Universalist
Rev. Dr. Robert M. Hardies, Washington, DC, Unitarian Universalist
Rev. Dr. Barbara Hardy, Washington, DC, United Church of Christ
Rev. Canon Jude Harmon, San Francisco, CA, Episcopal Church
Sister Catherine Harold, San Antonio, TX, Catholic
Rev. Dr. Kristen Harper, Barnstable, MA, Unitarian Universalist
Rabbi Vered Harris, Edmond, OK, Judaism

Rabbi Maurice Harris, Eugene, OR, Reconstructionist Judaism
Sr. Sheila Hart, St. Louis, MO, Catholic
Rev. Kerrie Harthan, Cambridge, MA, United Church of Christ
Sister Joan Hartlaub, Cincinnati, OH, Roman Catholic
Sister Mary Ann Hartman, St. Louis, MO, Catholic
Sister Mary Harvey, Water Mill, NY, Catholic
Sister C. Jean Hayen, BVM, Dubuque, IA, Roman Catholic
Reverend Susan Hayward, Washington, DC, United Church of Christ
Sister Kathleen Healy, San Francisco, CA, Roman Catholic
Sister Ruth Hehn, Cheyenne, WY, Roman Catholic
Sister Janet Heiar, DeWitt, IA, Catholic
Rev. Paul Heins, Logan, UT, Presbyterian Church (U.S.A.)
Rabbi Corey Helfand, Foster City, CA, Judaism
Sister Bernadette Helfertt, Ashland, MT, Catholic
Mr. Lester Helmeczi, Lebanon, PA, United Church of Christ
Sister Rosseria Helmkamp, Fremont, OH, Catholic
Rev. Angela Henderson, Houston, TX, Unitarian Universalist
Sr. Elena Henderson, Powhatan, VA, Catholic
Rev. Dr. Susan Henry-Crowe, Washington, DC, United Methodist Church
Rabbi Floyd Herman, Baltimore, MD, Reform Judaism
Rabbi Ben Herman, Jericho, NY, Conservative Judaism
Rev. David Herndon, Pittsburgh, PA, Unitarian Universalist
Rabbi Jordan Hersh, Frederick, MD, Judaism
Dr. William Hershey, Albuquerque, NM, Buddhist
Sr. Mary Heyser, Yonkers, NY, Roman Catholic
The Rev. Lori Hlaban, Brookfield, WI, Unitarian Universalist
Sister Margaret Hobart, Queens, NY, Roman Catholic
Rev. Mark Hoelsken, SJ, Bethel, AK, Roman Catholic
Sr. Marilynn Hofer, Oldenburg, IN, Catholic
Rabbi Scott Hoffman, Merrick, NY, Conservative Judaism
Rev. M. Lara Hoke, Andover, MA, Unitarian Universalist
Sister Carol Ann Holder, Wilmington, DE, Catholic
The Rev. Charles Holliday, Richmond, VA, Episcopal Church
Rabbi Lauren Holtzblatt, Takoma Park, MD, Conservative Judaism
Sister Marion Honors, Latham, NY, Catholic
Dr. Ronald Hopson, Washington, DC, United Church of Christ
Pastor Ashley Horan, Minneapolis, MN, Unitarian Universalist
Rev. Jeff Horejsi, Fairfax, MN, Roman Catholic
Rabbi Marla Hornsten, West Bloomfield, MI, Reform Judaism
Rev. Laura Horton-Ludwig, Reston, VA, Unitarian Universalist
Sister Margie Hosch, Greenville, SC, Catholic
Reverend Joan Houk, Wexford, PA, Roman Catholic
Sister Johnelle Howanach, Great Falls, MT, Catholic
Chaplain C. Brent Hoy-Bianchi, Reno, NV, Evangelical Lutheran Church in America
Sr. Dolores Hrdina, Merrill, WI, Roman Catholic
Rev. Christine Hribar, Wenham, MA, United Church of Christ
Sister Anne Hubbard, Somerville, MA, Catholic
Sister Charlene Hudon, Seattle, WA, Catholic
Sister Patrice Hughes, Pittsburgh, PA, Catholic
Sister Julia Huiskamp, East St Louis, IL, Roman Catholic
Reverend Douglas Hunt, Haverford, PA, Unitarian Universalist
Sister Edna Hunthausen, Helena, MT, Catholic
Father John Hydar, Ventura, CA, Catholic
Sr. Mary Hydro, St. Leo, FL, Catholic
Sr. Frances C. Ibarley, Sinsinawa, WI, Roman Catholic
Rev. Booth Iburg, Pensacola, FL, Metropolitan Community Churches
Rabbi Rachel Isaacs, Portland, ME, Conservative Judaism
Sister Peggy Jackelen, Merrill, WI, Catholic
The Rev. Paula Jackson, Cincinnati, OH, Episcopal Church
Sister Dorothy Jackson, SCN, Louisville, KY, Roman Catholic
Rabbi Glenn Jacob, Lynbrook, NY, Reform Judaism
Rabbi Jill Jacobs, New York, NY, Judaism
Rev. Gary L. Jacobson, Portland, OR, Catholic
Sister Martha Jaegers, St. Louis, MO, Catholic
Reverend Mitra Jafarzadeh, Cincinnati, OH, Reform Judaism
Rev. Abhi Janamanchi, Bethesda, MD, Unitarian Universalist
Sister Marie Janousek, Wichita, KS, Catholic
The Rev. Heather Janules, Bethesda, MD, Unitarian Universalist
Rev. Virginia Jarocha-Ernst, Linroft, NJ, Unitarian Universalist
Rabbi Daniel Jezer, Tully, NY, Conservative Judaism
Sister Wanda Jinks, OP, Houston, TX, Catholic
Sister Paulissa Jirik, St. Paul, MN, Catholic
Sister Rita Jirik, West St. Paul, MN, Catholic
Sister Carol Johannes, Ann Arbor, MI, Roman Catholic
The Rev. Darin Johnson, San Diego, CA, Evangelical Lutheran Church in America
Rev. Nancy Palmer Jones, San Jose, CA, Unitarian Universalist
Rev. Dr. Patricia Jones, Christiansburg, VA, United Methodist Church
Reverend Susan Joseph Rack, Martinsville, NJ, Presbyterian Church (U.S.A.)
Reverend Robin Joynes, Cheverly, MD, Missionary Baptist
Rabbi Raachel Jurovics, Raleigh, NC, Jewish Renewal
Sister Barbara Juszkiewicz, Buffalo, NY, Roman Catholic
Rabbi Bruce Kadden, Tacoma, WA, Reform Judaism
Brother Michael Kadow, Racine, WI, Roman Catholic
Rabbi Meredith Kahan, Cincinnati, OH, Reform Judaism
Rabbi Rachel Kahn-Troster, Teaneck, NJ, Conservative Judaism
Sr. Rose Ann Kaiser, Huntington, IN, Catholic
Dr. Walter Kalaf, Gainesville, FL, United Methodist Church
Rabbi Beth Kalisch, Gladwyne, PA, Reform Judaism
Rabbi Jeremy Kalmanofsky, New York, NY, Conservative Judaism
Rahhi Jennifer Kaluzny, West Bloomfield, MI, Reform Judaism
Sister Sarab Kaminski, Sinsinawa, WI, Catholic
Rabbi Lewis Kamrass, Cincinnati, OH, Reform Judaism
Rev. Katie Kandarian-Morris, Durango, Colorado, Unitarian Universalist
Sister Carol Kandiko, Lakewood, OH, Roman Catholic
Sister Edithann Kane, Baltimore, MD, Roman Catholic
Sister Pat Kane, Aston, PA, Catholic
Cantor John Kaplan, Memphis, TN, Reform Judaism
Rev. Susan Karlson, Staten Island, NY, Unitarian Universalist
Rabbi Harley Karz-Wagman, Alexandria, LA, Reform Judaism
Rabbi Debra Kassoff, Greenville, MS, Reform Judaism
Rabbi Nancy Kasten, Dallas, TX, Reform Judaism
Rabbi Hillel Katzir, Lubbock, TX, Judaism
Rabbi Jan Caryl Kaufman, New York, NY, Conservative Judaism
Cantor Jason Kaufman, Alexandria, VA, Reform Judaism
Sister Carole Keaney, Goshen, NY, Catholic
Sister Fran Kearney, San Francisco, CA, Catholic
Sister Patricia Keating, Charleston, SC, Roman Catholic
Sister Margaret Keaveney, Santa Barbara, CA, Roman Catholic
Sister of St. Joseph Patricia Keefe, Braintree, MA, Roman Catholic
Sister Ann Keegan, Maspeth, NY, Roman Catholic
Sister Anna Keirn, San Gabriel, CA, Catholic
Sister Ellen Kelly, Astoria, NY, Roman Catholic
Rev. Dr. Sherry Kennedy, Venice, FL, Metropolitan Community Churches
The Rev. Dr. M'ellen Kennedy, Lincoln, VT, Unitarian Universalsit & Sufi
Sister Mary Kerins, New Hyde Park, NY, Roman Catholic
Rev. Dr. Edward Kern, San Antonio, TX, Evangelical Lutheran Church in America
Sister Mary Noel Kernan, Greensburg, PA, Roman Catholic
Cantor Penny Kessler, Bethel, CT, Reform Judaism
Sister Lou Ann Kilburg, Dubuque, IA, Catholic
Sr. Sue Kilduski, Chicago, IL, Catholic, Benedictine
Rev. D. Andrew Kille, San Jose, CA, American Baptist
Rev. Dr. Maureen Killoran, San Antonio, TX, Unitarian Universalist
Rabbi Jason Kimelman-Block, Silver Spring, MD, Conservative Judaism
Rev. Rick King, Longmont, CO, United Church of Christ
Rev. Dr. Dan King, Kingston, MA, Unitarian Universalist
Rabbi Ralph Kingsley, Aventura, FL, Reform Judaism
Sister Honora Kinney, Albany, NY, Roman Catholic
Rabbi Paul Kipnes, Calabasas , CA, Reform Judaism
Rabbi Emma Kippley-Ogman, Mendota Heights, MN, Judaism

The Rev. Jim Kitchens, Sacramento, CA, Presbyterian Church (U.S.A.)
Rabbi David Klatzker, Commack, NY, Conservative Judaism
Rabbi Michael Klayman, Lake Success, NY, Conservative Judaism
Rabbi Richard Klein, Sarasota, FL, Reform Judaism
Sr. Nelda Klein, Adrian, MI, Roman Catholic
Rabbi Joeseph Klein, Birmingham, MI, Reform Judaism
Rabbi Andrew Klein, Barrington, RI, Reform Judaism
Rabbi Sharon Kleinbaum, New York, NY, Reconstructionist Judaism
Sister Margaret Kling, Englewood Cliffs, NJ, Roman Catholic
Rev. Ray Knapp, Tulsa, OK, Ecumenical Catholic Communion
The Rev. Dr. William Knight, Hilo, HI, Metropolitan Community Churches
Sister Marianne Knight, IHM, Allentown, PA, Catholic
Rabbi Peter Knobel, Evanston , IL, Reform Judaism
The Rev. Wayne Knockel, Colorado Springs, CO, Episcopal Church
Rev. Harry Knox, Silver Spring, MD, Metropolitan Community Churches
Rabbi Alison Kobey, Clarksburg, MD, Reform Judaism
Sister Marlene Kochert, Tohatchi, NM, Roman Catholic
Sister Gabrielle Kocour, Atchison, KS, Catholic
Rabbi Douglas Kohn, Nyack, NY, Reform Judaism
Sister Rita Kohut, Great Falls, MT, Catholic
Rabbi Stephanie Kolin, Los Angeles, CA, Reform Judaism
Rabbi Jay M. Kornsgold, East Windsor, NJ, Conservative Judaism
Rabbi Audrey Korotkin, Altoona, PA, Reform Judaism
Rabbi Raquel Kosovske, Northampton, MA, Reform Judaism
Seminarian Erin Koster, Chicago, IL, Evangelical Lutheran Church in America
Sister Donna Kramer, Los Angeles, CA, Catholic
Rabbi Michael Kramer, Hockessin, DE, Reform Judaism
Rabbi Douglas Krantz, Townsend, DE, Reform Judaism
Sister RM Krebs, Mankato, MN, Catholic
Sister Mary Grace Krieger, Ossining, NY, Roman Catholic
Sister Patricia Krommer, CSJ, Los Angeles, CA, Roman Catholic
Rev. Robert Krueger, Portland, OR, Catholic
Fr. Dan Krutz, Baton Rouge, LA, Episcopal Church
Sister Mary Beth Kubera, St. Louis, MO, Roman Catholic
Sister Janet Kuciejczyk, St. Louis, MO, Roman Catholic
Rabbi Jonathan Kupetz, Pomona, CA, Reform Judaism
Rev. Dr. Margaret Kutz, Burke, VA, United Methodist Church
Rev. Dr. Damon Laaker, Omaha, NE, Evangelical Lutheran Church in America
Rev. Allen Ladage, New Haven, MO, United Methodist Church
Rabbi Howard Laibson, Seal Beach, CA, Reform Judaism
Rabbi Howard Laibson, Seal Beach, CA, Judaism
Reverend Susan LaMar, Catonsville, MD, Unitarian Universalist
Rev. Katharine Landis, Seattle, WA, Unitarian Universalist
Rabbi Lynne Landsberg, Washington, DC, Reform Judaism
Rev. Thomas Lane, Greensboro, NC, Presbyterian Church (U.S.A.)
Rabbi Hannah Laner, Nederland, CO, Judaism
Rabbi Ruth Langer, West Newton, MA, Judaism
Rabbi Alan LaPayover, Philadelphia, PA, Judaism
Sr. Martha Larsen, San Francisco, CA, Catholic
Rabbi Michael Adam Latz, Minneapolis, MN, Reform Judaism
Rev. Richard Laurick, Notre Dame, IN, Roman Catholic
Rev. James C. (Jay) Leach, Charlotte, NC, Unitarian Universalist
Sister Maureen Leach, San Antonio, TX, Roman Catholic
Sister Catherine Leamy, Countryside, IL, Catholic
Sr. Madeleine LeBlanc, Somerville, MA, Roman Catholic
The Reverend Kekapa Lee, Honolulu, HI, United Church of Christ
Rabbi William Leffler, Kennebunkport, ME, Reform Judaism
Sister Gemma Legel, OSF, Farmington Hills, MI, Roman Catholic
Fr. Kevin Leidich, Los Altos, CA, Roman Catholic
Rev. Marnie Leinberger, Pueblo, CO, Christian Church (Disciples of Christ)
Rabbi David Leipziger Teva, Middletown, CT, Judaism
Sister Pauline Lemaire, Seattle, WA, Catholic
Sister Barbara Lenarcic, Villa Marie, PA, Roman Catholic
Rabbi Michele Lenke, Needham, MA, Reform Judaism
Sister Clare Lentz, Spokane, WA, Catholic
Rabbi Michael Lerner, Berkeley, CA, Jewish Renewal
Rabbi Devon Lerner, Arlington, MA, Reform Judaism
Rabbi Darah Lerner, Bangor, ME, Reform Judaism
Rev. Warren Lesane, Richmond, VA, Presbyterian Church (U.S.A.)
Rev. Janice Levering, Topek, KS, Metropolitan Community Churches
Rabbi Carol Levithan, New York, NY, Conservative Judaism
Rabbi David Levy, Succasunna, NJ, Reform Judaism
Rabbi Sheldon Lewis, Palo Alto, CA, Judaism
Rabbi Annie Lewis, Philadelphia, PA, Conservative Judaism
Rev. Deborah Lewis, Charlottesville, VA, United Methodist Church
Rabbi Mordechai Liebling, Philadelphia, PA, Reconstructionist Judaism
Rev. Jeff Liebmann, Midland, MI, Unitarian Universalist
Rev. Dana Lightsey, Golden, CO, Unitarian Universalist
Rabbi Seth M. Limmer, Chicago, IL, Reform Judaism
Dr. Sandra Lincoln, Portland, OR, Catholic
Rabbi Greg Litcofsky, Livingston, NJ, Reform Judaism
Rabbi Lewis Littman, Littman, FL, Reform Judaism
Rabbi Richard Litvak, Aptos, CA, Reform Judaism
Sister Dominica Lo Bianco, Aston, PA, Roman Catholic
Sr. Mary Ellen Loch, Wichita, KS, Congregation of St. Jospeh
Sister Lucia Lodolo, San Francisco, CA, Roman Catholic
Rev. Sherman Logan, Sandston, VA, Unitarian Universalist
Sister Frances Lombaer, Adrian, MI, Catholic
Rev. Rachel Lonberg, Nashville, TN, Unitarian Universalist
Sister Lillian Long, Berlin, ND, Catholic
Rev. Melodie Long, Sackets Harbor, NY, Presbyterian Church (U.S.A.)
Sister Sandra LoPorto, Garfield Heights, OH, Catholic
Sister Patricia Lorenz, Kansas City, MO, Roman Catholic
Rabbi Ari Lorge, New York, NY, Reform Judaism
Rabbi Harold Loss, West Bloomfield, MI, Reform Judaism
Sister Diane Louttit, Binghamton, NY, Roman Catholic
Rev. Kelly Love, Davis, CA, United Methodist Church
Dr. Joseph Lowery, Atlanta, GA, United Methodist Church
Sister Marie Lucey, Hyattsville, MD, Catholic
Rev. Jacqueline Luck, Kingsport, TN, Unitarian Universalist
Rev. Dr. Dale Luffman, Redmond, OR, Community of Christ
Rev. Greg Lugn, Lincoln, NE, Christian Church (Disciples of Christ)
Sister Barbara Lum, Rochester, NY, Roman Catholic
Rev. Robin Lunn, Milford, NH, American Baptist Churches, USA
Rev. Dr. Mary Luti, Lowell, MA, United Church of Christ
Rev. James Lynch, Colorado Springs, CO, Metropolitan Community Churches
sister Jeane Lynch, Somerville, MA, Roman Catholic
Rev. Jim Lynch, Kenosha, WI, Evangelical Lutheran Church in America
The Rev. Suzelle Lynch, Brookfield, WI, Unitarian Universalist
Dr. Hunter Mabry, Roanoke, VA, United Methodist Church
Sister Mitzi MacDonald, Montebello, CA, Roman Catholic
Sister Kathleen Mackerer, Flourtown, PA, Catholic
Sister Frances Madigan Madigan, Boca Raton, FL, Catholic
Brother Joseph Maguire, Yeadon, PA, Roman Catholic
Brother John Mahoney, Baltimore, MD, Roman Catholic
Sister Mary Mahowald, El Paso, TX, Roman Catholic
Rabbi James Maisels, Bloomfield Hills, MI, Judaism
Rev. Calvin Majors, Ponca City, OK, Christian Church (Disciples of Christ)
Imam Zia Makhdoom, Springfield, VA, Muslim
Rabbi Jonathan Malamy, White Plains, NY, Reconstructionist Judaism
Rabbi Laurence Malinger, Aberdeen, NJ, Reform Judaism
Rabbi Howard Mandell, Andover, MA, Conservative Judaism
Sister Rosemary Mangan, Washington, DC, Roman Catholic
Rabbi Deborah Mangan, Barnstable, MA, Reform Judaism
Rabbi Harry Manhoff, San Leandro, CA, Reform Judaism
Rabbi Randall Mark, Wayne, NJ, Conservative Judaism
Rabbi Jeffrey Marker, Brooklyn, NY, Judaism

Rabbi Susan Marks, Sarasota, FL, Reform Judaism
Ms. Annette Marquis, Richmond, VA, Unitarian Universalist
Mr. Robert Marzullo, Shoreline, WA, Catholic
Reverend Theresa Mason, Grand Island, NE, United Methodist Church
Rev. Dr. George Mason, Dallas, TX, Cooperative Baptist Fellowship
Rabbi Jeremy Master, Greenville, SC, Reform Judaism
Rev. Michael-Ray Mathews, San Jose, CA, American Baptist Churches, USA
Rev. Taryn Mattice, Ithaca, NY, Presbyterian
Sister Catherine Mauge, Idyllwil, CA, Catholic
Sister Pauline Maurier, Manchester, NH, Catholic
Sister Judith Mausser, Brooklyn, NY, Catholic
Sr. Dorothy Maxwell, Blauvelt, NY, Catholic
Sister Margaret McAnoy, IHM, Atlanta, GA, Catholic
Sister Jane McCarthy, Clinton, IA, Catholic
Sister Catherine McConnell, Philadelphia, PA, Roman Catholic
Sister Beth McCormick, Croton-on-Hudson, NY, Roman Catholic
Rev. Gordon McCoy, Chicago, IL, Metropolitan Community Churches
Sister Mary Rose McCrate, Dayton, OH, Roman Catholic
Sr. Frances McDermott, New York, NY, Catholic
Sister Maureen McDonnell, Madison, WI, Roman Catholic
Sister Ellen McElroy, New Salem, PA, Roman Catholic
Rev. David V. McFarland, Pittsburgh, PA, Unitarian Universalist
Sister Marietta McGannon, Millbrae, CA, Roman Catholic
Rev. Robert McKenzie, Oakland, CA, Presbyterian
Reverend Sharon McKinney, Winston Salem, NC, African Methodist Episcopal Zion Church
Rev. Christana McKnight, Seekonk, MA, Unitarian Universalist
Rev. Brian McLaren, Marco Island, FL, Non-denominational Christian
Sister Sally McLaughlin, Quincy, MA, Catholic
Sister Margaret McLaughlin, Philadelphia, PA, Catholic
Sister Mary McMahon, Yardley, PA, Roman Catholic
Sr. Kathleen McMullen, Belmont, CA, Catholic
Sister Nancy McNemar, Osyka, MS, Catholic
Rev. Bernadine McRipley, Levittown, PA, Presbyterian
Sister Agnes Meagher, Brentwood, NY, Catholic
Sister Marilynn Mechtenberg, Monroe, MI, Roman Catholic
Rabbi Michele Medwin, Binghamton, NY, Reform Judaism
Rev. Peggy Meeker, Rochester, NY, Unitarian Universalist
Rev. Mark Meeks, Bailey, CO, Presbyterian Church (U.S.A.)
Reverend Christie Melby-Gibbons, Downey, CA, Moravian
The Rev. Emily Melcher, Olympia, WA, Unitarian Universalist
Rabbi Michael Mellen, New York, NY, Reform Judaism
Ms. Rose Marie Menard, Orange, CA, Catholic
Sr. Elizabeth Menard, Plattsburgh, NY, Catholic
Rev. Dr. Jim Merritt, Pensacola, FL, Metropolitan Community Churches
Rabbi Richard Messing, Stoughton, MA, Reform Judaism
Sr. Christina Meyer, Salina, KS, Catholic
Sister Pat Meyer, Huron, OH, Catholic
Rabbi Aaron Meyer, Seattle, WA, Reform Judaism
Sister Carmelina Meyers, Dubuque, IA, Catholic
Sister Anne Michel, Brentwood, NY, Catholic
Sister John Michele, Scranton, PA, Roman Catholic
Sr. Mary Middendorf, Louisville, KY, Catholic
Rabbi Stanley Miles, Louisville, KY, Reform Judaism
Sister Angela Milioto, Montebello, CA, Roman Catholic
Rabbi Heather Miller, Los Angeles, CA, Reform Judaism
Rev. David Miller, Solana Beach, CA, Unitarian Universalist
Rabbi Jonathan Miller , Birmingham, AL, Reform Judaism
Rabbi Sydney Mintz, San Francisco, CA, Reform Judaism
Rev. Manish Mishra-Marzetti, Cherry Hill, NJ, Unitarian Universalist
Sister Mary Joyce Moeller, Ft. Thomas, KY, Catholic
Sister Mary Molini, Bridgeton, MO, Catholic
The Reverend Peter Morales, Boston, MA, President of the Unitarian Universalist Association
Reverend Melanie Morel-Ensminger, New Orleans, LA, Unitarian Universalist
Sr. Marianne Morelli, Sparkill, NY, Catholic
Reverend David Morris, Concord, CA, Unitarian Universalist
Rev. Dr. Mark Morrison-Reed, Rochester, NY, Unitarian Universalist
Rabbi Joel Mosbacher, Mahwah, NJ, Reform Judaism
Rabbi Linda Motzkin, Saratoga Springs, NY, Reform Judaism
The Rev. Dwyn Mounger, Knoxville, TN, Presbyterian Church (U.S.A.)
Sister Suzanne Moynihan, SSND, Milwaukee, WI, Roman Catholic
Rev. Keith Mozingo, Baton Rouge, LA, Metropolitan Community Churches
Sr. Margaret Muller, PBVM, Whitehouse Station, NJ, Roman Catholic
Sr. Christine Mura, Albany, NY, Roman Catholic
Sister Patricia Murphy, Baltimore, MD, Roman Catholic
Senior Pastor Richard Murphy, Ludington, MI, Unitarian Universalist
Sr. Maureen Murray, San Pedro, CA, Roman Catholic
Sister Nancy Murray, Adrian, MI, Roman Catholic
Cantor Shira Nafshi, Concord, NH, Reform Judaism
Rabbi Robin Nafshi, Concord, NH, Reform Judaism
Cantor Judith Naimark, Middletown, NY, Reform Judaism
Rabbi Michael Namath, Potomac, MD, Reform Judaism
Sr. Nora Nash, Aston, PA, Catholic
Rev. Bobbi Neason, Bandon, OR, Presbyterian Church (U.S.A.)
Sister Patricia Nee, Gloverville, SC, Catholic
Sister Linda Neil, CSJ, Schenectady, NY, Catholic
Rev. Dr. J. Herbert Nelson, Washington, DC, Presbyterian Church (U.S.A.)
Sister Mary Jo Nelson, Fort Wayne, IN, Roman Catholic
Mr. James Nelson, Orrville, OH, United Church of Christ
Pastor Geoffrey Nelson-Blake, San Francisco, CA, Seventh-day Adventist
Rev. Brooke Newell, Jay, NY, United Methodist Church
Reverend Elizabeth Nguyen, Boston, MA, Unitarian Universalist
Sister Judy NIday, Dayton, OH, Roman Catholic
Reverend Sylvia Niedner, Columbus, OH, Order of Universal Interfaith
Elder Steven Noble, Twinsburg, OH, Presbyterian Church (U.S.A.)
Sister Phyllis Nolan, Bridgeton, MO, Daughters of Charity
Rev. Chuck Oatman, Drumore, PA, Protestant
The Rev. Dr. Charles Oberkehr, Alexandria, VA, Evangelical Lutheran Church in America
Sister Kathleen O'Brien, Monroe, MI, Catholic
Sister Alma O'Brien, Columbia, PA, Catholic
Sister Leonissa O'Brien, Philadelphia, PA, Roman Catholic
Sister Mary O'Donnrll, Greensburg, PA, Catholic
Sister Dolores O'Dowd, Albion, NY, Catholic
Rabbi Janet Offel, Woodland Hills, CA, Judaism
Sister Kathleen O'Halloran, Keansburg, NJ, Roman Catholic
Reverend David O'Leary, Melrose, MA, Roman Catholic
Rabbi David Oler, Deerfield, IL, Reform Judaism
Rabbi Jesse Olitzky, South Orange, NJ, Conservative Judaism
Rev. Dr. Claudene Oliva, Flint, MI, Unitarian Universalist
Ms. Mary Olson, Bethesda, MD, Roman Catholic
Sister Audrey Olson, St. Louis, MO, Catholic
Sr. Marie Olwell, Camden, NJ, Catholic
Sister Rita Orleans, Leavenworth, KS, Catholic
Rev. Dr. Gaye Ortiz, Augusta, GA, Unitarian Universalist
Cantor Barbara Ostfeld, Buffalo, NY, Reform Judaism
Rev. Dale Ostrander, Washington, DC, United Church of Christ
Rev. Martin Pable, Milwaukee, WI, Catholic
Sister Mary Lou Palas, Greensburg, PA, Catholic
Rev. Gradye Parsons, Louisville, KY, Presbyterian Church (U.S.A.)
Rabbi Ephraim Pelcovits, New York, NY, Conservative Judaism
Sister Clare Pelkey, Latham, NY, Catholic
Rabbi Hava Pell, Camp Hill, PA, Reconstructionist Judaism
Br. Patrick Pennell, Danvers, MA, Catholic
Sister Dee Peppard, Arlington Heights, IL, Catholic
Rabbi Nina Perlmutter, Chino Valley, AZ, Jewish Transdenominational
Rev. Elder Troy Perry, Los Angeles, CA, Metropolitan Community Churches

Sister Terese Perry, Burlingame, CA, Catholic
Sister Phylis Peters, Harlingen, TX, Christian
Rev. David Peters, Hurricane, WV, United Methodist Church
Mr. David Petersen, Arlington Heights, IL, Lutheran
Pastor Darren Phelps, Washington, DC, Pentecostal
Brother Albert Phillipp, Los Fresnos, TX, Catholic
Fr. Brian Pierce, Irving, TX, Catholic
Sister Frances Mary Pierson, Fremont, CA, Roman Catholic
Sister Mary Lee Pitre, Grand Rapids, MI, Roman Catholic
Sister Mary Leah Plante, Los Angeles, CA, Roman Catholic
Rabbi William Plevan, New York, NY, Conservative Judaism
Reverend Patti Pomerantz, Portland, OR, Unitarian Universalist
Rabbi Michael Pont, Marlboro, NJ, Conservative Judaism
Rabbi Mindy Portnoy, Kensington, MD, Reform Judaism
Rabbi Philip M Posner, Santa Cruz, CA, Reform Judaism
Sr. Dina Potter, Shaw, MS, Catholic
Sister Elizabeth Powell, Merion Station, PA, Catholic
Sister Catherine Prendergast, Tacoma, WA, Catholic
The Reverend Cecil Prescod, Portland, OR, United Church of Christ
Sr. Pat Prunty, Aberdeen, SD, Catholic
Reverend Joy Christi Przestwor, West Hartford, CT, Liberal Catholic
Sister Mary Pung, Benton Harbor, MI, Roman Catholic
Rev. Jeanne Pupke, Richmond, VA, Unitarian Universalist
Sister Margery Race, Austin, TX, Catholic
Sister June Racicot, Woodstock, VT, Catholic
Sister Teresa Raftery, Manhasset, NY, Roman Catholic
Rev. Mary Anne Ramsey, Winter Haven, FL, Alliance of Baptists
Rabbi Larry Raphael, San Francisco, CA, Reform Judaism
Rabbi Debra Rappaport, Minneapolis, MN, Reconstructionist Judaism
Chaplain Kelly Raths, Salem, OR, United Methodist Church
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Rabbi Victor Reinstein, Jamaica Plain, MA, Judaism
Sister Ruth Reischman, Leavenworth, KS, Catholic
Sister Honora Remes, Maryland Heights, MO, Catholic
Sister Ann Remkus, Adrian, MI, Roman Catholic
Rev. Dana Reynolds, Minneapolis, MN, Unitarian Universalist
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Rev. Tom Rhodes, Raleigh, NC, Unitarian Universalist
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Miss Margaret Richards, Greenport, NY, Unitarian Universalist
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Rabbi Elizabeth Richman, Washington, DC, Conservative Judaism
Rabbi Yael Ridberg, La Jolla, CA, Reconstructionist Judaism
Rabbi Louis Rieser, Boynton Beach, FL, Reform Judaism
Pastor Drew Rindfleisch, Chicago, IL, Evangelical Lutheran Church in America
Rev. Lori Rivera, Harrisburg, PA, Metropolitan Community Churches
Sister Rosaria Rizzo, Albany, NY, Catholic
The Reverend Adam Robersmith, Geneva, IL, Unitarian Universalist
Sr. Juanita Robichaud, Whitefield, ME, Catholic
Rabbi Yair Robinson, Wilmington, DE, Reform Judaism
RADM, Rabbi Harold Robinson, Centerville, MA, Reform Judaism
Sister Rose Marie Rocha, RSM, Pawtucket, RI, Catholic
Sr. Diane Roche, Washington, DC, Catholic
Sister Norma Rocklage, Indianapolis, IN, Roman Catholic
Sister Patricia Rogers, Milwaukee, WI, St. Francis
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Rabbi Jason Rosenberg, Tampa, FL, Reform Judaism
Rabbi James Rosenberg, Providence, RI, Judaism
Rabbi Harry Rosenfeld, Albuquerque, NM, Reform Judaism
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Rabbi Cheryl Rosenstein, Bakersfield, CA, Reform Judaism
Sister Miriam Ross, West Allis, WI, Catholic
Rabbi Donald Rossoff , Morristown , NJ, Reform Judaism
Rabbi Jeffrey Roth, New Paltz, NY, Judaism
Rabbi Michael Rothbaum, Oakland, CA, Judaism
Rev. Jean Rowe, Brevard, NC, Unitarian Universalist Association
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Rabbi Jared Saks, Portland, ME, Reform Judaism
Rabbi Ari Saks, Perth Amboy, NJ, Conservative Judaism
Sr. Elizabeth Salmon, Maryknoll, NY, Maryknoll Sisters of St. Dominic
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Rabbi David Sandmel, New York, NY, Reform Judaism
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Sr. Denise Sausville, Washington, MO, Roman Catholic
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Sister Miriam Schnoebelen, OSB, Atchison, KS, Catholic
Sr. Mary Schoberg, Center Moriches, NY, Catholic
The Reverend Lauren Schoeck, Lancaster, PA, Episcopal Church
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Bro. Mark Schroeder, O.F.M., Sacramento, CA, Franciscan Catholic
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Sister Mary Alma Vandervest, Latrobe, PA, Roman Catholic
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Sister Ann Wittman, Merrill, WI, Catholic
Rabbi Greg Wolfe, Davis, CA, Reform Judaism
Rev. Dr. Janet Wolfe, Marshfield, WI, Presbyterian Church (U.S.A.)
Rev. Jay Wolin, Davenport, IA, Unitarian Universalist
Rabbi Jonathan Woll, Glen Rock, NJ, Reform Judaism
Rev. Nathan Woodliff-Stanley, Denver, CO, Unitarian Universalist
Reverend Wendy Woodruff, Greenfield, WI, Metropolitan Community Churches
Reverend Dr. Willie Woodson, Richmond, VA, Presbyterian
Reverend Dean Woodward, Denver, CO, United Methodist Church
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Rabbi Bridget Wynne, Albany, CA, Reform Judaism
Rabbi Dr. Shmuly Yanklowitz, Scottsdale, AZ, Orthodox Judaism
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Rev. Brother Jim Zabransky, SVD, East Troy, WI, Roman Catholic
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Rabbi Melinda Zalma, New York, NY, Judaism
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Reverend Joseph Zarro, Belmont, MA, United Church of Christ
Reverend William Zavaski, Arlington Heights, IL, Roman Catholic
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Rabbi Elana Zelony, Richardson, TX, Conservative Judaism
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Rabbi Matthew Zerwekh, Kalamazoo, MI, Reform Judaism
Rev. Dr. Paul Ziese, San Antonio, TX, Evangelical Lutheran Church in America
Sister Paulette Zimmerman, St. Louis, MO, Catholic
Rabbi Sheldon Zimmerman, East Hampton, NY, Reform Judaism
Sister Giulii Zobelein, Los Angeles, CA, Catholic
Rabbi Leonard Zoll, Escondido, CA, Reform Judaism
Sister Mary Louise Zollars, Baltimore, MD, Catholic
Rabbi Henry Zoob, Westwood, MA, Reform Judaism
Rev. Dr. Charlene Zuill, Honolulu, HI, United Methodist Church

BEND THE ARC
a jewish partnership
for justice

Testimony of Stosh Cotler
Chief Executive Officer, Bend the Arc: A Jewish Partnership for Justice
Submitted to
The Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
For the hearing record on:
"The State of Civil and Human Rights in the United States"
December 9, 2014

The fight to protect the civil and human rights of all Americans is deeply personal for American Jews. Our community has been at the forefront of nearly every civil and human rights struggle in our nation's modern history, drawing from teachings of our tradition as well as our modern-day experience as a minority people. We heed the prophetic call to build just and holy societies that value human dignity as we recognize and empathize with the sufferings of all marginalized communities. Our historical experience has imparted to us respect for the principle of equality before the law and the importance of a vibrant constitutional democracy.

The organization I serve as CEO, Bend the Arc: A Jewish Partnership for Justice, mobilizes and organizes the American Jewish community today on a range of civil and human rights issues including voting rights, criminal justice reform and equality for the lesbian, gay, bisexual and transgender (LGBT) community. As such, I appreciate the opportunity to submit this statement to the Subcommittee on this range of issues facing our nation today.

Voting Rights
Fifty years ago, three young men were murdered by the Ku Klux Klan in Mississippi for working to register African-Americans to vote. Today, inspired by their legacy, we work to carry on Andrew Goodman, James Chaney and Michael Schwerner's fight to defend the voting rights of all Americans. I am appreciative of this Committee's efforts to move the Voting Rights Amendment Act (S. 1945) forward by holding a hearing this year. But this bill deserves a vote, deserves to be passed by the full Senate before another election can be held without the Voting Rights Act in full effect.

There is something quintessentially American, but also quintessentially Jewish, about voting. After all, voting is a ritual, part of belonging to the community. American Jews have always valued our right to vote. As our ancestors fled pogroms and persecution, those who came here found a country where they, even if they were not always welcome or even fully protected under the law, nonetheless had a legal right to exist, pursue their own affairs, and be part of our political system at the basic level.

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We draw inspiration not only from our ancestors, but from the Jewish leaders of our time—those who marched on Washington, those who participate in election protection today—and from our sages of old. "A ruler is not to be appointed unless the community is first consulted," (Babylonian Talmud, B'rachot 55a) our rabbis taught, and in our nation, that means the full diversity of our citizenry has the unhindered right to vote for their leaders.

Yet, while voting rights have long been—and continue to be—a personal issue for the Jewish community, this is true for the broader interfaith community as well. To illustrate this, I submit for the record two letters in support of the Voting Rights Amendment Act on behalf of the myriad diverse signers. The first, an interfaith community letter, was signed by 88 faith-based organizations representing more than a dozen religious denominations and the second, an interfaith clergy letter, was signed by more than 1,000 faith leaders from all 50 states and the District of Columbia and more than two dozen religious denominations.

In striking down a key provision of the Voting Rights Act, the Supreme Court's 2013 decision in Shelby County v. Holder dismantled critical protections for those most at risk of having their rights abridged. It took mere weeks after the ruling for many of the jurisdictions previously monitored under the VRA to rush out and make changes to election law that could deny the vote to thousands of citizens. The reasons for these changes may or may not be as blatantly racist as they were fifty years ago, but they are certainly just as cynical and malicious. Many proponents have been clear that their motives are based on suppressing votes to win partisan election contests. Yet, even ignoring the motives, the results of these changes are clear—they will make it harder for communities of color, women, first-time voters, the elderly, and the poor to cast their vote.

Every day Congress fails to live up to its constitutional obligation to protect the right to vote, it gives a free pass to voting discrimination. It is clear that our work is far from complete. It is clear we still need the Voting Rights Act.

Criminal Justice Reform

Recent events have made it clearer than ever that criminal justice in our nation is in crisis. Though the communities who are overwhelmingly falling victim to systemic injustice are largely not our own, we firmly believe that the fates of all Americans are intertwined and when the rights of some are trampled, the rights of all are compromised.

Across America, low-income neighborhoods predominantly populated by African Americans and Latinos are treated like warzones, rather than communities of families. Eric Garner, Michael Brown, and untold others have paid with their lives for a racist system that has created in our society a deeply

ingrained belief that black men are inherently dangerous people. As a country, we have never truly grappled with the lasting effects of slavery and the multiple iterations of Jim Crow—and the impact has become crystal clear. Our nation must directly counter the effects of the systemic, ingrained racial bias that impairs the judgment and behavior of too many law enforcement personnel and prevents them from protecting the communities they serve. I urge the Senate Committee on the Judiciary and the Congress as a whole to enact legislation that will require body cameras on police, the demilitarization of local police forces, create better training programs, and greater police investment in building positive community relations. The status quo is unacceptable.

Bend the Arc is also concerned by the continued use of racial and religious profiling by law enforcement, and by the surveillance and mapping of religious communities—particularly, Muslim communities—across the nation by both local and federal law enforcement, without suspicion of wrongdoing. On top of the moral call to defend fellow American religious communities from this type of discrimination, Bend the Arc also has a unique connection to the issues of surveillance. Our own Board Chair, Stephen F. Rohde was himself the target of illegal surveillance by the New York Police Department, targeting his constitutionally-protected anti-war activities while attending Columbia Law School. Rohde participated in the court case that challenged that surveillance, *Handschu v. Special Servs. Div'n.*, which serves as a foundational precedent for the case challenging the NYPD's surveillance of Muslims throughout the Northeast, *Hassan v. City of New York*. We continue to urge President Obama to revise and strengthen the Department of Justice's 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. Such a move should clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of discriminatory profiling. I also urge this Committee to explore legislative avenues to reign in profiling by law enforcement.

Finally, as members of the coalition that worked to secure the enactment of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA), we continue to work toward its full implementation. Five years after the HCPA was enacted, we have made great progress, but there remains a crisis of underreporting of hate crime data, data which is crucial in determining where resources should be directed to better protect vulnerable communities. To that end, Congress should explore new steps that could be taken to ensure more accurate, helpful statistics, including greater transparency and accountability. Additionally, I urge Congress to support budget authority to fund, for the first time, grants authorized under Sec. 4704 of the HCPA, which are intended to promote federal coordination and support for bias-motivated criminal investigations and prosecutions. Finally, we must do all we can to prevent hate crimes from happening in the first place by promoting inclusive anti-bias education and by including bullying and harassment and non-discrimination

provisions in proposals for reauthorization of appropriate legislation such as the Elementary and Secondary Education Act. These recommendations are just a few of the comprehensive, thoughtful proposals you have already received from my colleagues who lead the Hate Crime Coalition.

LGBT Non-Discrimination Protections

As a proud ally in the national movement for LGBT equality, Bend the Arc has organized marches and candlelight vigils and has brought the Jewish community's strong moral voice for LGBT equality to bear in states and across the nation. Our nation has made great progress toward ensuring full equality for the LGBT community, but we still have a long way to go to ensure that LGBT individuals experience equal rights and protections. It is thrilling to watch the number of states in which same-sex couples enjoy the freedom to marry grow dramatically. Yet, at the same time, the number of states in which an LGBT individual could be legally married and yet still legally fired from a job for being LGBT remains staggeringly high. Indeed, more than 30 states and the District of Columbia allow same-sex couples to marry while only 18 states and the District of Columbia explicitly prohibit workplace discrimination on the basis of sexual orientation and gender identity. This is just one small snapshot of the still-legal discrimination faced by LGBT Americans across the country. I urge the Senate to consider comprehensive legislation to protect the civil rights of LGBT Americans, not only in the workplace, but in housing, in education and in in the foster care system, among other sectors as well.

Again, I thank the Subcommittee for the opportunity to submit this statement for the record of this important hearing.

Written statement of
Human Rights Watch

to

The United States Senate Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights
and Human Rights

"The State of Civil and Human Rights in the United States"

December 9, 2014

Human Rights Watch submits the following statement to the Committee on current human rights challenges facing the United States, and how Congress should address them. Human Rights Watch is an independent, international organization that works in over 90 countries around the world as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all. We scrupulously investigate abuses, expose the facts widely, and press those with power to respect rights and secure justice.

Human Rights Watch has documented the state of human rights within the United States in 15 in-depth investigative reports over the span of the 113th Congress. We have issued policy briefings on the need for US immigration reform[1] and on reducing the US dependence on incarceration.[2] In the last 12 months we have also submitted comprehensive reports on US compliance with three core human rights treaties: the International Covenant on Civil and Political Rights,[3] the International Convention on the Elimination of All Forms of Racial Discrimination,[4] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[5] Taken together, these reports provide a much fuller picture of the state of human rights in the United States than can be covered in this brief statement.

For purposes of this statement, we focus on US domestic human rights concerns most directly under the purview of the Committee, particularly on civil and political rights in the arenas of immigration, criminal justice, and privacy. Defending human rights, of course, is not solely the responsibility of this Committee—it is the responsibility of all congressional committees. Human rights are about safe and non-discriminatory workplaces, be they on an almond farm[6] or an aircraft carrier.[7] Human rights are about accountability for torture and other ill-treatment,[8] ending the use

[1] Human Rights Watch, *Within Reach: A Roadmap for US Immigration Reform*, http://www.hrw.org/roadmap-to-immigration-reform
[2] Human Rights Watch, *Nation Behind Bars: A Human Rights Solution*,
http://www.hrw.org/sites/default/files/related_material/2014_US_Nation_Behind_Bars_0.pdf
[3] Human Rights Watch, *Submission to the Human Rights Committee during its consideration of the Fourth Periodic Report of the United States*, http://www.hrw.org/news/2013/01/04/us-human-rights-watch-submission-un-human-rights-committee (2012)
[4] Human Rights Watch, *Submission to the Committee on the Elimination of Racial Discrimination during its consideration of the seventh to ninth periodic reports of the United States of America*,
http://www.hrw.org/sites/default/files/related_material/2014%20HRW%20US%20CERD.pdf (2014)
[5] Human Rights Watch, *Submission to the United Nations Committee Against Torture during its consideration of the third to fifth periodic reports of the United States of America*,
http://www.hrw.org/sites/default/files/related_material/HRW%20Submission%20to%20CAT%20-%20October%202014.pdf (2014)
[6] Human Rights Watch, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, May 2012, http://www.hrw.org/reports/2012/05/15/cultivating-fear
[7] "Sexual Violence Continues to Undermine US Military," Cornell University Law School,
http://www.lawschool.cornell.edu/academics/clinicalprogram/int-human-rights/Military-Sexual-Assault-Petition-to-IACHR.cfm (accessed December 4, 2014)
[8] Human Rights Watch, *Getting Away with Torture: The Bush Administration and Mistreatment of Detainees*, July 2011,
http://www.hrw.org/reports/2011/07/12/getting-away-torture-0.

of fundamentally flawed military commissions,[9] and once and for all closing the Guantanamo Bay detention facility.[10] Human rights should be promoted in US schools[11] and US businesses.[12]

Without question, this Committee has frequently played a vital role in protecting human rights in the United States. At the same time, on some occasions the Committee has fallen short of its promise, and the progress of human rights in the United States has suffered as a result. Through this testimony we hope to highlight a few of the successes of this Committee, while also flagging areas on which we hope the Committee will go further in the next Congress.

Immigration reform

The work of this Committee resulted in a landmark immigration reform measure, Senate Bill 744.[13] The bill reflected a commitment to keeping families unified, to protecting immigrants from abuses and crime, and to acknowledging the contributions of long-term residents in the United States. It created a pathway to legal status for a vast majority of the 11 million unauthorized immigrants currently living in the United States and included several insightful protections that could help to keep families with mixed immigration status together. For example, it empowered the Department of Homeland Security to allow certain people already removed from the country but with strong family ties in the United States to return and apply for legalization. It also better aligned immigration detention policies with human rights requirements, reducing mandatory detention, improving detention conditions by restricting the use of solitary confinement, and requiring the appointment of counsel for children and persons with mental disabilities in immigration proceedings.

The bill that passed out of this Committee was far from perfect; for example, it shut out from relief people with criminal convictions, even non-violent convictions and those convictions far in the past. Yet overall, it was a massive improvement over the immigration system currently in place, and was broadly supported, with 13 out of 18 members of this Committee voting in favor the bill. This vote presaged the broad bipartisan support that resulted in over two-thirds of the full Senate voting in favor of the final version of the bill. It was disappointing that even with this broad veto-proof majority, however, the House of Representatives refused to even consider the bill, paying short shrift to the human rights protections it included.

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[9] Laura Pitter (Human Rights Watch), "Guantanamo's System of Injustice," *Salon*, January 19, 2012, http://www.hrw.org/news/2012/01/19/guantanamo-s-system-injustice

[10] "US: Send Guantanamo's Yemenis Home," Human Rights Watch news release, April 7, 2014, http://www.hrw.org/news/2014/04/07/us-send-guantanamo-s-yemenis-home.

[11] Human Rights Watch and the American Civil Liberties Union, *A Violent Education: Corporal Punishment of Children in US Public Schools*, August 2008, http://www.hrw.org/reports/2008/08/19/violent-education-0.

[12] Human Rights Watch, *Tobacco's Hidden Children: Hazardous Child Labor in United States Tobacco Farming*, May 2014, http://www.hrw.org/reports/2014/05/13/tobacco-s-hidden-children. See also Arvind Ganesan (Human Rights Watch), "Predatory Lending and Indian Country," *The Hill*, September 24, 2013, http://thehill.com/blogs/congress-blog/economy-a-budget/324007-predatory-lending-and-indian-country.

[13] "US: Immigration Reform Clears Major Hurdle," Human Rights Watch news release, June 27, 2013, http://www.hrw.org/news/2013/06/27/us-immigration-reform-clears-major-hurdle.

While President Barack Obama has announced executive measures that offer some protections to a segment of unauthorized immigrants in the United States, those measures are insufficient to resolve the harms caused by the immigration status quo.[14] This Committee should continue to support the protections embodied in Senate Bill 744 in the new Congress, and should work to engage the House of Representatives in taking up immigration reform legislation while keeping the protections outlined in the Senate bill.

Mass incarceration

In the last few years, the Committee has attempted to tackle the problem of mass incarceration in the United States. This marks a departure from the past four decades, where incarceration rates and sentence lengths have been driven more by political considerations—appearing "tough on crime"—than careful considerations of the nature of the offense and the offender and proportionate sentence lengths no longer than necessary. As a result, the United States has the largest reported incarceration rate in the world and the highest per capita rate of imprisonment.[15] The most recent data available indicates 2.4 million individuals are being held in confinement in the United States.[16] Drug offenders represent 50.6 percent of federal prisoners and an estimated 21.3 percent of all prisoners in the United States. Many are serving sentences that are grossly disproportionate to their culpability and the severity of the offense.[17]

In January, the Committee approved the Smarter Sentencing Act, which, according to the Urban Institute, would have "dramatically" reduced overcrowding in federal Bureau of Prison facilities.[18] If the bill were to become law, in 10 years federal prisons would be only 20 percent over capacity, instead of 50 percent overcrowding under the status quo— over those 10 years the bill would reduce federal incarceration by over 240,000 bed-years and save $2.5 billion. More importantly, the bill would begin to address some of the unjust, disproportionate sentencing practices that have been a significant factor in the US over-incarceration problem.

Much like Senate Bill 744, the Smarter Sentencing Act was not a perfect bill. It failed to fully address draconian sentencing enhancements used by prosecutors to coerce guilty pleas in drug cases.[19] The safety valve expansion, which would have allowed judges to bypass some mandatory minimum sentencing requirements, was minimal compared to other bills considered by the

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[14] "US: Immigrant Plan Laudable but Incomplete," Human Rights Watch news release, November 21, 2014, http://www.hrw.org/news/2014/11/21/us-immigration-plan-laudable-incomplete.
[15] *Nation Behind Bars,* p.5.
[16] "Mass Incarceration: The Whole Pie," Prison Policy Initiative, March 12, 2014, http://www.prisonpolicy.org/reports/pie.html (accessed December 4, 2014).
[17] *Nation Behind Bars,* p. 9.
[18] Urban Institute, "Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System," November 2013, http://www.urban.org/uploadedpdf/412932-stemming-the-tide.pdf (accessed December 4, 2014).
[19] Human Rights Watch, *An Offer You Can't Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty,* December 2013, http://www.hrw.org/reports/2013/12/05/offer-you-can-t-refuse.

Committee.[20] The bill itself was amended in committee to include even more mandatory minimums for certain crimes. Yet again, like Senate Bill 744, the bill was a major improvement over the current status quo. Again, the bill also passed out of the Committee with a strong bipartisan 13 to 5 vote, and the bill ultimately stalled, never getting a vote by the full Senate.

The Committee should continue to work to address mass incarceration and excessive punishment in the upcoming Congress. Legislation it considers to reform the federal prison system should, like the Smarter Sentencing Act, prioritize eliminating disproportionate sentences and thus reducing incarceration rates, particularly for non-violent and drug-related crimes. When it comes to mass incarceration, the United States should aim to not be a global leader.

Solitary confinement

Human Rights Watch has been reporting on the harms caused by prolonged isolation of prisoners for over a decade. As we noted to this Committee in 2012:

> For many, the absence of normal social interaction, of reasonable mental stimulus, of exposure to the natural world, of almost everything that makes life human and bearable, is emotionally, physically, and psychologically destructive. People suffer grievously in prolonged solitary confinement because human beings are social animals whose well-being requires interaction and connection with others as well as mental, physical, and environmental stimulation.[21]

Prolonged isolation can be especially damaging to children, as we documented in 2012.[22]

This Committee played a crucial role in highlighting the overuse of solitary confinement in US jails and prisons by holding two separate hearings on the practice. Those hearings helped to raise public awareness about prolonged isolation and resulted in the federal Bureau of Prisons agreeing to an independent review of its practices (those findings are still pending).

Unfortunately, no bill to restrict the use of solitary confinement in the federal prison system was taken up by the Committee. The Committee should therefore, in the next Congress, build on the momentum of these solitary confinement hearings by developing and approving legislation that bans prolonged or indefinite isolation, as well as bans the isolation of youth or of persons with mental disabilities.

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[20] Justice Safety Valve Act of 2013, Senate Bill 619, https://www.congress.gov/bill/113th-congress/senate-bill/619 (accessed December 4, 2014).
[21] "US: Look Critically at Widespread Use of Solitary Confinement," Human Rights Watch news release, June 18, 2012, http://www.hrw.org/news/2012/06/18/us-look-critically-widespread-use-solitary-confinement.
[22] Human Rights Watch, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, October 2012, http://www.hrw.org/reports/2012/10/10/growing-locked-down.

Mass surveillance

The Senate Judiciary Committee has attempted to rein in the use of electronic surveillance and intelligence gathering practices that violate the right to privacy of people in the United States. Beyond the harm to privacy rights, Human Rights Watch has documented how current mass surveillance programs also threaten basic freedoms essential to a democratic society and public accountability, including freedom of expression and the right to counsel.[23] In July we reported on how US government surveillance programs are impeding the work of journalists, who increasingly find that sources are unwilling to speak with them, even about unclassified matters of public concern, out of fear that their communications could be monitored. Ultimately, this means that less information about matters of public interest reaches the public, and it is harder for the public to hold the US government to account. Large-scale surveillance is also interfering with the ability of attorneys to represent their clients, creating a concern about their ability to meet their professional responsibilities to maintain confidentiality of client information. Fear of surveillance makes it harder for attorneys to build trust with their clients or protect legal strategies.

The most recent version of the USA FREEDOM Act, as introduced by Chairman Patrick Leahy, which failed to pass the Senate in November, would have reformed government surveillance programs in part by prohibiting "bulk" and limiting large-scale data collection under Section 215 of the USA PATRIOT Act and other authorities.[24] Passing the USA FREEDOM Act would have been an incremental step in the fight to protect the right to privacy enshrined in article 17 of the International Covenant on Civil and Political Rights. The bill as it was considered by the full Senate did not deal with other problematic surveillance programs, like those under Section 702 of the FISA Amendments Act or Executive Order 12333. The bill further did not acknowledge or address a duty to respect the right to privacy of individuals outside the United States. But it was an important, incremental step, and Congress should have adopted it. This Committee, in the upcoming Congress, should move to take up legislation that challenges the vast surveillance practices undertaken by the US government.

Unfinished business

Finally, while this statement has primarily focused on the ways the Senate Judiciary Committee should build on efforts to protect human rights in the upcoming Congress, there are key human rights concerns still to be resolved in the waning days of the current Congress. With police accountability at the forefront of concern after the deaths of Michael Brown and Eric Garner, among others, the Senate should immediately pass the Death in Custody Reporting Act.[25] If passed, the Act would require law enforcement agencies to track and report on the death of any

[23] Human Rights Watch, *With Liberty to Monitor All: How Large-Scale US Surveillance is Harming Journalism, Law, and American Democracy*, July 2014, http://www.hrw.org/reports/2014/07/28/liberty-monitor-all-0.
[24] Letter from Human Rights Watch to the US Senate in support of the USA FREEDOM Act, November 14, 2014, http://www.hrw.org/news/2014/11/14/letter-us-senate-support-usa-freedom-act-s-2685.
[25] Death in Custody Reporting Act of 2013, House Resolution 1447, https://www.congress.gov/bill/113th-congress/house-bill/1447, (accessed December 4, 2014).

person in the process of being arrested, arrested, or being transferred or placed in a jail or prison. This data would fill a crucial gap in the US understanding of very basic information about police behavior, and would better inform the national debate around improving law enforcement behavior and ensuring police accountability in cases of misconduct.

This Committee should also recommit itself to defending the Prison Rape Elimination Act (PREA). The Committee recently attached to the laudable Second Chance Reauthorization Act a provision that would have weakened the penalty provisions of the Act.[26] Close to 200,000 people in confinement experienced some form of sexual victimization in US confinement facilities in 2013.[27] This is no time to restrict the ability of the federal government to penalize non-compliance with PREA. The Committee should oppose any changes to PREA and reexamine in the next Congress not only how to defend the Act, but how to make it stronger.

The responsibility of the Senate Judiciary Committee and its Subcommittee on the Constitution, Civil Rights and Human Rights to improve the domestic US human rights record is a serious and considerable one. In many ways, the story of how this Committee has worked to promote and protect human rights is a story of unfinished business. Difficult work remains. We urge the Senators returning to the Committee in January to take up the mantle of human rights and to take measurable steps to defend and protect human rights at home.

[26] "Senate Committee Authorization Could Impact PREA Penalties," *Correctional News*, September 24, 2014, http://www.correctionalnews.com/articles/2014/09/24/senate-committee-authorization-could-impact-prea-penalties (accessed December 4, 2014).
[27] Human Rights Watch submission to the UN Committee Against Torture, 2014.

The State of Civil and Human Rights in the United States:
Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
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Women in Detention: The Need for a National Agenda

Statement for the Record, submitted on December 8, 2014,
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Focusing on Women in Detention

We thank the Committee for convening this hearing, *The State of Civil and Human Rights*, to address "key civil and human rights issues related to criminal justice reform, voting rights, and police-community relations." We appreciate the opportunity to submit this statement, which seeks to bring attention to the challenges that women—and the families and communities of which they are a part—face in the criminal justice system. Congress can provide important leadership by exploring how the intersection of gender, race, ethnicity, and age affects those in prison systems and by putting the issue of incarcerated women onto the bipartisan national agenda committed to lowering incarceration rates and to offering individuals "second chances" to build productive lives.

Reflective of Arthur Liman's commitment to a just, limited, and humane criminal justice system, the Arthur Liman Public Interest Program at Yale Law School attempts to understand the uses and implications of incarceration in the United States. During the past few years, we have focused on the challenges that distance from home impose on prisoners and their families, which we have termed "isolation by place." In addition, we have done research on the problems flowing from the segregation of individuals while they are incarcerated, or "isolation by rule."[1]

More than thirty years ago, the House of Representatives Subcommittee on Courts, Civil Liberties, and the Administration of Justice convened a hearing, described then as the first time "that Congress has focused on the problems and needs of women offenders, and particularly those in the Federal Prison System."[2] The Chair of the Subcommittee expressed concern about "charges that women are getting short-changed when it comes to facilities, rehabilitation, health services, and job training."[3] The concern voiced in 1979 remains relevant today; decisions about where and how to incarcerate women raise a myriad of civil and human rights issues.

The specific problems faced by women in the federal prison system came into vivid relief when in July of 2013, the Federal Bureau of Prisons (BOP) announced its plan to convert the Federal Correctional Institution (FCI) Danbury, which was the only FCI in the Northeast for women, into a prison for men. The goal was to provide more space for male prisoners who, like

women, are often confined in overcrowded facilities.[4] Under the BOP proposal, many of the women from the Northeast were to be sent to a new federal prison located in Aliceville, Alabama, more than 1,000 miles away.

Because we are based in New Haven, Connecticut, the Yale Law School has had a long relationship—begun in the early 1970s—with FCI Danbury. Therefore, we joined with a host of others in raising objections to the proposal. The concern was that, other than about 150- 200 women eligible for assignment to the prison camp at Danbury, no other women sentenced in the federal system from the Northeast would have the possibility of being proximate to their families and communities. In the fall of 2013, Senators Blumenthal, Casey, Gillibrand, King, Leahy, Markey, Murphy, Sanders, Schumer, Shaheen, and Warren raised questions, as did twelve chief judges of federal district courts in the region,[5] and many others. In November of 2013, the BOP announced that Danbury's main facility was still to be converted to a male facility but that the BOP would build an additional facility on the Danbury site with 400 beds for women classified as low security.[6]

In the interim, BOP has relocated the Danbury women, primarily to jails in Brooklyn, New York, and Philadelphia, Pennsylvania. As of this writing, the schedule for creating space for women at Danbury remains unclear and dozens of post-trial women are in the federal pretrial facilities in Brooklyn and Philadelphia.[7] Because they are not designed to house post-conviction prisoners, these jails have limited programming and do not provide the Residential Drug Treatment Program (RDAP), which helps prisoners deal with drug addiction and provides opportunities to shorten their time in prison.[8]

In short, recent experiences in the federal prison system have made plain the need to bring into focus the challenges facing women in prison. Below, we provide a brief demographic overview of women in prison and then turn to specific concerns about classification, placement, visiting, health, safety, and work. As we detail, some states are forging new programs, aiming to be responsive to the distinctive paths that women and men take to prison and seeking to offer targeted training programs and opportunities reflective of those differences. It is our hope that in the coming year, Congress continues to explore the problems facing all prisoners, and that it convenes hearings focused specifically on women in detention.

Women in the Criminal Justice System

According to data from the Bureau of Justice Statistics, as of the fall of 2014, 1,574,000 individuals were incarcerated in the United States in federal and state prisons; more were held in jails. Of the number in prison, 104,134, or 6.6 percent, were women.[9] Moreover, the number of women incarcerated is rising at a rate higher than that of men.[10]

In 2011, the Women Offenders Security Classification Subcommittee of the Criminal Justice Section of the American Bar Association's Corrections Committee issued a report, *Revising Security Classification Instruments and Needs Assessments for Women Offenders*. It explained:

> "Women offenders . . . differ significantly from their male counterparts in a number of ways. First, female prisoners are less violent than male prisoners before, during, and after their incarceration. Women are incarcerated primarily for committing non-

> violent crimes, such as, according to one study, drug offenses (29%) and property offenses (31%). In contrast, 58% of incarcerated men in the same study were in prison because they committed a violent offense. In addition, men continue to be more violent than women once they are in prison: they commit twice as many violent acts of misconduct than women, and their misconduct tends to be more serious. . . .
>
> Second, most women in prison are mothers. Over 70% of women under correctional supervision are mothers of at least one child under the age of 18. As of 2004, women in state prison were more likely (62%) to have children than men (51%). . . . Nearly 80% of women living with a minor child just prior to their incarceration were primarily responsible for caring for their child, as compared to 26% of male prisoners. Female inmates are also more likely to be located farther away from home than male prisoners.
>
> Third, women under correctional system supervision are more likely than male offenders to have experienced physical or sexual abuse prior to being incarcerated. . . .
>
> Finally, female inmates also have different mental health needs than male inmates. Women generally suffer from higher levels of depression, anxiety, and self-injurious behavior, and female offenders are more likely to suffer from mental illness. . . ."[11]

Distance, Visiting, and Families

Women in the federal prison system exemplify many of the problems that the Women Offenders Security Classification Subcommittee identified. As of the fall of 2014, the number of women in the federal prison system was 14,344, or about 6.7 percent.[12] Those women are often incarcerated at great distances from their homes and families, have limited opportunities for targeted programming, face specific issues of safety and health, and may not have the range of work opportunities available to men.

The BOP states that it aims to put inmates within "reasonable" proximity to the areas of their "anticipated release,"[13] and it has defined "reasonable" by noting that "[o]rdinarily, placement within 500 miles of the release area is to be considered reasonable, regardless of whether there may be an institution closer to the inmate's release area."[14]

To use five hundred miles as a goal is to put enormous burdens on anyone—family members, lawyers, clergy, or friends—who hopes to visit. Such distances also undermine the ability to plan for jobs or health services for reentry. For example, when we explored the impact of closing off FCI Danbury to women, we learned from the U.S. Sentencing Commission that about ten percent of all the women sentenced in the federal system between October 2011 and September 2012 were sentenced in a federal district court in the Northeast.[15] Further, after concerns were raised about transferring women to remote facilities in the South, the BOP informed Senators that thirty percent of the then-815 Danbury women with identifiable U.S. home addresses were residents of the BOP's Northeast region.[16] While that number was employed to ease concerns about the movement of women away from Danbury, it also raises

concerns from another perspective: seventy percent of Danbury inmates with known home addresses were incarcerated in the Northeast despite the fact that the facility was far from their homes and families. Indeed, about nine percent of the women were from Texas, and more than five percent from California.

Those figures correspond with available research on gender disparities and distance. In the 1990s, the Ninth Circuit Gender Bias Task Force found that women in the federal prison system were incarcerated an average of 160 miles farther from their families than their male counterparts.[17] More recently, in a study of a maximum-security state prison, Karen Casey-Acevedo and Tim Bakken found that the majority (61 percent) of mothers had not received any visits from their children, and that "perhaps the most significant determinant of whether an inmate receives visits is the distance between her home county and the prison to which she is committed."[18]

Recognizing the beneficial effects that opportunities to visit can have on prisoners and their families, in 2013, the Department of Justice (DOJ) launched what it terms an "aggressive campaign" to mitigate the harms that incarceration of parents imposes on children.[19] As the DOJ website explained: "We owe these children the opportunity to remain connected to their mothers and fathers."[20] On June 19, 2013, BOP Director Charles Samuels sent a memo to every inmate incarcerated in the federal system in which he encouraged inmates to maintain parental ties. He explained that "there is no substitute for seeing your children, looking them in the eye, and letting them know you care about them."[21]

Questions abound about the implementation of these commitments. In addition to putting prisoners at great distances from their families, limited visiting hours make it hard for those who can travel to visit.[22] Many facilities have visiting on only a few days a week and for certain hours. The short windows of time limit the opportunities for families to stay connected.

Other options exist. Prison policies can promote or discourage visiting, as the chart below, gathered from a review of the policies of most of the states and the federal system,[23] makes plain.

Promoting and Discouraging Prison Visits: Policy Examples from the States

ALLOWS VISITING	PROMOTES VISITING
- No limit on number of visitors on an inmate's list (e.g., California) - No limit on visiting days (e.g., New York maximum security) - Overnight family visits (e.g., Mississippi) - Virtual visits supplementing, but not replacing, in-person visits (e.g., Oregon) - Locate prisons near urban populations (e.g., Rhode Island) - Provide subsidized public transit to remote prisons (e.g., New York)	- Policies accessible online (e.g., South Dakota) - Plain language visitor handbook (e.g., Connecticut) - Local rules accessible online and clearly posted at each facility - Promote/encourage visitation in policy (e.g., Colorado) - Provide toys in visit room (e.g., Florida) - Provides grievance procedures when visits are terminated/prohibited (e.g., Maine)

- Provide "special" visits for out of state / long distance visitors (e.g., Alaska) - Allow young children to visit without ID (e.g., Arkansas) - Allow inmate-inmate visits (e.g., New Jersey) - Allow visits from former felons (e.g., Hawaii) - Define "immediate family" broadly (e.g., Kentucky)	- Less restrictive dress codes (e.g., New Mexico) - Less invasive search procedures (e.g., New York) - Allow diaper bags for infants (e.g., North Dakota) - Provide children's play areas in visiting rooms (e.g., Missouri) - Allow breastfeeding during visits (e.g., Wisconsin)
DISCOURAGES VISITING	**PROHIBITS VISITING**
- Prohibit toys in visiting room (e.g., New Hampshire) - Restrictive dress codes (e.g., Utah) - Invasive search procedures (e.g., Texas) - Terminate visits if children misbehave or make noise (e.g., Rhode Island) - Require multiple forms of ID (e.g., West Virginia) - Prohibit visitors from being on more than one inmate's list (e.g., Alabama) - Limit frequency of changes to inmates' visitor lists (e.g., Mississippi) - Waiting period for inmates removed from one inmate list and added to another (e.g., Arkansas) - Require visitors to reapply every year (e.g., Utah)	- Limit number of visitors on an inmate's list (e.g., South Dakota) - Limit visiting days/hours (e.g., Virginia) - Send inmates to prisons far from families/out of state (e.g., federal BOP) - Prohibit visits from friends of the opposite gender for married inmates (e.g., Oklahoma) - Require proof of legal status for noncitizens (e.g., Washington) (recently repealed) - Deny contact visits as punishment (e.g., Michigan) - Visits by appointment only (e.g., Delaware) - Prohibit visits from persons with a recent drug arrest (e.g., Idaho) - Prohibit visits from former felons (e.g., Michigan) - Prohibit visits from people not known to inmate prior to incarceration (e.g., federal BOP) - Limited visiting with minors (e.g., Indiana)

Classification and Gender-Responsive Programming

The question of placement interacts with decisions on classification, which are typically predicated on a mix of an assessment of security needs (or risk) and on how the facility might provide treatment, often described as "programming." In its 2011 report, the Women Offenders Security Classification Subcommittee found that "[m]ost prison systems classify women using the same custody classification assessments that they use for their male prisoners."[24] Yet women present a lower risk of violence while incarcerated; as a result, when relying on criteria developed with men as the baseline, systems "frequently over-classify women by placing them in more severe custody situations than their actual security risk warrants."[25]

Related to classification is the question of the kinds of programs, activities, and services provided in prisons. The term "gender-responsive programming" denotes the view that prisons ought to tailor programs for men and women to reflect that women and men are convicted of

different crimes and that, in light of gendered roles, women and men often have different household responsibilities, education, and work histories.[26] Race, ethnicity, and age also intersect with gender and affect opportunities in and out of prisons.

A few state prison systems have sought to respond. For example, Washington has promulgated policies to "align and prioritize . . . resources to provide evidence based, gender responsive interventions."[27] The interventions include programming that is "trauma informed, strength based, and [that] emphasize[s] building self-efficacy;" providing "services to address gender specific medical and mental health issues;" and training employees in "[g]ender responsive communication skills, including strategies to avoid re-traumatizing those seeking assistance."[28] Moreover, not all such efforts are based in prisons. In Oklahoma, a program initiated in 2009, "Women in Recovery," offers an alternative outpatient program, in lieu of prison, for women facing long sentences related to drug and alcohol addiction.[29] The program provides substance abuse and mental health treatment, as well as education, job training, and family services, and women with young children receive the highest priority for admission.[30]

Safety, Health, and Sexual Assault

Congress has been instrumental in bringing the problem of sexual violence in prison to the fore, with its enactment of the Prison Rape Elimination Act (PREA), creating national standards for safety.[31] Auditing of facilities must take place, to ensure compliance. Given the passage of a decade, Congress should learn how jurisdictions allocate resources to audit and whether attention is paid equally to facilities for men and women. For example, in a May 2013 report, the Bureau of Justice Statistics concluded that women in state and federal prisons suffer higher rates of inmate-on-inmate sexual violence (6.9 percent) than their male counterparts (1.7 percent).[32] In addition, inquiries should be made into policy changes prompted by PREA. Here the example is PREA standard 115.15(b),[33] which requires that as of August 20, 2015, staff in facilities with more than fifty inmates may no longer perform cross-gender pat down searches of female inmates, absent exigent circumstances. The task is to ensure that, as the standard requires, compliance does not result in a curtailing of inmates' access to programming, visiting, and other activities.[34]

Safety is not limited to safety from sexual assault. Working and living conditions are often of concern, as is access to medical care. Because there are so many more men than women in prison, providing access to professionals trained in women's health needs is an ongoing challenge for administrators of correctional systems.

Education, Work, UNICOR, and Reentry

Yet another question is how to ensure that both women and men have the full range of opportunities to learn skills and be compensated for work. Once again, the federal prison system offers an example of the kinds of questions that need to be asked. UNICOR is the trade name of Federal Prison Industries, Inc. (FPI), a wholly owned federal government corporation that provides work opportunities to inmates in the federal prison system.[35] UNICOR is a source of some of the best-paid work in that system. Nationwide, 10 of FPI's factories, or 11.49 percent, are located in women's facilities; the remaining 77 of FPI's factories (88.51 percent) are located in men's facilities.[36] Do women and men have equal opportunities to participate in UNICOR's more lucrative industries and gain access to employment upon release? Sixty percent of the FPI

employment opportunities available to women prisoners appeared, from the data received thus far, to fall under the Services business group; in comparison, 12.99 percent of FPI "factories" in men's prisons are service-related.[37] The concern about how work is allocated comes in part from research on the hiring of those released from prison. One study about hiring of those who have been in prison concluded that "the firms most likely to hire ex-offenders were those in the manufacturing, construction, and transportation sectors, that is, firms that likely have fewer jobs requiring customer contact . . . . Service industries, in contrast, were by far the least willing."[38]

From the "Forgotten Offender" to a Focus on Women in Detention

We conclude by underscoring the critical roles that Congress has played in bringing to the fore the problems of sexual misconduct in prison, the need to reduce the prison populations, the overuse of administrative segregation and isolation in prisons, and the civil and human rights of prisoners. Given those commitments, Congress can also be instrumental in bringing attention to the issues facing incarcerated women of all colors, ethnicities, and ages. To do so would have a substantial impact on prisoners, their families, and the communities to which prisoners will return.

Thank you for the opportunity to submit this statement.

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[3] *Id.*

[4] John Pirro, *FCI Danbury Converting Back to Men's Prison*, NEWS TIMES (July 3, 2013), *available at* http://www.newstimes.com/news/article/FCI-Danbury- converting-back-to-men-sprison-4645323.php.

[5] Letter to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons from Christopher Murphy, U.S. Senator Connecticut; Kristen E. Gillibrand, U.S. Senator New York; Richard Blumenthal, U.S. Senator, Connecticut; Patrick Leahy, U.S. Senator, Vermont; Charles E. Schumer, U.S. Senator, New York; Jeanne Shaheen, U.S. Senator, New Hampshire; Robert P. Casey, Jr., U.S. Senator, Pennsylvania; Bernard Sanders, U.S. Senator, Vermont; Angus S. King,

Jr., U.S. Senator, Maine; Elizabeth Warren, U.S. Senator, Massachusetts; and Edward Markey, U.S. Senator, Massachusetts (Aug. 2, 2013).

[6] Press Release, Senator Chris Murphy, *Senators Announce Changes to FCI Danbury Transfer* (Nov. 4, 2013).

[7] ANNA ARONS, KATHERINE CULVER, EMMA KAUFMAN, HOPE METCALF, MEGAN QUATTLEBAUM, JUDITH RESNIK, & JENNIFER YUN, ARTHUR LIMAN PUBLIC INTEREST PROGRAM, YALE LAW SCHOOL, DISLOCATION AND RELOCATION: WOMEN IN THE FEDERAL PRISON SYSTEM AND REPURPOSING FCI DANBURY FOR MEN (Sept. 2014), *available at* http://www.law.yale.edu/images/liman/Liman_DanburyPrisonReport_9.3.14.pdf. *See also* Press Release, Senator Richard Blumenthal, *New Report Exposes Extensive Delays in Danbury Women's Prison Renovations; Blumenthal, Murphy to Call on Bureau of Prisons to Expedite Transition and Mitigate Harm* (Sept. 2, 2014).

[8] RDAP is a 500-hour, nine-to twelve-month intensive drug treatment program; if inmates successfully complete the program, they become eligible for a sentence reduction of up to twelve months. *See* 18 U.S.C. § 3621(e)(2)(B) (2010). In addition to a sentence reduction, an inmate may also receive other benefits for successfully completing RDAP, including financial awards, consideration for the maximum period of time in a community-based treatment program, preferred living quarters, and special recognition. BOP PROGRAM STATEMENT 5330.11, Psychology Treatment Programs, at 19-21 (Mar. 16, 2009). Further, those who decline to participate when eligible may become ineligible for furlough or a Federal Prison Industries work assignment, and their choice may also be taken into consideration when deciding how much time they will be able to spend in community confinement. *Id.* at 21-22. The BOP is required by statute to provide RDAP, subject to funding. *See* 18 U.S.C. § 3621(e)(1).

[9] E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013, at 1, 5 (Sept. 2014).

[10] Todd D. Minton and Daniella Golinelli, *Jail Inmates at Midyear 2013 – Statistical Tables* (Aug. 12, 2014), *available at* http://www.bjs.gov/content/pub/pdf/jim13st.pdf.

[11] *See* WOMEN OFFENDERS SECURITY CLASSIFICATION SUBCOMMITTEE, CORRECTIONS COMMITTEE, AMERICAN BAR ASSOCIATION, REVISING SECURITY CLASSIFICATION INSTRUMENTS AND NEEDS ASSESSMENTS FOR WOMEN OFFENDERS 4-5 (Mar. 23, 2011), *available at* http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/2011a_resolution_105c.authcheckdam.pdf [hereinafter 2011 Women Offenders Subcommittee].

[12] FEDERAL BUREAU OF PRISONS, INMATE GENDER, *available at* http://www.bop.gov/about/statistics/statistics_inmate_gender.jsp (last visited Dec. 7, 2014).

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[15] See U.S. SENTENCING COMMISSION, 2012 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, *available at* http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks /2012/sbtoc12.htm (last visited Nov. 10, 2013).

[16] *See, e.g.,* Letter from Charles E. Samuels, Jr., Director, Federal Bureau of Prisons, to Hon. Christopher Murphy, U.S. Senator, at 6 (Sept. 27, 2013). The BOP defines the "Northeast Region" to include ten states: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont.

[17] The Honorable Jack C. Coughenour, *Separate and Unequal: Women in the Federal Criminal Justice System*, 8 FED. SENTENCING REP. 142 (1995); *see also* John C. Coughenour, Proctor Hug, Jr., Marilyn H. Patel, Terry W. Bird, Deborah R. Hensler, M. Margaret McKeown, Judith Resnik & Henry Shields, Jr., *The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 745 (1994).

[18] Karen Casey-Acevedo & Tim Bakken, *The Effects of Visitation on Women in Prison*, 25 INT'L J. COMP. & APPL. CRIM. JUST. 49 (2001).

[19] U.S. Dep't of Justice, *Giving a Boost to Kids of Incarcerated Parents*, THE JUSTICE BLOG (JUNE 12, 2013), *available at* http://blogs.justice.gov/main/archives/2950 (last visited Nov. 5, 2013).

[20] *Id.*

[21] Memorandum from Charles E. Samuels, Jr., Director, Federal Bureau of Prisons to All Bureau Inmates (June 19, 2013), *available at* http://www.bop.gov/news/press/press_releases/Parenting_ Message_ English.pdf (last visited Sept. 21, 2013).

[22] Johnna Christian, *Riding the Bus: Barriers to Prison Visitation and Family Management Strategies*, 21 J. CONTEMP. CRIM. JUST. 31 (2005).

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[24] *See* Women Offenders Subcommittee, *supra* note 11, at 2.

[25] *Id.*

[26] *See, e.g.*, BARBARA BLOOM, BARBARA OWEN, STEPHANIE COVINGTON, & MYRNA RAEDER, NATIONAL INSTITUTE OF CORRECTIONS, U.S. DEP'T OF JUSTICE, GENDER-RESPONSIVE STRATEGIES: RESEARCH, PRACTICE, AND GUIDING PRINCIPLES FOR WOMEN OFFENDERS vi (2003).

[27] WASHINGTON DEPARTMENT OF CORRECTIONS, POLICY NO. 590.370, GENDER RESPONSIVENESS 2 (May 19, 2014).

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[36] *See* National Institute of Corrections, *List of FPI Sites* (email from NIC Representative to Megan Quattlebaum) (May 14, 2014 05:57 PM) (on file with author).

[37] Jaclyn Harris, Women, Prisons, and Labor: An Examination of the Work Opportunities Provided to Women Prisoners through UNICOR (2014) (draft manuscript, Arthur Liman Public Interest Program) (on file with authors).

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Subcommittee on The Constitution, Civil Rights, and Human Rights

Hon. Richard Durbin, Chair

Hon. Ted Cruz, Ranking Member

"The State of Civil and Human Rights in the United States"

December 8, 2014

Dēmos is a national, non-partisan, non-profit public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy.

Dēmos' lawyers and researchers have extensive legal and policy expertise on the subjects of civil rights, voting rights, and money in politics. In our forthcoming report, *Stacked Deck: How the Racial Bias in our Big Money Political System Undermines Our Democracy and Our Economy*, we examine the distorting influence of money in politics and how it undermines our nation's decades-long struggle for racial equity. Drawing from this research, we conclude that our big money political system is a civil rights issue because it privileges the views of a wealthy donor class that is largely white; contributes to a disturbing lack of representation for communities of color in Congress and other legislative bodies; and leads to destructive policies that disproportionately affect people of color.

Despite a current Supreme Court majority hostile to common-sense rules limiting the use of big money in politics, a better world is possible. Matching small political contributions with public funds, transforming the Supreme Court's approach to money in politics or amending the Constitution to permit more robust equality-focused campaign finance reforms, and community-based organizing efforts to combat the influence of private money in politics can enhance the ability of ordinary citizens—from every race and class—to enjoy the ultimate promise of citizenship: a meaningful say over the policies that shape our lives.

I. THE RACIAL BIAS OF MONEY IN POLITICS

A. Description of the Problem

A significant majority of campaign money at the federal and state levels comes from less than 1 percent of the population who make large contributions of $1,000 or more ("the donor class").[i] The small cohort of wealthy donors is overwhelmingly white. For example, more than 90 percent of federal contributions in the 2012 election cycle that were $200 or more came from neighborhoods that were mostly white.[ii] In contrast, research shows that there is significant racial diversity among small donors.[iii]

This is important for policy because the donor class tends to hold policy preferences that diverge from those of people of color, whose views are more similar to the general public.[iv] For example, when asked whether it's more important to create jobs or hold down the deficit, people of color agree with lower-income Americans that creating jobs is the clear priority, whereas the wealthy have the opposite view.[v]

When elections are primarily funded by wealthy, white donors, candidates as a whole are less likely to prioritize the needs of people of color.[vi] Candidates of color also are less likely to run for elected office, raise less money when they do, and are less likely to win. For example, candidates of color raised 47 percent less money than white

candidates in 2006 state legislative races.[vii] Additionally, 90 percent of our elected officials are white, despite the fact that people of color are 37 percent of the U.S. population.[viii]

Ultimately, the dominance of big money in our politics ultimately diminishes the ability of people of color to influence policy and effectively advocate for their interests through the give-and-take of the political process—central components of democracy and the power that gives meaning to the right to vote.

Moreover, this interest is linked to larger voting rights issues because, to build a fair and inclusive democracy, we need to reduce the role of money and increase the influence of people. As we see with the Roberts Court's decisions in *Citizens United*, *McCutcheon*, and *Shelby County*, the fundamental concept of "one person, one vote" and statutory protections against voter discrimination are under attack. The people whose votes are most easily suppressed are the most socially and economically marginalized voters.[ix] Increasing the barriers to the franchise reduces their turnout disproportionately. Voter restriction measures thereby translate the economic gap between rich and poor into a political gap between donors and voters; they allow wealthy people to control the political system the way they currently control the economy. The rapid increase of voter ID legislation introduced and passed at the state level is one such manifestation.[x] The American Legislative Exchange Council (ALEC), which receives much of its funding from wealthy business interests, played a significant role in drafting template voter ID bill language that was used in a number of states, before the group disbanded its Voter ID Task Force in 2012.[xi]

As illustrated in the case study summaries in Section III, our big money political system harms people of color in two distinct ways. First, where wealthy donor and corporate interests diverge significantly from those of working families on economic policies such as the minimum wage, people of color are disproportionately affected because a larger percentage are poor or working class. Second, and more profoundly, our nation's legacy of racism and persistently racialized politics depresses the political power of people of color, creating opportunities for targeted exploitation as seen in the subprime lending crisis and the mass incarceration boom, and our big money political system makes it prohibitively difficult for communities of color to effectively use the political process to protect their interests.

II. POSSIBLE SOLUTIONS

The pathway to a fairer country is through a stronger democracy. A key to promoting economic mobility and racial justice for people of color is to give these communities more say over the decisions that affect their daily lives.

To accomplish this we need to both curb the influence of the wealthy, white "donor class" and amplify the voices of all Americans, including people of color, so that elected officials will listen to and work for all of their constituents, not just a privileged few. This requires reclaiming our Constitution from a runaway Supreme Court, for which

a system that matches small political contributions with public funds will enhance this effort.

A. Restoring Our Constitution

In cases such as *Buckley v. Valeo*, *Citizens United v. FEC*, and *McCutcheon v. FEC*, the Supreme Court has stepped in to dismantle democratically-enacted policies intended to prevent wealthy interests from translating economic might directly into political power.

We can transform the Supreme Court's approach to money in politics such that the Court overturns its own bad decisions—just as the justices have reversed course on New Deal economic protections, racial segregation, LGBT rights, and more. We can accomplish this by developing and promoting robust interpretive frameworks that go beyond fighting corruption as compelling values that our Constitution protects; mobilizing allies across the political spectrum and within the legal community to support these ideas; ensuring that newly appointed justices share the public's common-sense understanding of the role that money should play in our electoral system; passing cutting-edge laws at the state and local levels; and fighting back in the courts to establish an enduring interpretation of the Constitution that empowers the people to pass sensible limits on the use of big money. Alternatively, we can amend the Constitution to clarify that the people have the power to rein in the influence of big money.

B. Matching Small Contributions with Public Funds

The best way to encourage candidates to listen to constituents and help people of color have their voices heard in the political process is to match small contributions with public funds. For example, studies of New York City's matching system and similar grant-based systems in Arizona and Connecticut have shown that such programs can significantly increase the diversity of the donor base and help more candidates of color run for office and win elections.[xii]

Further, matching small contributions by a six-to-one or more ratio, as well as providing a voucher or tax credit to small donors, can encourage millions of Americans to participate through $25 or $50 contributions that actually matter, providing the incentive for candidates to reach out to—and listen to—average voters, not just big donors.[xiii]

The Fair Elections Now Act (S.2023), sponsored by Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights Chair Senator Dick Durbin, and the Government By the People Act (H.R.20) are leading proposals to bring a small donor matching system to the federal level.[xiv] These bills have been endorsed by the NAACP and deserve their fair consideration.[xv]

III. CASE STUDIES FROM OUR FORTHCOMING REPORT

The following brief case study summaries illustrate how our big money political system has had a tremendous and disproportionate affect on people of color in the United States. The final two studies tell the story of how fairer election systems and good organizing in communities of color can lead to real progress. See our forthcoming report, *Stacked Deck: How the Racial Bias in our Big Money Political System Undermines Our Democracy and Our Economy*, for the full detailed stories.

- *Private Prisons and Incarceration.* Incarceration in the U.S. has increased by 500 percent over the past three decades, with people of color vastly overrepresented in our nation's prisons and jails.[xvi] This is the result of policies that have boosted the bottom line of the growing private prison industry by putting more people in jail for longer sentences despite dropping crime rates. Even more directly illustrating the problematic link between money in politics and the diminishment of basic civil liberties, simply the threat of increased spending in a judicial election by corporations and unions is correlated with a 7 percent decline in how frequently judges vote in favor of criminal defendants.[xvii] Moreover, as more people go through the prison system, they face collateral consequences—such as voting disenfranchisement, reduced employment prospects, and lack of access to fair housing—that both are important civil benefits and factors related to recidivism.[xviii]

- *The Subprime Lending Crisis.* Because of rampant discriminatory lending practices, the subprime-lending crisis hit people of color especially hard. Banks and other mortgage lenders used millions of dollars of political contributions and lobbying to weaken and circumvent consumer-friendly regulations, resulting in the largest loss of wealth in communities of color in American history.[xix]

- *The Minimum Wage.* The federal minimum wage has remained stagnant, losing real value over the past several decades. Raising the wage to $10.10 an hour would lift more than 3.5 million workers of color out of poverty, but Congress has instead prioritized policies favored by the wealthy.[xx]

- *Paid Sick Leave.* The U.S. is one of the only prosperous democracies that does not guarantee even minimal paid sick leave to all employees, which would improve public health and disproportionately benefit Latino workers.[xxi] A paid sick leave proposal was bottled up in the Connecticut legislature until the state passed a "fair elections" system that enabled candidates to run for office without depending upon wealthy donors and special interests. Following this change, Connecticut became the first state in the nation to guarantee paid sick leave.[xxii]

- *Voting Rights in Minnesota.* TakeAction Minnesota recently demonstrated how organizing in communities of color can help defeat restrictions on the freedom to vote. Now, as they turn to expanding the franchise for formerly incarcerated people, TakeAction and its allies are building power for a multi-year strategy that

connects voting rights and money in politics, breaking down silos and continuing to build the movement for a fairer and more inclusive democracy.

IV. CONCLUSION

Through our current big money campaign finance regime, the small, overwhelmingly white donor class exerts vastly disproportionate influence over policy in the United States. This occurs both because candidates of all races are more likely to prioritize the concerns of the wealthy white donor class, as well as because the need to raise large sums of money acts as a barrier to fair representation for candidates and communities of color. Similar in effect to burdensome laws that restrict access to the ballot, the outsized role of big money in politics is a compelling civil and voting rights issue. Both offend the fundamental principal of "one person, one vote," which requires equal representation regardless of race or wealth.

Fundamental change, of course, is always difficult to achieve, but momentum is growing. The silver lining of the Supreme Court's extreme interventions on money in politics has been unprecedented public awareness and concern. A growing list of civil rights, environmental, workers' rights and other advocacy organizations are coming together to embrace the insight that enacting transformative change around their first priority issues—around the various civil rights that they seek to promote—requires strengthening our democracy and reducing the role of big money. Public support for common sense solutions remains exceptionally strong across party and ideological lines. There have been important recent victories, with the prospects for bigger wins on the horizon. Together, these factors provide real cause for optimism in the face of a daunting problem.

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[v] *July 2012 Post-ABC Election Poll*, WASH. POST (July 16, 2012), http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2012/07/10/National-Politics/Polling/question_5646.xml?uuid=nREzWspDEeGNIUXuYXpxKg.

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[viii] *See* Women Donors Network, *Who Leads Us?*, http://wholeads.us/.

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[x] Kara Brandeisky, Hanquing Chen and Mike Tigas, *Everything's That's Happened Since Supreme Court Ruled on Voting Rights Act*, PROPUBLICA (Nov. 4, 2014), http://www.propublica.org/article/voting-rights-by-state-map.

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[xiii] *Id.*

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[xvii] Joanna Shepherd & Michael S. Kang, SKEWED JUSTICE: CITIZENS UNITED, TELEVISION ADVERTISING AND STATE SUPREME COURT JUSTICES' DECISIONS IN CRIMINAL CASES, http://skewedjustice.org.

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Written Testimony

By

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Before

The United States Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights

At a Hearing Entitled

"The State of Civil and Human Rights in the United States"

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Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee on the Constitution, Civil Rights, and Human Rights: thank you for extending the opportunity to submit testimony concerning the state of civil rights in the United States, including the status of Latino voting rights and protection of all Americans' equal right to vote.

The NALEO Educational Fund is the nation's leading non-profit, non-partisan organization that promotes full Latino participation in the American political process, from citizenship to public service. Our constituency encompasses the more than 6,000 Latino elected and appointed officials nationwide, and includes Republicans, Democrats, and Independents. For several decades, the NALEO Educational Fund has been at the forefront of efforts to advance policies that protect Latino voters, and to ensure that Latinos are fully engaged as voters and have a fair opportunity to choose their elected leaders. We have played a central role in advocating passage and reauthorization of state and federal voting rights legislation including the Voting Rights Act of 1965. We have also provided direct assistance to voters encountering barriers to casting ballots through our year-round, bilingual hotline, 888-VE-Y-VOTA, and through nationwide dissemination of bilingual voting rights public service announcements, palm cards, and other materials.

Today, the Latino electorate is increasing rapidly throughout the country, comprising a growing share of America's eligible voters. According to the Pew Research Center, a record 25.2 million Latinos are already adult U.S. citizens. They account for 11% of all eligible voters, up from 10.1% in 2010 and 8.6% in 2006. While the largest numbers of Latino voters live in states that have long been home to significant Latino communities, like California and Texas, the highest rates of growth in the Latino electorate are occurring in states like South Carolina, where the number of eligible Latino voters is up 126.2% since 2006, and Alabama, where the Latino electorate has expanded 110.5% since 2006. Each year, about 800,000 Latino U.S. citizens turn 18 and become eligible to vote; these individuals represent a significant segment of the American voting-eligible population of the future. In light of its steady increase in numbers, the Latino community's full participation in our political process is critical to ensuring that our democracy remains robust and representative of the United States' diversity and strength.

Unfortunately, we continue to see voting policies and procedures adopted that violate principles of fair and equal treatment, and that disproportionately prevent and impede Latino political participation. Laws and practices found to discriminate against Latino voters have been enacted within the most recent fifteen years in states such as Arizona, California, Florida, Georgia, Massachusetts, New York, Pennsylvania, and Texas. The following incidents are illustrative examples; additional cases are profiled in NALEO's June 2014 joint report with the Mexican American Legal Defense and Educational Fund and the National Hispanic Leadership Agenda, *Latinos and the VRA: A Modern Fix for Modern Day Discrimination*:

- California: The Chualar Union Elementary School District in Monterey County, California, which serves a significant Latino population but had historically failed to elect Latino leadership, sought in 2002 to adopt an at-large electoral system. District officials defended this choice by raising concerns about the suitability for office of candidates elected from a majority-Latino single-member district, criticizing the linguistic skills and preferences of particular school board members. Reviewers concluded that the proposed change "was motivated, at least in part, by a discriminatory animus."

- Florida: Osceola County, Florida is home to an increasing Latino community that by 2005 accounted for more than one-third of the County's total population. In spite of Latino voters' political cohesiveness and growing numbers, no Latino candidate had ever been elected to the Osceola County Commission under at-large elections in which all County residents voted for each seat on the Commission. Federal officials found that the County had failed to provide assistance to Americans not yet fully fluent in English; had a history of discriminating against Latino voters and candidates; and had adopted a method of election that had the impact of diminishing the strength of the Latino vote. Osceola County attempted to respond to a court decision against it by enacting a mixed electoral system of two at-large seats and five seats elected from discrete districts, but the court said that this proposal, "perpetuat[ed] the vote dilution that this case seeks to solve," and insisted on a plan using only discrete single-member districts. Today,

following implementation of a single-member only plan, one of five sitting Commissioners is Latina.

- Florida: The state of Florida launched an effort in 2012 to use an error-prone process with foreseeable discriminatory effects to identify and remove alleged non-citizens from its list of registered voters. Officials cross-referenced pollbooks with information in the state Department of Highway Safety and Motor Vehicles' database on the citizenship of holders of driver's licenses and state-issued IDs. This state-held citizenship data, however, is incorrect or outdated for many people, particularly for naturalized citizens who first obtained a state ID before becoming American citizens. Naturalized citizens in Florida are largely Latino, Asian American, or of African descent. Before its initiative was temporarily blocked, Florida sent letters questioning the qualifications of more than 2,000 registered voters. Nearly 60% of the recipients of these letters were Latino, though fewer than 20% of the state's voters are Latino; an overwhelming 87% of targeted voters were minorities. The overwhelming majority of those whose status was subsequently confirmed were in fact American citizens eligible to vote, who had been wrongly threatened with disfranchisement.

- Georgia: Following a period of exponential growth in the County's Latino electorate, three candidates for local office in Long County, Georgia challenged the registration of a number of Latino voters in 2004. Though no evidence was presented that the challenged voters were ineligible, the County required only these voters, but not any other individuals whose qualifications were challenged, to prove their U.S. citizenship. The County eventually settled a Voting Rights Act lawsuit against it by agreeing to take additional steps to guard against discrimination, and to provide bilingual voter assistance.

- Pennsylvania: Over the course of two years of investigation, in 2001 and 2002, federal officials observed repeated, systemic hostile and unequal treatment of Spanish-speaking and other Latino voters by pollworkers in Berks County, Pennsylvania. Elections

officials frequently treated Latino voters differently than others, requesting that they show identification and provide other personal information not required by state law, and turning registered eligible voters away out of confusion over their names, among other actions. Within earshot of numerous individuals, pollworkers made such statements in reference to Latino voters as, "This is the U.S.A. - Hispanics should not be allowed to have two last names. They should learn to speak the language and we should make them take only one last name," and "They can't speak, they can't read, and they come in to vote." The County's record of allowing open hostility toward Latino voters to go unchecked was sufficiently egregious that a federal court ordered immediate remedial measures to go into effect, including appointment of a federal examiner to monitor elections in the County, less than a month after a Voting Rights Act lawsuit was filed against the jurisdiction.

- Texas: The state of Texas enacted a law in 2007 that would have imposed a land ownership requirement on candidates for the governing boards of Fresh Water Supply Districts throughout the state. Significant racial and ethnic disparities in land ownership rates in Texas meant that minorities would be disproportionately disqualified by the law from running for these positions. Moreover, every one of the then-sitting District supervisors who did not own land and would have been disqualified from standing for re-election under the law was Latino. The law accordingly failed anti-discrimination review, and was prevented from going into effect.

- Texas: Just four years later, in 2011, the Texas legislature adopted one of the nation's strictest voter ID requirements, requiring most in-person voters to present one of a short list of government-issued identification documents reflecting a substantially similar name to that recorded in pollbooks. Numerous analyses of data on eligible and registered Texas voters revealed that Latino, African American, and other minority citizens disproportionately did not have and could not obtain a document that would permit them to vote. The law was rushed to passage, bypassing usual legislative procedures including Committee deliberation and production of an accurate fiscal note, even though hardly any

evidence was amassed of a problem that the law would remedy. Taking into consideration these factors, Texas's history of adopting discriminatory voting procedures, and the racially-charged legislative environment at the time of the mandate's adoption, a federal judge determined that the law was deliberately designed and enacted to impair minority voting.

- Texas: In 2011, Texas also redrew district maps for its Congressional seats and the state legislature. As a result of Texas's population growth between 2000 and 2010 – 65% of it due to increase in the Latino population – the state gained four seats in Congress. The legislature's map, however, failed to create a single new district in which Latino voters would have a likely opportunity to elect a candidate of their choice. Messages between legislative staff revealed that the map had been intentionally drawn to remove important landmarks associated with business activity and actively voting minority communities from districts in which minority voters might exert significant influence. On the strength of evidence like this and Texas's long and consistent history of adopting redistricting plans that put underrepresented voters at a disadvantage, a reviewing court found the state's plan to be intentionally discriminatory.

Since 1965, these and many other discriminatory election laws and practices have been stopped as a result of the Voting Rights Act, and as a result, Latino and other underrepresented voters have slowly but surely gained better access to polling places and political office. However, this progress was put in jeopardy by the Supreme Court's 2013 decision in *Shelby Co. v. Holder,* which had the effect of suspending most preclearance procedures prescribed by Section 5 of the Voting Rights Act (52 U.S.C. § 10304). Just prior to the release of the *Shelby Co.* decision, nearly one in three eligible Latino voters in the nation lived in a jurisdiction subject to preclearance procedures, under which all new voting and election policies had to be certified as non-discriminatory before they could take effect. Without this protection against discrimination, jurisdictions that are home to more than 7 million Latino voters are far less likely to be subject to any transparency and accountability mechanisms, and thus have more opportunity to adopt practices that disproportionately prevent Latinos from voting.

In the course of conducting non-partisan get-out-the-vote phone banking and of answering calls from voters around the country to 888-VE-Y-VOTA in 2014, the NALEO Educational Fund found evidence of a diversity of challenges encountered in the voting process, including indications that discrimination against Latino voters persists. Though our get-out-the-vote calls targeted lower-propensity Latino voters who were less likely to have had a significant number of voting experiences, about 6% of the individuals with whom we spoke reported that they might have or definitely had encountered discrimination or intimidation at the polls.

The NALEO Educational Fund and our partners in the Election Protection Coalition answered nearly 3,000 calls from voters who identified themselves as Latino on November 3 and 4, 2014, and we classified just over 5% of these calls as concerning problems that reflected possible or likely breaches of voting rights or election law. Spanish-speaking Latino callers reported problems at a higher rate than English-speaking Latino callers, and we received reports of possible violations of language assistance requirements from jurisdictions including Los Angeles County, California; Harris County, Texas; and Philadelphia County, Pennsylvania.

Calls concerning potentially discriminatory deceptive information or hostile behavior represented more than 10% of problem calls to our hotline, and came from states including Kentucky, North Carolina, and Texas. One caller from Texas, for example, said that pollworkers at her polling place made derogatory comments about Latino names and were visibly annoyed in interactions with her, but welcomed white voters casting ballots at the same time as her with smiles and courteousness. Another caller from North Carolina reported that she had been questioned somewhat extensively about her qualifications to vote and asked to show identification while her non-Hispanic white husband, who went to vote at the same time as her, was not asked any such questions and was finished voting well before she was.

In view of evidence that discrimination in voting persists, and taking into account the growing importance of engaging all of our nation's increasingly diverse electorate in the voting process, the NALEO Educational Fund urges Congress to maintain and modernize federal protections that

guarantee the equal treatment of all voters. A fully-effective Voting Rights Act should incorporate forward-looking provisions of the Voting Rights Amendment Act of 2014 including enhanced public notice and transparency requirements, and oversight of jurisdictions home to large populations of Americans who are not yet fully fluent in English.

We strongly support adoption of new standards for applying preclearance to jurisdictions that demonstrate a recent pattern of discrimination and high likelihood of discriminating against racial, ethnic, and linguistic minority voters in the future. Preclearance can also be used effectively against, and should be applied to prevent, adoption anywhere in the country of the particular practices and laws that have the most consistent and repeated track record of having had a discriminatory impact. Such a provision would extend the Voting Rights Act's protection in a narrowly targeted way to Latino and other rapidly-growing populations living in jurisdictions in which discrimination may not have occurred in the past, but who encounter growing risk of becoming the targets of discrimination as their visibility increases, and as their communities' demographic characteristics evolve.

The NALEO Educational Fund looks forward to continuing to work with the members of this Subcommittee to strengthen our democracy by enhancing civil rights protections and ensuring the consistent equal treatment of all Americans as we move into the 114th session of Congress.

Testimony of Rachel Laser, Deputy Director
Religious Action Center of Reform Judaism
The State of Civil and Human Rights in the United States
Tuesday, 12/9/2014
226 Dirksen Senate Office Building
Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

On behalf of the Union for Reform Judaism, whose more than 900 congregations across North America encompass 1.5 million Reform Jews, and the Central Conference of American Rabbis, whose membership includes over 2000 Reform rabbis, I write to express our views on a variety of key civil and human rights issues. Our Movement is the largest in American Jewish life and has a strong history of active involvement in the struggle for civil and human rights.

The Reform Movement is proud to have been involved in the founding and development of some of the most important civil rights organizations, including the National Association for the Advancement of Colored People (NAACP) and the Leadership Conference on Civil and Human Rights. Reform Jewish activists - rabbis and congregants alike - participated in the Mississippi Freedom Summer and several were close colleagues of and arrested with Dr. Martin Luther King, Jr. after challenging racial segregation in public accommodations.

More than 45 years after the signing of the landmark Civil Rights Act of 1964 and Voting Rights Act of 1965, both which were drafted in part in the Religious Action Center (RAC) building that was the longtime home of the LCCR, the United States has done much to combat legal discrimination. Yet the legacy of racial inequality has not been erased. We must still vigilantly guard and expand upon those rights earned in earlier decades of struggle.

Voting Rights
We continue to be extremely disappointed by the Supreme Court decision in *Shelby County, Ala. v. Holder* which found Sec. IV of the Voting Rights Act unconstitutional and effectively overturned the nation's longstanding commitment to protecting the voting rights of all citizens. The Voting Rights Act had been renewed four times since 1965, most recently in 2006 when it passed the House and Senate by overwhelming, bipartisan majorities and was signed by President George W. Bush.[1]

In our most recent election, a number of voter identification laws and other discriminatory laws were in effect in several states, and many voters either faced unnecessary obstacles on Election Day or were disenfranchised.[2] It is imperative that a new formula be adopted to ensure that jurisdictions that continue to implement discriminatory voting practices are prevented from doing so. The Voting Rights

[1] http://rac.org/Articles/index.cfm?id=23212
[2] http://www.brennancenter.org/blog/how-much-difference-did-new-voting-restrictions-make-yesterdays-close-races

Amendment Act (H.R. 3899/S. 1945) would, among other provisions, create a new preclearance formula, make it easier for courts to subject jurisdictions to preclearance, and require communities to notify the public when making changes to voting procedures. We urge the House and Senate to pass this legislation as swiftly as possible to ensure that no American is denied the right to vote.

Felon Disenfranchisement

At the same time, an estimated 5.8 million American citizens are currently disenfranchised as a result of felony convictions. While 13 states and the District of Columbia restore voting rights upon release from prison, 35 states continue to restrict the voting rights of people who are no longer incarcerated.[3] In fact, 4.4 million of these disenfranchised Americans have been released from prison and are living and working in their communities, but are still denied the right to vote.[4]

Felon disenfranchisement is especially harmful because of the racial disparities that exist in our criminal justice system. An estimated 2.2 million African Americans, or 7.7% of black adults, are disenfranchised. By comparison, only 1.8% of the non-African American population are disenfranchised because of felony convictions. If current rates of incarceration continue, three in ten black men can expect to be disenfranchised at some point in their lifetime, and in states that disenfranchise ex-offenders, as many as 40% of black men could lose their right to vote permanently.[5]

Sentencing Reform

As the war on drugs continues and the prison population remains high, a reassessment of our nation's priorities in fighting drug abuse is in order. Many analysts believe that the rising numbers of people incarcerated in the United States for drug offenses constitutes a failure on the part of our criminal justice system, especially when so many are nonviolent, low-level offenders. Stiff minimum sentencing laws have mandated lengthy sentences for drug offenders at both the state and the federal levels. Many of these drug offenders are parents who are forced to leave their children with family or in foster homes while they serve out their sentence. In other cases, they are women who sold or transported drugs on behalf of their boyfriends or pimps and yet because of mandatory minimums and "three strikes" laws, many are serving more time than people convicted of violent crimes, including rape and even second-degree murder. Even people who do not manufacture or sell drugs are subject to incarceration for the simple offense of drug possession.

We urge Congress to consider the Smarter Sentencing Act (S.1410/H.R.3382), a bipartisan bill aimed at reforming federal mandatory minimum sentencing laws. The Smarter Sentencing Act recognizes that our mandatory five-, 10-, and 20-year sentences for many drug offenders are too often applied to nonviolent, low-level, or drug-addicted

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[3] http://www.sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf

[4] http://www.brennancenter.org/legislation/democracy-restoration-act

[5] http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Laws%20in%20the%20US.pdf

offenders, and lowers those sentences for some offenders. The bill, which has already been passed by the Senate Judiciary Committee, would create fairer sentencing laws by restoring judicial discretion, lessening racial disparities, as well as make the federal criminal justice system more cost-effective and improve public safety. The bill also slightly broadens the "safety valve" that can give judges necessary discretion to impose sentences below mandatory minimum levels when appropriate.

Additionally, the bill would correct a lingering injustice by applying the Fair Sentencing Act retroactively to more than 8,000 federal prisoners still serving crack cocaine sentences that Congress unanimously denounced as unfair and racially discriminatory in 2010. While we were pleased by the Senate's approval of the Fair Sentencing Act, federal crack cocaine sentencing has had a significant and unequal impact on the application of justice in our nation, and the Act must be applied retroactively.[6] Overall, the Smarter Sentencing Act would reduce overcrowding in our prisons nationwide and improve public safety by allowing law enforcement to focus resources on the most dangerous criminals.

Criminal Justice Reform

Our criminal justice system also struggles with unnecessarily high rates of recidivism. A 2014 study by the National Institute of Justice tracked more than 400,000 prisoners in 30 states after their release from prison in 2005.[7] The study found that within three years of release, roughly two-thirds (67.8 percent) of former prisoners were rearrested, and within five years of release, about three-quarters (76.6 percent) were rearrested.[8]

A bipartisan solution to this problem is the reauthorization of the Second Chance Act (S. 1690/H.R. 3465). First passed with overwhelming bipartisan support in 2008, the law promotes evidence-based programs to aid the reentry of former prisoners into society and improve public safety. Since the law's passage, grants have been awarded in nearly every state to provide substance abuse treatment, employment and mentoring services, improve transition from prison and jail to communities and reduce recidivism.

The Second Chance Act provides crucial resources at a time when they are desperately needed. In 2013, federal and state prisons held over 1.5 million inmates – 1 in every 209 American residents. Unfortunately, most individuals face numerous challenges when returning to the community from prison or jail and often struggle to obtain employment and housing and are all too likely to be rearrested. The Second Chance Reauthorization Act strengthens the original law and seeks to ensure that the tax dollars spent on corrections no longer support a revolving door in and out of prison.

Racial Profiling

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[6] http://rac.org/Articles/index.cfm?id=4002#ixzz3Kr05djA6

[7] Durose, Matthew R., Alexia D. Cooper, and Howard N. Snyder, Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010 (pdf, 31 pages), Bureau of Justice Statistics Special Report, April 2014, NCJ 244205.

[8] http://www.nij.gov/topics/corrections/recidivism/Pages/welcome.aspx

In light of recent events in Ferguson, Missouri and around the country, it is also clear that in many communities, the relationships between law enforcement, public officials and community members have been terribly damaged by mistrust. Poor relationships between law enforcement and communities of color as well as growing economic and social inequality remain in Ferguson as they do in communities nationwide. If America is to live up to its value of equal justice for all such disparities must be addressed. We are encouraged by the President's recent announcement about tightening standards on the provision of military-style equipment to local police departments and providing funds for police officers to wear cameras. However, we must look further at the ways law enforcement officers interact with minority communities.

Racial profiling is discriminatory and denies individuals the constitutional right of equal protection under the law, further damaging community-police relations. The End Racial Profiling Act of 2013 (S. 1038, H.R. 2851) aims to prohibit racial profiling at the federal, state, local and tribal levels. The bill would legally prohibit racial profiling, provide specialized instruction in federal law enforcement training, condition state and local government receipt of federal funds on the successful adoption of anti-racial profiling policies, award Justice Department grants to state and local governments that best implement practices that defeat racial profiling, and position the Attorney General as watchdog to assess such practices. Racial profiling raises civil rights concerns, undermines the criminal justice system by diverting resources from pursuing actual criminal behavior, and reinforces false stereotypes, whether in the context of counterterrorism, street-level crime or immigration enforcement. This bill should be swiftly adopted.

Death in Custody

The current lack of uniform reporting requirements has made it impossible to know how many people are dying in custody of law enforcement and from what causes. The result, in addition to the tragic loss of life, has sadly been to weaken trust in law enforcement. The bipartisan Death in Custody Reporting Act of 2013 (H.R. 1447) would provide much-needed transparency in the criminal justice system. The law would require and facilitate the collection of information regarding the deaths of prisoners in custody, alleviating the environment of suspicion, concern and mistrust that currently exists.

In December 2013, the U.S. House of Representatives unanimously passed the Death in Custody Reporting Act, but the Senate has yet to act. Now is the time to address this shortcoming that undermines our criminal justice system.

Death Penalty

To that end, we must also bring an end to our nation's use of the death penalty. The Reform Jewish Movement has formally opposed the death penalty since 1959, finding it both morally repugnant and ineffective as a crime deterrent. Since 1973, at least 149 people have been exonerated and freed from death row and too many have been executed despite serious doubts that they are innocent.[9] Racial disparities in capital cases,

[9] http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row?scid=6&did=110

incompetent counsel, the execution of the mentally ill all demonstrate that our country must do better in its application of justice by bringing an end to the death penalty.

Hate Crimes

Bias-motivated crimes are unique in that they not only impact the victims but also the entire community that shares the targeted identity. Consequently, bias-motivated crimes have the potential to exacerbate community tensions and make targeted communities feel vulnerable and defenseless. The Reform Jewish Movement has a long history of supporting hate crime penalty-enhancement laws and played an active role in advocating for the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA).

This year marked the five year anniversary of the passage of the HCPA. We commend the new initiatives that were recently announced by the White House event commemorating the five year anniversary of the HCPA and call on Congress to support these initiatives and other efforts to strengthen efforts to prevent, effectively respond to and collect data on hate crimes. Specifically, we urge Congress to fund incentives to increase participation in the FBI's Hate Crime Statistics Act data collection program; pass legislation focusing on inclusive anti-bias education, hate crime prevention, and bullying, cyberbullying and harassment education, policies, and training; and include bullying and harassment and non-discrimination provisions in its reauthorization of the Elementary and Secondary Education Act, the Higher Education Act, the Juvenile Justice and Delinquency Prevention Act Reauthorization, and other appropriate legislation.

Conclusion

We are inspired by Jewish tradition that teaches the very basic belief that all human beings are created *b'tselem Elohim* (in the Divine image), as it says in Genesis 1:27, "And God created humans in God's own image, in the image of God, God created them; male and female God created them." Regardless of context, discrimination and violence against any person arising from apathy, insensitivity, ignorance, fear, or hatred is inconsistent with this fundamental belief. We oppose discrimination and violence against all individuals and will continue to work toward the day when all people are treated equally, regardless of race, ethnicity, gender, religion, sexual orientation or gender identity.

CENTER FOR REPRODUCTIVE RIGHTS

Center for Reproductive Rights

Violations of Immigrants' Civil and Human Rights to Access Reproductive Health Care

Testimony Submitted to the Subcommittee on the Constitution, Civil Rights, and Human Rights

Committee on the Judiciary

United States Senate

December 9, 2014

Summary

Discriminatory state and federal policies violate immigrants' civil and human rights to access reproductive health care. Reproductive rights are human rights, and earlier this year, two United Nations treaty-monitoring bodies that track the United States' compliance with U.S.-ratified human-rights treaties have called upon the United States to rectify this denial of critical health-care services.

The Center for Reproductive Rights

The Center for Reproductive Rights is the only global legal advocacy organization dedicated to reproductive rights, with expertise in both U.S. constitutional and international human rights law. Since 1992, the Center has used the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill. Reproductive freedom lies at the heart of the promise of human dignity, self-determination, and equality embodied in both the U.S. Constitution and the Universal Declaration of Human Rights.

We envision a world where every woman is free to decide whether and when to have children; where every woman has access to the best reproductive healthcare available; and where every woman can exercise her choices without coercion or discrimination. More simply put, we envision a world in which every woman participates with full dignity as an equal member of society.

Reproductive Rights are Human Rights

Reproductive rights are fundamental human rights that all nations are obligated to respect, protect, and fulfill. Twenty years ago, 179 nations, including the United States, convened in Cairo at the International Conference on Population and Development (ICPD), and agreed that:

> [R]eproductive rights…rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their

> children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.[1]

The ICPD agreement also noted that "reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents."[2] These "already recognized" rights include, first and foremost, the fundamental human right to life.[3] The right to life should not be narrowly interpreted, and fulfillment of this right requires governments to take positive measures to reduce maternal mortality, unintended pregnancies and unsafe abortion.[4] Reproductive rights also encompass the right to equality and non-discrimination in health care, including with respect to immigrants (this issue is examined in greater detail in the next section).

Because of the axiomatic nature of the fact that reproductive rights are human rights, it is not surprising that State Department officials have consistently spoken out about their importance. In September of this year, Secretary Kerry reminisced about leading the U.S. delegation to Cairo, describing the "extraordinary difference that it makes when women and girls can decide if and when to have children."[5] Former Secretary of State Hillary Clinton similarly spoke of the importance of reproductive rights:

> [W]hile I am very pleased that this year's outcome document endorses sexual and reproductive health and universal access to family planning, to reach our goals in sustainable development we also have to ensure women's reproductive rights. Women must be empowered to make decisions about whether and when to have children. The United States will continue to work to ensure that those ***rights*** are respected in international agreements.[6]

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[1] *Programme of Action of the International Conference on Population and Development*, at para. 7.3, in REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, U.N. Doc. A/CONF.171/13 (1994), *available at* http://www.un.org/popin/icpd/conference/offeng/poa.html.

[2] *Id.*

[3] Univ. Declaration of Human Rights, *adopted* Dec. 10, 1948, art. 3, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948); ICCPR, art. 6(1).

[4] HRC, *General Comment No. 6: Article 6 (Right to life)*, (16th Sess., 1982), *in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 176, paras. 1, 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008) [hereinafter HRC, *Gen. Comment No. 6*]; HRC, *Gen. Comment 28*, para. 10. *See also Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44 – Addendum – Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, para. 66, U.N. Doc. E/CN.4/1999/68/Add.4 (Jan. 21, 1999) (noting "[g]overnment failure to take positive measures to ensure access to appropriate health-care services that enable women to safely deliver their infants as well as to safely abort unwanted pregnancies may constitute a violation of a woman's right to life…

[5] Remarks of Secretary of State John Kerry on the 20th Anniversary of the International Conference on Population and Development, Sept. 8, 2014, *available at* http://www.state.gov/secretary/remarks/2014/09/231385.htm.

[6] Remarks of former Secretary of State Hillary Clinton, U.N. Conference on Sustainable Development (Plenary Session), Rio De Janeiro, Brazil, June 22, 2012, *quoted at* http://usatoday30.usatoday.com/news/world/story/2012-06-22/clinton-rio20-un-sustainability/55763566/1 (emphasis added).

President Obama has also emphasized that reproductive health is a matter of fundamental rights, stating at a Planned Parenthood conference, "there's still those who want to turn back the clock to policies more suited to the 1950s than the 21st century. And they've been involved in an orchestrated and historic effort to roll back ***basic rights*** when it comes to women's health."[7]

International Human-Rights Bodies Have Cited the U.S. for Violating Immigrants' Right to Health Care

A. Violating Immigrants' Access to Reproductive Health Care Violates Their Human Rights

As a State party to the International Covenant on Civil and Political Rights (ICCPR), the U.S. assumed an obligation under Article 2 of the Covenant to extend rights to "*all* individuals within its territory and subject to its jurisdiction,"[8] and to do so "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[9] The U.N. Human Rights Committee has interpreted "other status" to include immigration status[10] and urged states to eliminate distinctions in access to social services on the basis of immigration status.[11] Similarly, the Committee on the Elimination of Racial Discrimination (CERD), which monitors implementation of the U.S.-ratified Convention on the Elimination of All Forms of Racial Discrimination, has previously addressed differential treatment of non-nationals as a form of discrimination in access to healthcare. In its 2008 review of the U.S., CERD found that because persistent disparities in reproductive health are evidence of gender and racial discrimination in access to healthcare, the U.S. should take steps to eliminate barriers to healthcare that impede access for women of color.

Fulfilling this duty may require amending legislation or administrative regulations—such as Medicaid rules that exclude certain classes of immigrants from eligibility—and addressing non-legal barriers that impact access to reproductive healthcare, such as high cost of contraceptive services and supplies, and transportation barriers for women in rural areas.[12]

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[7] Remarks by President Barack Obama at the April 26, 2013, Planned Parenthood Conference, *available at* http://www.whitehouse.gov/photos-and-video/video/2013/04/26/president-obama-speaks-planned-parenthood-gala#transcript (emphasis added).

[8] ICCPR, art. 2(1) (emphasis added); HRC, *General Comment No. 15: The position of aliens under the Covenant* (1986), *in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para.1, U.N. Doc. HRI/GEN/1/Rev.6 at 140 (2003) (stating that "[i]n general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness").

[9] ICCPR, article 2(1).

[10] *See* HRC, *Concluding Observations: Syrian Arab Republic*, para.19, U.N. Doc. CCPR/CO/84/SYR (2005); *Azerbaijan*, para. 20, U.N. Doc. CCPR/CO/73/AZE (2001).

[11] HRC, *Concluding Observations: Korea*, para.12, U.N. Doc. CCPR/C/KOR/CO/3 (2006); *Latvia*, para.18, U.N. Doc. CCPR/CO/79/LVA (2003); *Thailand*, para.23, U.N. Doc. CCPR/CO/84/THA (2005).

[12] HRC, *General Comment No. 15: The position of aliens under the Covenant* (1986), *in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para.4, U.N. Doc. HRI/GEN/1/Rev.6 at 140 (2003). *See also* HRC, *Concluding Observations: Canada*, para.20, U.N. Doc. CCPR/C/79/Add.105 (1999) (expressing concern over cuts to social welfare programs that have disproportionately harmed women, especially single mothers, and recommending making an assessment of the impact of such cuts and taking action to redress any discriminatory effects); *Korea*, para.12, U.N. Doc. CCPR/C/KOR/CO/3 (2006)

In the past year, two international human rights bodies have raised alarm over the United States' denial of reproductive health care to immigrants. In March 2014, the Human Rights Committee, which monitors U.S. compliance with the ICCPR (ratified by the United States in 1992), conducted a comprehensive review of U.S. implementation of its treaty obligations and expressed concern about U.S. policies vis-à-vis immigrants' access to reproductive health care:

> [The Committee expresses] concern about the exclusion of millions of undocumented immigrants and their children from coverage under the Affordable Care Act and the limited coverage of undocumented immigrants and immigrants residing lawfully in the United States for less than five years by [Medicaid] and Children's Health Insurance, all resulting in difficulties for immigrants in accessing adequate health care (arts. 7, 9, 13, 17, 24 and 26).

The Committee recommended that the U.S. "identify ways to facilitate access to adequate health care, including reproductive health-care services, by undocumented immigrants and immigrants and their families who have been residing lawfully in the United States for less than five years."[13]

The United Nations Committee on the Elimination of Racial Discrimination reached a similar conclusion to the Human Rights Committee after it conducted a periodic review of the United States' compliance with the Convention on the Elimination of All Forms of Racial Discrimination in August 2014 (the U.S. ratified the treaty in 1994). In its Concluding Observations released September 25, 2014, the Committee also raised concerns about the exclusion of many immigrants, including women and children, from the benefits of the Affordable Care Act (ACA) as a violation of the U.S. obligation under the convention to eliminate racial and gender discrimination in health care. The Committee recommended that the United States:

> [t]ake concrete measures to ensure that all individuals, in particular those belonging to racial and ethnic minorities who reside in states that have opted out of the Affordable Care Act, undocumented immigrants and immigrants and their families who have been residing lawfully in the United States for less than five years, have effective access to affordable and adequate health-care services.[14]

The parallel observations reached by the Committee on the Elimination of Racial Discrimination and the Human Rights Committee in the same year speak to the critical nature of ensuring access to reproductive health care for immigrants in the United States as a matter of human rights. The basis of their observations is detailed in the following sections.

(recommending that Korea ensure "equal access to social services" after the HRC received information that immigrants faced numerous non-legal barriers in accessing healthcare despite a 2003 law granting them the legal right to access the national healthcare system on an equal basis of citizens).

[13] U.N. Human Rights Committee (CCPR), *Concluding observations on the fourth periodic report of the United States of America*, U.N. Doc. C/USA/CO/4 (March 26, 2014).

[14] U.N. Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, U.N. Doc. C/USA/CO/7-9 (Sept. 25, 2014).

B. *Federal Policies Discriminate Against Non-Citizens on the Basis of Immigration Status in Violation of their Fundamental Human Rights*

Many immigrants are ineligible for the benefits of the Affordable Care Act and other public health coverage programs, including Medicaid and the Children's Health Insurance Program (CHIP). These programs exclude many categories of non-citizens who are most in need of affordable access to care given their low socio-economic standing.[15] Exclusions apply to the following groups:

- **Qualified immigrants:** Non-citizens who are "lawfully present" in the United States are required to wait five years before they are eligible to enroll in federal Medicaid and CHIP, regardless of their income eligibility.[16] This restriction, passed as part of welfare reform in 1996 and reinforced in the Affordable Care Act, applies to lawful permanent residents, individuals with work authorization, refugees, and asylees; other lawfully present immigrants, with the exception of some pregnant women and children, are excluded altogether.[17]

- **Undocumented immigrants:** Federal policy completely excludes undocumented immigrants from eligibility for Medicaid and CHIP,[18] and the ACA bars them from purchasing private insurance on the newly developed health insurance exchanges, even at full cost.

- **Immigrants Granted Deferred Action under Executive Actions:** In 2012, the Obama Administration granted young immigrants who were brought to the United States as children and who remained undocumented relief from deportation; in 2014 the Administration took similar action for undocumented immigrant parents of U.S. citizens and lawful permanent residents. Yet individuals granted Deferred Action for Childhood Arrivals (DACA) are excluded from any participation in the ACA, Medicaid or CHIP, and there are indications that Deferred Action for Parental Accountability (DAPA) recipients will be subject to the same discriminatory exclusions. Only half of the states

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[15] Forty-six percent of non-citizens are uninsured compared to 15% of U.S.-born citizens and 23% of naturalized citizens. HENRY J. KAISER FAMILY FOUNDATION, *Key Facts on Health Coverage for Low-Income Immigrants Today and Under Health Reform*, 2 (2012).

[16] The ACA incorporated provisions first established in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

[17] NATIONAL IMMIGRATION LAW CENTER, *Overview of Immigrant Eligibility for Federal Programs, available at* http://www.nilc.org/table_ovrw_fedprogs.html (last updated Oct. 2011).

[18] Four states offer state-funded health coverage to immigrants regardless of their immigration status, but these states restrict such coverage to special groups like children or pregnant women, or cover limited services. KFF, *Key Facts on Health Coverage for Low Income Immigrants Today and Under the Affordable Care Act*, 6 (2013), *available at* http://kaiserfamilyfoundation.files.wordpress.com/2013/03/8279-02.pdf. NAT'L IMMIGRANT LAW CTR., *Medical Assistance Programs for Immigrants in Various States, available at* http://www.nilc.org/healthcoveragemaps.html (last updated Feb. 2014).

use their own funds to allow DACA recipients who are minors or pregnant to access Medicaid or the Children's Health Insurance Program.[19]

These restrictions exclude millions of non-citizens from the coverage benefits of the ACA and other public programs, and thus significantly hamper their efforts to access affordable reproductive health care, solely due to their immigration status.[20]

Moreover, several categories of immigrants, particularly in states that have refused to expand Medicaid, have gained little from federal health reform. As of November 2014, 19 states have stated that they will not expand Medicaid, and another 4 have not yet done so.[21] The impact of non-expansion is dire for low-income residents' health: By refusing to expand Medicaid, the state of Texas, for example, leaves the women of the Rio Grande Valley and its estimated 500,000 uninsured residents without affordable health care options available to similarly low-income individuals in other states.[22] Access to affordable health insurance is critical for access to reproductive health care, particularly given cuts to federal and state family planning funds (see below).

C. *State and Federal Budget Cuts to Family-Planning Programs Disproprotionately Affect Immigrants in Violation of their Equal Right to Health Care*

Federal cuts to preventive reproductive health programs have eroded access to contraceptive services for millions of women without adequate health insurance, including immigrants excluded from the ACA, Medicaid and CHIP. Federal funding for Title X—the country's largest family planning program—was reduced by 12.3% ($39.2m) in the fiscal years between 2010 and 2013.[23] Consequently, the number of women receiving publicly subsidized contraceptive services decreased by 9% from 2000 to 2012, despite a 22% increase in the demand for such services.[24] The unmet demand for affordable contraception is nearly eight times greater among Latinas than whites[25] and is disproportionately high in states with large immigrant populations, like Texas.[26]

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[19] *See* 45 CFR § 152.2(8) (77 Fed. Reg. 52614, Aug. 30, 2012) and 45 CFR § 152.2(8) (78 Fed. Reg. 4613, Jan. 22, 2013) (a pair of interim rules excluding those granted deferred action under DACA from the definition of "lawfully present," and therefore making them ineligible for participation in the health care exchanges established by the ACA, Medicaid, or CHIP).

[20] *Low Income Immigrants Today and Under the Affordable Care Act*, *supra* note 16, pg. 6.

[21] *A 50-State Look at Medicaid Expansion*. FAMILIES USA (Nov. 24, 2014), http://familiesusa.org/product/50-state-look-medicaid-expansion.

[22] Sarah Varney, *Texas' Struggling Rio Grande Valley Presses for Medicaid Expansion*, KAISER HEALTH NEWS, May 21, 2013, http://www.kaiserhealthnews.org/stories/2013/may/21/texas-border-counties-medicaid.aspx (reporting that the rate of uninsured residents in the Rio Grande Valley, population 1.3 million, is about 38%).

[23] NATIONAL FAMILY PLANNING & REPRODUCTIVE HEALTH ASSOCIATION, *Title X: Budget and Appropriations*, *available at* http://www.nationalfamilyplanning.org/title-x_budget-appropriations (last visited Sept. 8, 2014).

[24] Jennifer J. Frost et al., *Contraceptive Needs and Services, 2012 Update*, GUTTMACHER INST. (Aug. 2014).

[25] *Id.*, at pg. 7-8. Of the women served by Title X clinics in the U.S. in 2012, 28% (1,349,528) identified themselves as Hispanic or Latino. Research Triangle Institute, *Family Planning Annual Report: 2012 National Summary*, 12 (2014), *available at* http://www.hhs.gov/opa/pdfs/fpar-national-summary-2012.pdf.

[26] Jennifer Frost ET. AL., *Contraceptive Needs and Services, 2012 Update*, GUTTMACHER INST., 11-12 (2014), http://www.guttmacher.org/pubs/win/contraceptive-needs-2012.pdf; Migration Policy Institute, *Immigration*

In addition to these harmful cuts at the federal level, 12 states have slashed state family planning funding since 2011.[27,28] In Texas, for example, the state legislature cut family planning funds by 66% and made it substantially harder for clinics that specialize in reproductive health care to receive the few funds that were left, effectively shuttering nearly 30 percent of the area's family planning clinics in 2011. Those that remained had to reduce services and raise fees, and they still struggle to meet people's needs.[29] The cuts hurt people like Amanda, a single mother in Texas. In a report prepared by the Center for Reproductive Rights and the National Latina Institute for Reproductive Health, Amanda recounted how she was forced to go to Mexico to obtain a long-acting contraceptive shot:

> She was on her way to the pharmacy with her three-year old daughter when a shootout erupted. "People just started running and saying there was going to be a shooting, and so we took off. So I couldn't get my shot… The crime situation in Mexico is so bad. I've been in three shootouts. I shudder from fear every time I go to Reynosa. *As a woman and a U.S. resident, why would I have to go to another country to see a doctor? The cost is too high here, but I risk my life if I go across the border.*" She now takes contraception only when she can afford to buy it on the black market.[30]

Conclusion

There are over 6.5 million immigrant women of reproductive age in the United States.[31] Like all women this age, they need access to the full range of reproductive health services in order to stay healthy and to be able to plan their families. Yet, because low-income immigrant women are largely excluded from government-supported insurance and generally cannot afford private insurance, they have virtually no options for accessing and affording reproductive healthcare such as contraception services and counseling, screenings for sexually transmitted infections, and treatment for reproductive system cancers.[32] These access barriers contribute to wide disparities in sexual and reproductive health outcomes among immigrant women, including higher rates than their native-born peers of unintended pregnancy, teen births, cervical and breast cancer, and

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Population by State, 1990-2012, http://www.migrationpolicy.org/programs/data-hub/charts/immigrant-population-state-1990-present?width=1000&height=850&iframe=true (last visited Sept. 19, 2014).

[27] This figure does not include New Hampshire, which cut its family planning budget in 2011 but restored the funds in 2013.

[28] *Laws Affecting Reproductive Health and Rights: State Trends at Midyear, 2013*. GUTTMACHER INST. (July 2014). http://www.guttmacher.org/statecenter/updates/2013/statetrends22013.html.

[29] CENTER FOR REPRODUCTIVE RIGHTS & NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH, *Nuestra Voz, Nuestra Salud, Nuestro Texas: The Fight for Reproductive Health Care in the Rio Grande Valley* (2013), http://www.nuestrotexas.org.

[30] *Id.* at pg. 47.

[31] Kinsey Hasstedt, *Toward Equity and Access: Removing Legal Barriers to Health Insurance Coverage for Immigrants*, 16 GUTTMACHER POL'Y REV. 1, 5 (2013), *available at* http://www.guttmacher.org/pubs/gpr/16/1/gpr160102.pdf

[32] Adam Sonfield, *The Impact of Anti-Immigrant Policy on Publicly Subsidized Reproductive Health Care*, 10 GUTTMACHER POL'Y REVIEW 7, 8 (2007).

sexually transmitted infections.[33] This can lead to lasting health and economic consequences not only for women, but also their families and their communities.

The Center for Reproductive Rights urges this subcommittee to investigate this matter further, to raise the profile of immigrants' access to reproductive health care within the United State Senate, and to promote policies that would rectify the United States' violation of human rights and its harmful and discriminatory restrictions on access to basic health care.

[33] ELLEN SCHLEICHER, WOMEN'S & CHILDREN'S HEALTH POLICY CENTER, JOHNS HOPKINS BLOOMBERG SCHOOL OF PUBLIC HEALTH, IMMIGRANT WOMEN AND CERVICAL CANCER PREVENTION IN THE UNITED STATES 1-4 (2007), *available at* http://www.jhsph.edu/research/centers-and-institutes/womens-and-childrens-health-policy-center/publications/ImmigrantWomenCerCancerPrevUS.pdf. Am. Cong. of Obstetricians & Gynecologists, *Health Care for Undocumented Women* 2 (2009), *available at* http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Health_Care_for_Underserved_Women/Health_Care_for_Undocumented_Immigrants.

The State of Human Rights in U.S. Agriculture
Submitted to:

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

December 9, 2015

Submitted by:

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- **Endorsement/Support:**
  Food Chain Workers Alliance, http://foodchainworkers.org/
  California Institute for Rural Studies,http://www.cirsinc.org/
  CATA (El Comite de Apoyo a los Trabajadores Agricolas), www.cata-farmworkers.org
  Organization United for Respect @walmart , http://forrespect.org/
  First Focus, http://firstfocus.org/
  Migrants in Action, http://www.migrantsinaction.org/

INTRODUCTION

The United States is a nation of laws. We the people, the average citizen, and law makers alike constantly strive to honor our constitution by rectifying our laws to address past and present human right violations. We see efforts to ensure every eligible voter is not denied. We see people take to the streets, podiums, and social media to deter unnecessary violence. We ask for change because the law says that we deserve both civil and human rights. What if the laws exempted you from rights 75 years ago and these exemptions remain? This is what happened in agriculture and as a result we have the following violations of human rights for both children and adults:

- An estimated 300,000 -500,000 predominately Hispanic children harvest produce in the heat, exposed to pesticides, using repetitive motions for 10-14 hours a day. The high school dropout rate for these children is 4x the national rate[1]. Due to exemptions to the Fair Labor Standards Act in 1938, the U.S. federal child laws are minimal for agriculture. The federal standard is 12 and younger in some cases. In many situations we have young girls working in fields with adult men where there are little regulations and reported abuse. These issues are well documented with written and video reports by numerous organizations. Despite these reports the CARE bill which seeks to equalize the child labor laws has failed to leave the Congressional House Committee on Education and the Workforce since 2001[2].

- Due to an exemption in 1935 farm workers are denied basic labor rights. While workers across the U.S. are fighting for a living wage of ~$15 an hour, farm workers are not uniformly guaranteed minimum wage. The Fair Food program is fighting to raise wages from $30 to $50 dollars a day for back breaking work. For workers' wages to rise from $10,000 to $16,000 a year as discussed in several 2014 articles[3],[4] the worker must pick 600,000- 624,390 pounds of tomato a year. Even with this small improvement the pay is still at the poverty level with instability due to weather, no sick days, no guaranteed overtime pay, and a lack of other basic benefits.

Farm workers perform honorable work and feed the people of our country. The exemptions in the laws lead to a sub-standard life and many human rights violations. In situations where people have become sick or even died there is little recourse because the laws haven't reached everyone. Some growers have expressed moral concerns about hiring children but fear age discrimination violations because it is legal. The changes should be uniform so all growers can provide the same rights without economic penalty. Let us extend labor rights and human rights to all workers and eliminate child labor completely. No industry should survive off the backs of children or deny hard working adults a decent existence.

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[1] http://www.hrw.org/support-care
[2] http://roybal-allard.house.gov/news/documentsingle.aspx?DocumentID=130055
[3] http://www.news-press.com/story/news/local/2014/04/26/immokalee-workers-star-de-niros-film-festival/8181021/
[4] http://www.nytimes.com/2014/04/25/business/in-florida-tomato-fields-a-penny-buys-progress.html?smid=tw-share&_r=1&gwh=E3DCA5B08D506AD88E7BBF68D467D7CE&gwt=regi&assetType=nyt_now

LEGAL HIGHLIGHTS

- **National Labor Relations Act of 1935**
  - Due to an exemption in the National Labor Relations Act of 1935[5], farm workers are exempt from minimum wage, overtime pay, and the right to unionize. This is in violation of ILO Convention 98, the Right to Organize and Collective Bargaining, 1949. The U.S offered a supportive position in response to this issue raised in the first UPR (Universal Periodic Review) cycle yet agricultural workers still lack basic rights[6].
- **FLSA (Fair Labor Standards Act) 1938 Exemption[7]**
  - The U.S. Department of Labor enforces the Fair Labor Standard Act of 1938 to ensure that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities. Children in the U.S. are protected from work in offices and factories. However, the exemption for agriculture has created a second class childhood for 300,000 – 500,000 predominately Hispanic children. The states have the option to enact stricter regulations. However, the majority of the 50 states have a standard age of 12; with some states such as Oregon setting age 9 for berry picking and other states deferring to the federal standard which allows work under age 12 in some situations.
  - The U.S. Federal standard for youth in non-agriculture is 16 with limits until age 18 to protect their education. This includes limits on their hours and restrictions for their health. For younger children work is not allowed. This standard should apply to all children but doesn't. The elimination of the exemption for agriculture and enacting one set of laws for all children would bring the U.S. into compliance for ILO 182 and ILO 138. In all situations, an exemption is made for the children of business owners and farm owners.
- **United Nations CERD (Convention on Elimination of Racial Discrimination) 2014 Recommendations[8] pertaining to agricultural workers:**

  The Committee is concerned at the increasingly militarized approach to immigration law enforcement, leading to the excessive and lethal use of force by CBP personnel; increased use of racial profiling by local law enforcement agencies to determine immigration status and to enforce immigration laws; increased criminal prosecution for breaches of immigration law; mandatory detention of immigrants for prolonged periods of time; and deportation of undocumented immigrants without adequate access to justice. It is also concerned that workers entering the State party under the H-2B work visa programme are at high risk of becoming victims of trafficking and/or forced labour, and that some children from racial and ethnic minorities, particularly Hispanic/Latino children, are employed in the agriculture industry and may face harsh and dangerous conditions (arts. 2, 5 and 6).

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[5] http://en.wikipedia.org/wiki/National_Labor_Relations_Act
[6] http://www.state.gov/j/drl/upr/recommendations/
[7] http://www.dol.gov/dol/topic/youthlabor/enforcement.htm
[8] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=936&Lang=en

The Committee calls upon the State party to ensure that the rights of non-citizens are fully guaranteed in law and in practice, by, inter alia:

(c) Reviewing its laws and regulations in order to protect all migrant workers from exploitative and abusive working conditions, including by raising the minimum age for harvesting and hazardous work in agriculture under the Fair Labor Standards Act in line with international labour standards and ensuring effective oversight of labour conditions;

(d) Ratifying International Labour Office Convention No. 29 (1930) concerning Forced or Compulsory Labour and Convention No. 138 (1973) concerning Minimum Age for Admission to Employment.

- **First UPR Cycle Recommendations:**
  - **Recommendation 193**. Prevent slavery of agriculture workers, in particular children and women[9]
  - **Recommendation 81**: Take the necessary measures in favor of the right to work and fair conditions of work so that workers belonging to minorities, in particular women and undocumented migrant workers, do not become victims of discriminatory treatment and abuse in the work place and enjoy the full protection of the labor legislation, regardless of their migratory status.

MAIN AREAS OF HUMAN RIGHTS CONCERN

- *Pesticides & Health*
  - An estimated 350,000 current and historic pesticide products are registered in the U.S., a 12.5 billion dollar industry[10]. Research indicates that children are also less able to metabolize and excrete most toxic substances and their organ systems are more vulnerable because they are rapidly growing and developing[11]. A systematic review of 25 published studies showed a 60 percent increased risk for leukemia among children whose mothers were exposed to pesticides[12].
  - Jesus 'Chuy' M., age twelve of California, understands pesticides on a personal level given he lost his mother to lymphoma cancer June 2010. Shortly before her death, his mother shared she was certain her cancer was due to having pesticides sprayed on or near her as she worked as a child and adult. In a series of interviews Chuy shared his fear of cancer knowing he would likely return to the cherry orchards of Oregon.
- *Working Conditions*
  - The piece rate work is grueling and low paid. If minimum wage is paid, the workers may be obligated to a quota which requires more hours than they are paid. The fields may lack water, shade and basic sanitary features. The adults and

[9] http://www.state.gov/j/drl/upr/recommendations/
[10] http://www.sustainabletable.org/263/pesticides
[11] http://iiceph.org/residential_pesticide_and_children_health

[12] http://www.ncbi.nlm.nih.gov/pubmed/20467891

children are stooped over and/or carrying heavy produce loads. The mornings may be wet and cold until the relentless sun beats down on them until sun down.

- The farm workers often are unable to access social benefits which make them more vulnerable to poverty and exploitation. The farm workers earn an average income of $10,000 - $13,000[13], many below the poverty wage for the U.S. Since the work is seasonal, they are often temporarily unemployed without benefits. As such, the children suffer from a cycle of generational poverty due to the work and compromised education, health and childhood. The media often says "...this is work Americans won't do." For some, there is a false perception the agricultural workers are foreign and undeserving of basic rights. Approximately half of the work force is documented and while the majority is Hispanic, they are also American. If this work is deemed so undesirable how can anyone justify this same work for children?
- The Center for Disease Control reported that crop workers died from heat stroke at a rate 20 times greater than all U.S. civilian workers[14].
- The work is seasonal and the workers often migrate from state to state yearly.
- Sexual harassment has long been documented by Human Rights Watch and other media.
- The living conditions for seasonal farm workers are substandard for the U.S. with communal bathrooms and/or overcrowded shed like housing units.

- *Workforce Description*
  - The majority of agricultural workers are impoverished Hispanics. The National Agricultural Workers Survey indicated that 80% of workers were Hispanic, the majority foreign born, and the remaining 20% were non-Hispanic White, African American and Asian American[15]. The status of some foreign born workers without proper documentation of U.S. citizenship status makes them more vulnerable to exploitation. However, even when the parents and children are documented citizens, the work conditions are harsh and unacceptable.
- *Education*
  - The high school dropout rate for these Hispanic children who labor in agriculture is four times the national rate[16]. The children sometimes work before and after school, weekends, and the entire summer season. Even if they are in school, they are moving from school to school which cause them to fall behind their peers. In interviews children reported that moving within the state still caused them to fail academically. The McKinney Vento study showed that a child takes 4-6 months to recover academically after switching schools. If any child switches during high school, they are fifty percent less likely to finish school relative to their stable counterparts[17]. Since the children are legally able to work the impoverished

[13] http://nfwm.org/education-center/farm-worker-issues/low-wages/
[14] http://www.cdc.gov/niosh/docs/wp-solutions/2013-143/pdfs/2013-143.pdf
[15] http://www.doleta.gov/agworker/report/ch1.cfm
[16] http://www.hrw.org/support-care
[17] http://74.125.155.132/search?q=cache:diMeSgklyz8J:www.hrsa.gov/homeless/pa_materials/pa7/pa7_garriss_hardy_ppt.doc+McKenny+Vento+homeless+kids+lose+6+months+of+learning&cd=9&hl=en&ct=clnk&gl=us

parents are more likely to move with the harvest. Some children reported moving between two to four different states and schools within one year.

- Victor T. shared that he dropped out of high school because he was so far behind his teachers told him he may never graduate. He only moved within the state of Texas but constantly felt behind. When I asked him what would happen to his dreams he said "Dreams, I never thought I was allowed to have dreams."

RELATED REPORTS and VIDEO DOCUMENTATION

- Human Rights Watch report: *Tobacco's Hidden Children*, 2014 [http://www.hrw.org/reports/2014/05/13/tobacco-s-hidden-children]
- Food Chains Documentary released in 2014 http://www.foodchainsfilm.com
- PBS, Frontline: *Rape in the Fields*, 2013
- AlJazeera: *Children at Work*, 2013 [http://www.aljazeera.com/programmes/faultlines/2013/10/america-hidden-harvest-201310292936877 61.html]
- *The Harvest* Documentary released in 2011, trailer available [http://theharvestfilm.com/]
- Human Rights Watch issued an investigate report: *Fields of Peril* in 2010 [http://www.hrw.org/reports/2010/05/05/fields-peril-0]
- Human Rights Watch issued an investigative report: *Fingers to the Bone* in 2000 [http://www.hrw.org/reports/2000/06/02/fingers-bone]

RECOMMENDATIONS

- Grant the same labor rights to agriculture workers as those afforded other workers in any other industry including the right to organize, minimum wage, overtime, and workmen's compensation.

- Despite clear concerns the CARE bill which seeks to equalize the child labor laws has failed to leave the Congressional House Committee since 2001[18]. Recognize that pesticide exposure via the harvesting work itself and pesticide drift is hazardous to children along with the heat, repetitive motions, and relative heavy produce loads and take measures to remove the 75 year old exemption for child labor in agriculture while recognizing the exception for the children of farm owners. Also, raise the age of tobacco harvesting to eighteen due to the extremely toxic nature of work.

- In addition to equalizing labor laws and improving working conditions for farm workers, investment in Vertical Hydroponic farming would offer agricultural workers stability, less pesticides, and more oversight of working conditions. The U.S. government should consider promoting non-soil based farming when applicable to produce which is hand harvested.

[18] http://roybal-allard.house.gov/news/documentsingle.aspx?DocumentID=130055

THE SIKHCOALITION
the voice of a people

Statement for the Record of the Sikh Coalition

Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
United States Senate
Hearing on the State of Civil and Human Rights in the United States

December 9, 2014

As the largest Sikh American advocacy organization in the United States, the Sikh Coalition believes that our nation is failing to protect the civil and human rights of all Americans.

Recent high-profile cases of police brutality, including the killings of unarmed African-Americans, have widened the gap between the lived experiences of our fellow Americans and our constitutional guarantees of due process and equal protection. Adding insult to injury, the Justice Department's newly-revised *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity* has reinforced loopholes that allow federal agencies to engage in invidious profiling.

In this context, the Sikh Coalition offers the following recommendations for policy reform and respectfully requests inclusion of this statement and its enclosures in the official hearing record.

A. Ban Invidious Profiling

The U.S. Congress should enact the End Racial Profiling Act (ERPA). This legislation—introduced most recently as S. 1038 and H.R. 2851—would ban invidious law enforcement profiling throughout the United States on the basis of suspect classifications, such as race, religion, ethnicity, and national origin. In addition, ERPA would provide a meaningful remedy to profiling victims; require the adoption of anti-profiling policies and training programs; and create a data collection mechanism to facilitate proactive identification and correction of profiling issues.

B. Hold Law Enforcement Agencies Accountable

The U.S. Congress should exercise stronger oversight authority over the U.S. Department of Justice and U.S. Department of Homeland Security to ensure that these agencies do not engage in invidious profiling. Although the Justice Department's new profiling guidance recognizes that discriminatory profiling is "unfair" and "ineffective," and that biased practices "promote mistrust of law enforcement, and perpetuate negative and harmful stereotypes," the document contains several gaping loopholes that undermine its objectives. In particular, the exclusion of Customs and Border Patrol (CBP) and Transportation Security Administration (TSA) activities from the scope of the Guidance sends the message that certain minority communities are suspect. In the context of post-9/11 hate crimes against Arabs, Muslims, Sikhs, and South Asians, and increased xenophobia resulting from debates about immigration reform, we believe these loopholes will reinforce stereotypes that make targeted communities vulnerable to hate violence and discrimination.

For Sikh Americans, the new guidance will exacerbate the challenges endured by our community at American airports. Turbaned Sikhs are set aside for secondary TSA screening 100 percent of the time at some airports, even after clearing a body scanner without setting off an alarm.[1] We have repeatedly secured Congressional support for TSA accountability, including independent audits of the TSA's screening practices, but the agency has consistently dismissed these requests.[2]

In the absence of strong leadership from the executive branch on profiling issues, the U.S. Congress should condition receipt of taxpayer funds by law enforcement agencies on full compliance with antidiscrimination laws, such as the Civil Rights Act of 1964, and the adoption of stronger controls against profiling. For example, the U.S. Congress can use incentives to encourage TSA and other law enforcement agencies to strengthen antidiscrimination policies; improve redress mechanisms for profiling victims; expand bias prevention trainings; and collect auditable data to diagnose and prevent profiling issues.

C. Build Trust Between Law Enforcement and Communities

Members of the U.S. Congress should use their convening power to organize regular public forums in their home districts to foster grassroots dialogue to build trust between law enforcement agencies and the communities they serve. For example, communities affected by invidious profiling and discrimination should be able to share their grievances directly with law enforcement leaders. Through this open dialogue, community members and law enforcement agencies can also partner with each other to develop shared solutions to any challenges they face.

In addition, Members of the U.S. Congress should encourage law enforcement agencies to provide equal employment opportunity to new recruits. Unfortunately, large police departments, such as the New York Police Department (NYPD), discriminate against turbaned and bearded Sikh Americans who wish to serve as police officers. Discrimination of this nature reinforces stereotypes that make Sikhs and other minorities vulnerable to discrimination and hate crimes.[3]

D. Conclusion

The Sikh Coalition is grateful to the Subcommittee on the Constitution, Civil Rights, and Human Rights for organizing this timely hearing and accepting our written testimony. We note with appreciation that the Subcommittee organized a hearing in response to the hate-motivated massacre of Sikh worshippers at the Oak Creek Gurdwara in 2012. That hearing resulted in a substantial expansion of federal hate crime tracking that will eventually benefit millions of Americans. We hope that today's hearing will also lead to positive outcomes for all Americans who are concerned about violations of civil and human rights in our society.

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[1] See *Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy*: Hearing Before the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Committee On the Judiciary, 111th Cong. (2010) (statement of Amardeep Singh, Director of Programs, Sikh Coalition), available at judiciary.house.gov/_files/hearings/pdf/Singh100617.pdf.

[2] *See* Enclosure 1.

[3] *See* Enclosure 2.

Enclosure 1

ONE HUNDRED TENTH CONGRESS
CONGRESS OF THE UNITED STATES
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

TELEPHONE: (202) 225-5021
HTTP://WWW.FOREIGNAFFAIRS.HOUSE.GOV/

September 12, 2007

Administrator Kip Hawley
Transportation Security Administration
601 South 12th Street
Arlington, VA 22202-4220

Dear Administrator Hawley:

I am deeply concerned about the Transportation Security Administration's (TSA) new approach to screening airline passengers' head coverings. I have the greatest respect for your mission to secure our nation's transportation systems. But unfortunately, it seems that this policy change, which went into effect on August 4, has prompted TSA employees to engage in rampant religious discrimination and profiling. I hope you agree that such practices are not only illegal and inconsistent with American values, but also ultimately detrimental to national security.

I am very skeptical that a policy targeting particular religious head coverings, such as turbans, can be effective. And I am alarmed about the way this policy has been abused and inappropriately implemented by Transportation Security Officers (TSOs). Of particular concern is the fact that out of the more than 50 reported incidents that have occurred since the institution of this new policy, the most egregious abuses of civil liberties as a direct result of this new policy appear to have occurred at San Francisco International Airport (SFO), which is in my congressional district.

In one recent incident there, a TSO told a turbaned Sikh American traveler that a secondary screening for anyone wearing a turban was mandatory. This comment was in direct contravention of TSA's revised policy, which calls on TSOs to use their discretion. The TSO then made the traveler take off his turban and proceeded to pat down the gentleman's hair, all in broad public view. As a trained TSO would know, a Sikh's turban is an article of faith and not an ordinary piece of cloth to be removed in public, which made this offense all the more outrageous. Another incident at the San Francisco airport left a Sikh American traveler so disgruntled and disgraced that he has decided to

book future travel from other nearby airports so that he does not have to face such mistreatment at that airport again.

It is apparent to me that these incidents demonstrate how the inconsistent application of this flawed policy has led to religious profiling and discrimination and the humiliation of ordinary Americans. Furthermore, such practices feed public stereotypes that erroneously equate members of the Sikh American community with terrorism. Provoking a sense of fear against innocent American citizens simply because they wear turbans is a dangerous precedent that our government should take extensive care to avoid.

The lack of religious sensitivity and inconsistency in implementing this revised policy is astounding and disturbing. How could an agency that took pride in working with religious and community groups after the tragic events of September 11, 2001 be so cavalier and discriminatory in its policy that affects those same groups just six years later? The consequence is an abuse of power and the deliberate degradation of everyday Americans.

I would like to know what actions TSA will undertake to ensure that these kinds of incidents no longer occur at SFO airport. In particular, I would appreciate the following:

- An explanation of what policy guidance was given to TSOs at SFO airport, and why they seem to have been involved in a disproportionate number of religiously discriminatory incidents since the institution of this revised policy;

- An explanation of the criteria that is to be used by TSOs at SFO airport when determining whether a secondary screening should take place, on the basis of clothing or dress, even after a traveler passes through a metal detector without setting off an alarm;

- An explanation of how TSA will prevent this policy from being used as a method of religious discrimination, profiling, and humiliation against Sikhs and other religious groups who wear religiously proscribed dress, especially at SFO airport where some of the most egregious offenses have occurred;

- An explanation of what actions TSA will undertake to amend the current policy, appropriately train TSOs, and/or perform outreach to the public to better advise revisions to the policy; and

- An explanation of why head coverings, and specifically turbans, have been singled out for secondary screening when other articles of clothing could also be used to conceal threat devices, and whether you believe this has led or could lead to religious discrimination and/or profiling.

As a victim of religious persecution myself, I abhor the idea that a U.S. government agency is engaged in a practice that isolates and humiliates ordinary Sikh Americans solely because they choose to wear the turban as an article of their faith. I hope that under your leadership, TSA will make the appropriate and necessary changes so that no future discriminatory practices are imposed on travelers. I look forward to a response at your earliest convenience.

Sincerely,

Tom Lantos

TOM LANTOS
Chairman

Congress of the United States
Washington, DC 20515

September 14, 2007

Secretary Michael Chertoff
U.S. Department of Homeland Security
Washington, D.C. 20528

Administrator Kip Hawley
Transportation Security Administration
601 South 12th Street
Arlington, VA 22202-4220

Dear Secretary Chertoff and Administrator Hawley,

We are writing to express our concerns about the recent change in TSA screening policy for headwear. We are concerned that the change was made without community consultation that has been characteristic of past policy changes, and that greater discretion for searching headwear without proper guidance for Transportation Security Officers (TSOs), has led to racial and religious profiling. Of particular concern is how the screening policy for headwear is applied to persons wearing turbans, an article of faith worn by many Sikh Americans.

We commend the fact that TSA had engaged in extensive community consultation after the attacks of September 11th, 2001 to ensure that any new screening policy would strike a fair balance between protecting civil rights and liberties of all passengers and the need for greater airport security. As we understand, the result was a carefully crafted policy that included reasonable precautions against potential security risks but also outlined specific procedures that ensured against racial and religious profiling. However, we are puzzled by why this screening policy with respect to headwear was changed in early August without consultation with Sikh Americans and other relevant community groups.

Additionally disconcerting is that greater ambiguity in the new policy lends itself to misapplication. We understand that the nation's 43,000 airport screeners now have increased discretion over whether to subject travelers with headwear to a secondary screening process. We are concerned that this policy change was made without adequate procedures and direction to TSOs to ensure against racial and religious profiling. We have been informed that dozens of complaints filed with Sikh American community groups indicate that passengers had been told that turban "pat-downs" are now mandatory in airports around the country. A mandatory turban pat-down is tantamount to racial and religious profiling and is therefore unacceptable in our democracy. It would be intolerable if the new policy has indeed been implemented, whether intended or not, in this matter.

Moreover, this policy may have the unintended effect of misdirecting our valuable law enforcement resources. If this new policy was drafted to address the potential for improvised explosive devices (IEDs) that are non-metallic, a screening policy should not solely target turbans, but all articles of clothing that could hide a potential threat device. By directing TSOs to target head coverings, and specifically turbans, we are not only discriminating based on religion but are also potentially overlooking other articles of clothing that could just as easily hide an IED. Furthermore, if improper guidance is causing TSOs to focus on all turbaned passengers simply because they are wearing turbans, we are concerned that TSOs will miss the truly dangerous people who seek to do our country harm.

Our country was built on a proud tradition of religious pluralism. Some of the first immigrants to the United States were themselves fleeing religious persecution. As TSA continues to refine its screening policies, we request that you take into account both national security issues and the religious concerns of all Americans. Given the widespread concern about the new policy and its implementation – both at home and abroad – we urge you to:

- provide us with a clear written explanation of:
  - the current policy, including any written guidelines that have been adopted;
  - the reasons why the old policy was changed;
  - what community consultation was done to craft the current policy;
  - how the headwear screening policy relates to the TSA policy on any garments that could hold non-metallic threat devices;
  - how the current policy was communicated to TSOs and other TSA employees;
  - how the current policy was communicated to the public;
  - how and why the policy was interpreted as a mandatory turban "pat-down" policy;
- work with representatives of the Sikh American community to ensure that the policy reflects a respect for the religious significance of turbans within the Sikh faith, and that the screening policy protects our homeland without sacrificing our religious freedoms;
- conduct better outreach to the traveling public regarding policy and implementation changes, including outreach to language minorities through ethnic press and translated materials; and
- provide better guidance and direction to TSOs in implementing the policy, if indeed, the implementation of a mandatory turban pat-down was due to misunderstanding or misguidance.

We trust that the Department of Homeland Security will do its best to balance national security concerns with protecting the civil rights and liberties of all passengers.

Sincerely,

Mike Honda
Chair
Congressional Asian Pacific American Caucus
(CAPAC)

John Conyers, Jr.
Chair
Judiciary Committee

Robert "Bobby" Scott
Chair
CAPAC Civil Rights Taskforce

Sheila Jackson-Lee
Chair
Subcommittee on Transportation
Security and Infrastructure Protection

Tom Lantos
Chair
Foreign Affairs Committee

United States Senate

WASHINGTON, DC 20510

September 25, 2007

The Honorable Kip Hawley
Assistant Secretary/Administrator
Transportation Security Administration
U.S. Department of Homeland Security
601 South 12th Street
Arlington, Virginia 22202

Dear Assistant Secretary Hawley:

It has come to our attention that the Transportation Security Administration (TSA) recently changed security procedures for head coverings, such as the Sikh turban. We request an explanation of the reasons behind this change and a description of TSA's process for developing, evaluating, and approving these new procedures.

After September 11, 2001, the Department of Transportation (DOT) did an admirable job of creating sound screening policies for religious attire. These policies were developed through extensive consultation with experts and members of affected communities, and the policies were considered practical and fair. The policies prohibited searches of religious headwear if travelers passed through a metal detector without sounding an alarm. DOT's *Guidance for Screeners and Other Security Personnel* stated:

> Sikhs view their turbans as an important connection to God that covers a very private and personal part of the body. . . Consequently, asking a Sikh to remove his/her turban (or similarly to unwind his/her religiously required, uncut hair) in the absence of a similar requirement for all other passengers that have successfully passed through metal detectors to remove articles of clothing for inspection, is disparate treatment and must be discontinued.

Scant official information is available on new policies, but their impact has been felt by many Sikh travelers. According to an August 21, 2007 TSA statement:

> On August 4th 2007, TSA implemented revisions to its screening procedures for head coverings. . . The new standard procedures subject all persons wearing head coverings to the possibility of additional screening, which may include a pat-down search of the head covering. Individuals may be referred for additional screening if the TSO cannot reasonably determine that the head area is free of a detectable threat item.

Additionally, TSA representatives have reportedly informed members of the Sikh community that guidance issued to all TSA screeners on the new headwear procedures specifically listed the turban as an item that can be subjected to secondary screening regardless of whether a metal detector has been set off.

We are concerned that this policy change could lead to disparate treatment of Sikh travelers, among others. Based on the limited information available and the recent experiences of several Sikh travelers, it appears that they are being singled out for secondary screenings solely on the basis of physical manifestations of their religious beliefs. Moreover, we find it troubling that the policy was changed without any consultation with impacted communities, and minimal information has been made public regarding the new procedures.

Please provide a copy of the new screening procedures, a detailed explanation of how the procedures will be implemented, and the reasoning for this policy change. Please also include an assessment of alternative procedures to achieve similar security objectives that may have been considered and rejected. Finally, we urge TSA to consult with the affected communities and address their concerns. We look forward to hearing from you.

Sincerely,

Richard J. Durbin
United States Senator

Russell D. Feingold
United States Senator

Barack Obama
United States Senator

Jeff Bingaman
United States Senator

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 7, 2011

The Honorable John S. Pistole
Administrator
Transportation Security Administration
601 South 12th Street
Arlington, VA 20598

Dear Mr. Pistole:

On June 17, 2010, the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing on Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy. At this hearing, members of the Sikh, South Asian, Arab and Muslim communities expressed substantial concerns about how TSA officials treat them at our nation's airports. In January 2010, this fear of Muslim, Arab, Sikh, and South Asian passengers made headlines when TSA issued a policy that targeted travelers from 14 countries, most of them Muslim nations. While this policy was rescinded, the conduct of TSA officials seems mixed at best. Passengers have reported that minorities continue to be singled out for enhanced screening based primarily on racial characteristics. We are requesting a briefing to continue dialogue on how TSA policies impact these communities and ways we can work to address these issues.

A coalition of community organizations sent Secretary Napolitano a letter in May 2010 detailing some of their concerns with TSA's practices, but has yet to receive an answer. A copy of this letter is enclosed. We request that you brief the Sikh, South Asian, Arab and Muslim communities and Members of the Subcommittee on how you are responding to the concerns of these communities.

Specifically we ask that you address the following four areas of interest.

1) **How Current Standard Operating Procedures Affect These Communities**

   The Sikh Coalition has reported that TSA officials in airports in Oakland, Seattle, Dallas, Chicago, Houston, and Los Angeles pull aside Sikh passengers for enhanced screening virtually 100% of the time. There is also strong evidence that existing TSA guidelines on bulky clothes have a disparate impact on Sikh and Muslim passengers whose traditional

and religious dress is considered "bulky." These guidelines are used by TSA officials to search religious wear like saris, scarves and turbans, sometimes invasively.

Current TSA guidelines allow for individuals to avoid invasive and public searches by completing their own self-pat down or by going to a private area for a search. Community Groups report that many TSA officials are often either unaware of these options or simply neglect to tell the travelers their options. How can TSA address these concerns and ensure their employees are properly following TSA guidelines that disproportionally affect Sikh, South Asian, Arab and Muslim passengers?

2) **Using New Technologies to Address the Concerns of These Communities**

TSA is constantly improving its screening technology to better protect passengers. Recent reports have indicated that even with the use of full body scanners, the newest screening technology, individuals from the Sikh, South Asian, Arab and Muslim communities continue to be pulled for additional physical screenings. How do these new technological developments help address the concerns over bulky clothing SOPs and invasive physical screening raised by these communities?

3) **Improving the TRIP Complaint System**

In testimony submitted to the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties, UNITED SIKHS reported that it has filed a series of Traveler Redress Inquiry Program (TRIP) complaints with TSA and has not received a timely official response or update on each of these complaints, some of which were filed over 3 years ago. This has created the impression that there is no avenue for passengers to pursue for redress or even acknowledgement of their concerns when TSA procedures are not followed properly. Why have official complaints about mistreatment failed to receive a consistent and timely response? How can the TRIP Complaint System be improved to ensure that passenger and community complaints receive a prompt and substantive response?

4) **Better Data Collection and Oversight**

In their May 2010 letter, the Sikh, South Asian, Arab and Muslim communities requested that TSA implement an auditing mechanism to ensure that TSA screening policies do not disproportionately or unjustly target Sikh, South Asian, Arab and Muslim passengers for additional screening. An independent audit and a method of data collection would help determine whether TSA's policies are fair to all passengers. How could TSA implement better data collection and oversight to ensure that racial profiling or discriminatory treatment is not occurring in our nation's airports?

Protecting the United States is of paramount concern and we recognize that the TSA must have screening policies in place to keep our airports and skies safe. However, we remain concerned that some policies that may be neutral on their face may be discriminatory in their application. Terrorists against the US have been of every racial background; indeed many of the most well

known terrorists do not fit a commonly perceived stereotype. We must ensure that all policies are carried out in an effective, neutral and non-discriminatory manner. This will not only ensure our continued safety but preserve the trust of Muslim, Arab, Sikh and South Asian communities in our government.

A briefing will provide an opportunity to resume open and productive conversations between TSA, concerned community groups and Congress to ensure that these concerns are addressed appropriately. Please contact Allison Rose of Rep. Judy Chu's staff if you have any questions and to schedule the meeting. We thank you for consideration and look forward to your reply.

Sincerely,

Rep. Judy Chu

Rep. Sheila Jackson-Lee

Rep. Bobby Scott

Rep. Melvin Watt

Congress of the United States
Washington, DC 20515

December 19, 2012

The Honorable John S. Pistole
Administrator
Transportation Security Administration
601 South 12th Street
Arlington, VA 20598

Dear Administrator Pistole:

As Members of Congress, we are writing you about the racial, ethnic and religious profiling occurring at U.S. airports. This past August, news reports indicated that Transportation Security Administration (TSA) screeners at Logan International Airport in Boston, Massachusetts subjected minorities to profiling, in particular Latinos, blacks and those who appeared to be from the Middle East. Similar allegations have been made in recent months about TSA screeners at airports in Hawaii and New Jersey. Although there were reports that these screeners are being retrained in these locations, this is not enough.

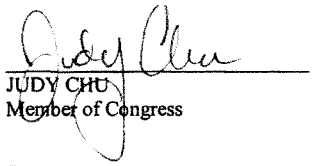
We therefore request a briefing on everything that TSA is doing to address racial, ethnic and religious profiling which continues to be an issue for Sikh, South Asian, Arab, Muslim, Hispanic and Black travelers.

Additionally, to fully understand the pervasiveness and adequately address racial profiling at TSA, the agency must undertake an independent audit of its screening practices at our nation's airports to determine whether its screeners are profiling travelers based on race, ethnicity, nationality and religion.

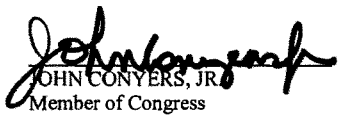
In 2009, TSA concluded that it has the capacity to undertake an independent audit but decided that it was not necessary because the new Advanced Imaging Technologies (AIT) machines would resolve profiling concerns. But this did not prove to be true. Sikhs, who are religiously required to wear turbans, report being set aside for secondary pat-downs 100 percent of the time at some airports, even after passing through AIT machines without incident. An independent audit would ensure TSA can adequately address any profiling within the agency, ultimately making all Americans feel safer and more secure at our nation's airports.

We thank you for your work to protect the nation's airports and appreciate the attention you have paid to this issue to date. Please contact Moh Sharma of Rep. Judy Chu's staff at moh.sharma@mail.house.gov to schedule the briefing and if you have any questions.

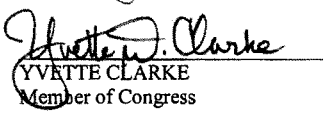
Sincerely,



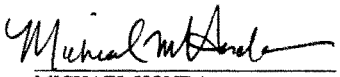
JUDY CHU
Member of Congress



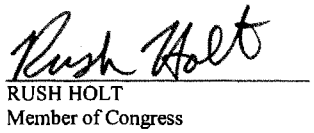
JOHN CONYERS, JR.
Member of Congress



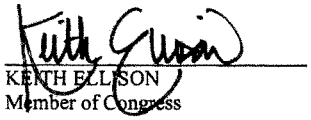
YVETTE CLARKE
Member of Congress



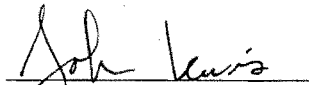
MICHAEL HONDA
Member of Congress



RUSH HOLT
Member of Congress



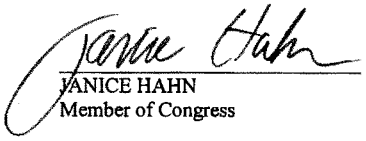
KEITH ELLISON
Member of Congress



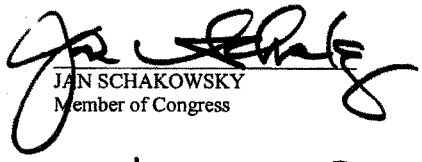
JOHN LEWIS
Member of Congress

JACKIE SPEIER
Member of Congress

HANK JOHNSON, JR.
Member of Congress



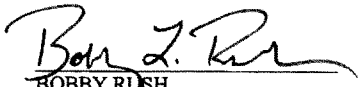
JANICE HAHN
Member of Congress



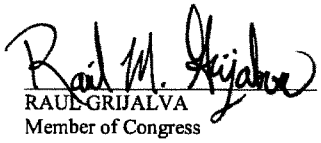
JAN SCHAKOWSKY
Member of Congress

ZOE LOFGREN
Member of Congress

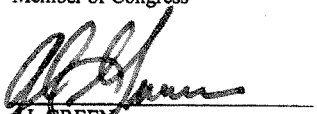
DANNY K. DAVIS
Member of Congress



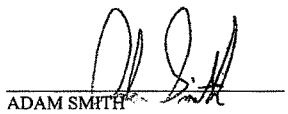
BOBBY RUSH
Member of Congress



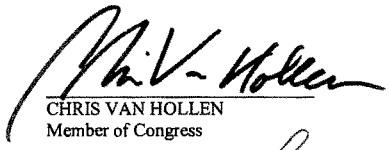
RAUL GRIJALVA
Member of Congress



AL GREEN
Member of Congress

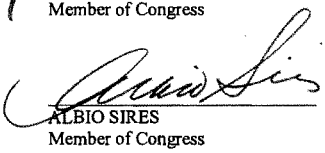


ADAM SMITH
Member of Congress



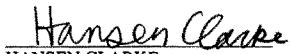
CHRIS VAN HOLLEN
Member of Congress

BOBBY SCOTT
Member of Congress

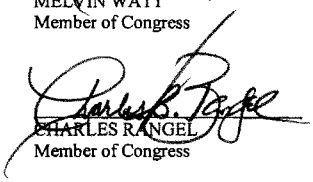


ALBIO SIRES
Member of Congress

MELVIN WATT
Member of Congress



HANSEN CLARKE
Member of Congress



CHARLES RANGEL
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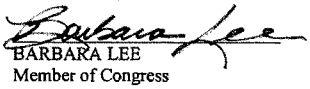
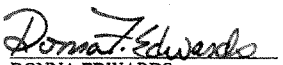
LORETTA SANCHEZ
Member of Congress

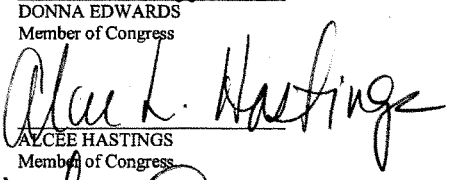


BARBARA LEE
Member of Congress



DONNA EDWARDS
Member of Congress

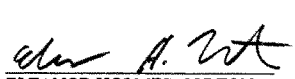
PETE STARK
Member of Congress



ALCEE HASTINGS
Member of Congress

ANDRE CARSON
Member of Congress

LAURA RICHARDSON
Member of Congress



ELEANOR HOLMES NORTON
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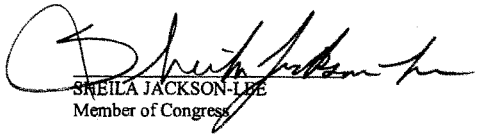

SHEILA JACKSON-LEE
Member of Congress

Enclosure 2

JOSEPH CROWLEY
14TH DISTRICT, NEW YORK

VICE CHAIR,
HOUSE DEMOCRATIC CAUCUS

Congress of the United States
House of Representatives
Washington, DC 20515–3214

COMMITTEE ON
WAYS AND MEANS

WEB PAGE
http://www.crowley.house.gov

August 20, 2014

Bill de Blasio
Mayor
City Hall
New York, NY 10007

William J. Bratton
Police Commissioner
New York Police Department
One Police Plaza, Madison St.
New York, NY 10038

Dear Mayor de Blasio and Commissioner Bratton:

Like many New Yorkers, I am deeply concerned about the increase in hate crimes committed against members of New York's Sikh-American community, and I urge you to develop a New York Sikh-American Action Plan to address this situation.

In the last two weeks alone, Dr. Jaspreet Singh Batra—a Sikh physician—was assaulted and injured in front of his elderly mother on Roosevelt Island, and Mr. Sandeep Singh—a Sikh business owner and father—was run over and seriously wounded by a driver in a pick-up truck in Queens. In both cases, the targets were subjected to bigoted slurs. These attacks sadly coincided with the second anniversary of the attack on the Oak Creek Gurdwara in Oak Creek, Wisconsin, which killed six worshippers and seriously injured several others. And, they follow last year's brutal attack on Columbia University professor Dr. Prabhjot Singh that resulted in his hospitalization. Further, members of the Sikh community have shared with officials news of other instances of hate employed against them, which all too often were not reported to the authorities.

Taken together, these attacks have created a situation in which the families that comprise New York's Sikh community feel under siege – concerned even to carry out everyday activities like patronizing a restaurant, walking home from work or going shopping. Our city now faces a unique situation, in which a key community reports that they are living as targets for violent bigotry.

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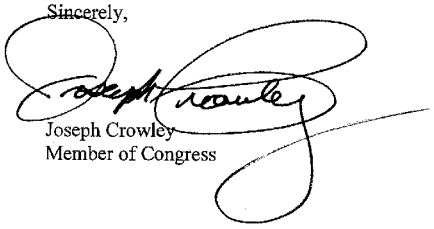
We all want this situation to come to an end, and I believe it requires the development of an action plan to address these legitimate concerns. For example, the City and NYPD could consider expanding security presence at Sikh places of worship for the time being so that attendees see the support of the authorities. The department could also consider designating a liaison to the Sikh community to serve as a conduit for community concerns and have the opportunity to explore more deeply the unique concerns of the Sikh community.

To further demonstrate support for the Sikh community, the City could also expand the service of observant Sikhs beyond the Metropolitan Transit Authority to include the NYPD. Turbaned Sikhs currently serve with distinction in the U.S. Army and are allowed to serve in the police department of Washington, D.C., as well as other major cities around the world, including London and Toronto, and NYPD could adopt a similar practice.

I look forward to working with you to prevent hate crimes, end discrimination, and create a safe environment for all New Yorkers. Thank you for your attention to these important issues.

Sincerely,



Joseph Crowley
Member of Congress

COLUMBIA LAW SCHOOL

HUMAN RIGHTS INSTITUTE

Northeastern University
School *of* Law

Program on Human Rights and the Global Economy

"Equal Access to Justice:

Ensuring Meaningful Access to Counsel in Civil Cases, Including Immigration Proceedings"

Testimony of

Risa E. Kaufman
Executive Director
Columbia Law School Human Rights Institute

&

Martha F. Davis
Professor of Law
Co-Director, Program on Human Rights and the Global Economy
Northeastern University School of Law

The State of Civil and Human Rights in the United States:

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

December 9, 2014

We welcome this opportunity to discuss the state of civil and human rights in the United States, and we commend the Subcommittee for engaging in this important inquiry. Our testimony today focuses on access to justice. The United States faces many challenges in fulfilling its promise of "equal justice under the law." Racial, ethnic and national minorities remain at a serious disadvantage in both criminal and civil matters. Although this problem raises many pressing issues, we focus here on the importance of ensuring meaningful access to counsel in civil cases, including immigration proceedings.

In the United States, millions of people who are poor or low-income must fend for themselves when facing a crisis such as eviction, foreclosure, domestic violence, termination of subsistence income, loss of child custody or deportation. Indeed, in the United States, only a small fraction of the civil legal problems experienced by low-income people—fewer than one in five—are addressed with the assistance of legal representation.[1] The World Justice Project's 2014 Rule of Law Index[2] places the United States towards the bottom of the list of industrialized nations with regards to access to justice, especially civil justice issues.

This crisis in unmet legal needs disproportionately harms racial minorities, immigrants and women. Recent studies show that African Americans are disproportionately subject to eviction[3] and foreclosure[4] proceedings. In New York City family and housing courts, the vast majority of litigants without representation are racial minorities.[5] Illustrating the intersection of race and gender, a California study found that approximately eighty-five percent of litigants appearing in family court without an attorney were women, and most were women of color.[6] Unfortunately representation statistics for immigration removal proceedings do not include data on race, ethnicity, or national origin, making it impossible to fully determine the impact of

lack of counsel on minority groups facing removal. However, data do show that Latin American immigrants are disproportionately targeted for removal proceedings.[7] They are also significantly more likely to be poor[8] and therefore unable to afford counsel.

Existing data also demonstrates that legal representation makes a significant difference in case outcomes. Represented parties enjoy statistically more favorable results in housing,[9] family law,[10] child welfare,[11] small claims,[12] immigration,[13] and employment-related civil rights cases.[14] Those who are represented by an attorney before administrative agencies governing such vital issues as social security, SSI, and unemployment also have higher success rates—in some cases up to two or three times higher—than those who are unrepresented in comparable cases.[15] In a survey of trial judges from thirty-seven states, the majority reported that pro se litigants were ineffective in their self-advocacy because they failed to present necessary evidence, committed procedural errors, or were unable to properly examine witnesses.[16]

The United States does provide lawyers to litigants in some important cases. In 1963, in *Gideon v. Wainwright*, the Supreme Court recognized a constitutional right to counsel in *criminal* matters.[17] But there is no similar right in *civil* cases. Individual states have advanced a civil right to counsel in narrow areas, particularly in child custody. However, the federal government has not recognized a right to counsel in immigration matters, and no state has a comprehensive approach to civil counsel that addresses the discriminatory impact of the current patchwork system.

The United States' obligation to ensure access to justice and fundamental fairness in the legal system is firmly grounded in international human rights law, which recognizes that legal representation is essential to safeguarding fair, equal, and meaningful access to the legal system as a whole, and critical to safeguarding other human rights. The United States has

ratified three core international human rights treaties, and, over the past year, the U.N. expert committees overseeing the implementation of all three of those treaties have expressed concern with the lack of civil legal representation in the U.S. and recommended that the U.S. government ensure access to counsel in civil proceedings, including immigration.[18]

Several independent international human rights experts have likewise emphasized the importance of ensuring access to counsel in civil cases, particularly those implicating basic human needs. In 2012, the U.N. Special Rapporteur on the right to adequate housing noted that legal remedies serve as an important procedural protection against forced evictions, but that such remedies are only effective where provision is made for the supply of civil legal aid.[19] Similarly, U.N. Special Rapporteurs have noted that civil counsel can play a significant role in vindicating and protecting the rights of racial minorities,[20] women,[21] and migrants.[22] As these experts note, meaningful access to civil counsel is often a critical precursor to exercising many other rights. The U.N. Special Rapporteur on extreme poverty recently commented that "[l]ack of legal aid for civil matters can seriously prejudice the rights and interests of persons . . . when they are unable to contest tenancy disputes, eviction decisions, immigration or asylum proceedings, eligibility for social security benefits, abusive working conditions, discrimination in the workplace or child custody decisions."[23] In a 2013 report to the U.N. General Assembly, the U.N. Special Rapporteur on the independence of judges and lawyers noted that "legal aid is an essential component of a fair and efficient justice system founded on the rule of law . . . [I]t is also a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights"[24] including the right to a fair trial, the right to an effective remedy, the right to

liberty and security of person, the right to equality before the courts and tribunals and the right to counsel.[25]

The importance of counsel in civil cases implicating basic needs has been recognized by other human rights tribunals, as well. The European Court of Human Rights (ECtHR) has articulated states' obligation to provide counsel in civil cases. In 1979, the ECtHR ruled in *Airey v. Ireland* that the right to fair trial may require that a state provide free legal assistance to those unable to obtain it when that assistance is necessary to provide effective access to the court.[26] The ECtHR later expanded on this statement, suggesting that the countries within the Council of Europe must provide free legal assistance as a human right where there is an inequality of arms and counsel is necessary to ensure a fair hearing.[27] Today, all forty-seven countries in the Council of Europe provide legal aid, including free or low-cost counsel, in civil and administrative matters implicating basic human rights, such as housing, family, employment, and public benefits—although some discretion is left to each state in developing eligibility criteria, and implementation varies.[28]

The Charter of the Organization of American States, of which the United States is a member, contains explicit support for the civil right to counsel, stating a goal to "dedicate every effort" to "[a]dequate provision for all persons to have due legal aid in order to secure their rights."[29] The Inter-American Commission on Human Rights (IACHR) has reinforced this view, noting that states can be obligated to provide free civil legal services to those without means in order to prevent a violation of their right to fair trial and judicial protection.[30] At the conclusion of its recent visit to the southern border of the United States to monitor the human rights situation of unaccompanied minors and families, the IACHR urged the United States "to ensure

that when families or unaccompanied children undergo removal proceedings, they will be represented by an attorney who has had sufficient time to discuss and prepare the case with them and with ad litem guardians to determine the best interest of the child."[31]

The U.S. government has recently taken steps that recognize the importance of access to justice in civil cases. In particular, the Department of Justice's Access to Justice Initiative, which works across federal agencies and with state and local justice systems to increase access to counsel and legal assistance in civil and criminal matters, is a promising start towards alleviating disparities in access to justice in this country. The Board of Immigration Appeals Pro Bono Project and "justice AmeriCorps," a partnership between the Department of Justice and the Corporation for National and Community Service, are encouraging in their efforts to provide legal representation to some individuals in immigration matters. But there is more that the federal government can and should do.

To meet its international human rights commitments and ensure fundamental fairness and equal access to justice in the legal system, the U.S. government should adopt reforms at the federal level and support state and local efforts. These include identifying and disseminating "best practices" at the state and local level to improve meaningful access to civil legal services and supporting state-level efforts to establish a right to counsel in certain civil cases. Congress, in particular, could lead additional reforms, including easing restrictions and increasing funding for the Legal Services Corporation (LSC), establishing a right to counsel in federal civil cases implicating basic human needs, including in immigration proceedings, and funding and conducting thoughtful research to measure and analyze the impact of counsel in civil cases, including race- and gender-based impacts.

We wish to provide more information on two of these measures in particular: increased support of LSC and funding of targeted research efforts. First, LSC is a key component in the government's efforts to improve civil litigants' abilities to access equal justice. LSC was created by Congress in 1974 as an independent nonprofit corporation to promote equal access to justice and provide grants for civil legal assistance to low-income Americans.[32] Yet, due to chronic underfunding and a barrage of restrictions, LSC has fallen short of its initial promise. Congressional appropriations for LSC have steadily decreased over the past several years, from $420 million in 2010 to $365 million in 2014.[33] These decreases are of particular concern as they come at a time of economic crisis, when more and more Americans are falling below federal poverty guidelines and are in more need of civil legal services than ever before.[34] LSC-funded organizations are further constrained in their ability to meet the legal needs of low-income and poor clients because of restrictive federal rules governing who may receive their legal services and the kinds of legal services they may provide. These limitations would be alleviated by dramatically increasing LSC funding and removing restrictions on the categories of clients whom grantee organizations may serve, types of activities in which they may engage, and kinds of cases they may take, as well as removing the requirement that LSC grantees confine their work within federal funding limitations, even when activities are independently financed.

Second, with respect to funding and conducting research, the U.S. failure to address the civil justice gap with urgency may be traced to the lack of information about its impact. To rectify this lack of information, the government should lead and support empirical research to assess the disproportionate impact that the absence of a generally-recognized right to counsel

in civil proceedings has on indigent persons belonging to racial, ethnic and national minorities, immigrants, and women. In order to meet these research needs, we suggest that the government establish a centralized body for directing civil justice research. As originally constituted, LSC had such a centralized body, but it was subsequently abolished,[35] an event which significantly hampered the national collection and coordination of civil legal aid research. The Department of Justice has recently acknowledged this problem, hosting a series of meetings exploring the possibility of establishing "an independent structure to produce research about [civil] legal aid, the dimensions and drivers of unmet needs, and the relative effectiveness of different delivery models."[36] A new independent research unit could be housed in the Justice Department itself or reconstituted under LSC. Short of establishing such a body, the government should help fund and coordinate research initiatives focused on civil legal aid generally, as well as its impact on racial, ethnic and national minorities, including immigrants, and women.

By implementing these and other measures, the United States can begin to bridge the civil justice gap, uphold the dignity of all Americans, and answer the international community's concerns about its commitment to making equal justice under the law a practical reality.

Thank you again for this opportunity. We welcome the government's attention to these important issues and look forward to its actions to improve access to justice in the United States.

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1. *Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low Income Americans*, LEGAL SERVS. CORP. 1 (Sept. 2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.
2. The World Justice Project, Rule of Law Index 2014, http://worldjusticeproject.org/rule-of-law-index.
3. In a 2012 study of evictions in Milwaukee, nearly half the evictions were in black neighborhoods, compared to twenty percent in white neighborhoods; sixty percent of the tenants in eviction court were women. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOCIOLOGY 88, 88, 98 (2012). Similarly, in a 2007 study of New York housing courts, African Americans accounted for fifty percent of tenants, but just twenty-five percent of the total population. Kira Krenichyn & Nicole Schaeffer-McDaniel, *Results From Three*

Surveys in New York City Housing Courts 26 (2007), *available at* http://www.brennancenter.org/sites/default/files/legacy/d/download_file_47909.pdf.

4. CTR. FOR RESPONSIBLE LENDING, *Foreclosures by Race and Ethnicity: The Demographics of a Crisis* 8-9 (2010), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf (showing that African-American and Latino borrowers experienced foreclosure rates of 7.9 percent and 7.7 percent respectively during economic crisis between 2007 and 2009, compared to a 4.5 percent foreclosure rate for white borrowers with the same income). *See also* Ira Goldstein, TRF, *Subprime Lending, Mortgage Foreclosures and Race: How Far Have We Come and How Far Have We to Go?* 6 (2008), *available at* http://www.prrac.org/projects/fair_housing_commission/atlanta/SubprimeMortgageForeclosure_and_Race_1014.pdf (showing that racial minorities were disproportionately targeted by predatory lending and exploitative real estate practices during the subprime mortgage crisis).

5. TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., *Report to the Chief Judge of the State of New York* 11-12 (2010), *available at* http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf; OFFICE OF THE DEPUTY CHIEF ADMIN. JUDGE FOR JUSTICE INITIATIVES, *Self-Represented Litigants: Characteristics, Needs, Services (The Results of Two Surveys)* 3 (2005), *available at* http://www.nycourts.gov/reports/AJJI_SelfRep06.pdf.

6. CAL. JUDICIAL COUNCIL ADVISORY COMM. ON RACIAL AND ETHNIC BIAS IN THE COURTS, *Final Report* 13 (1997), *available at* http://www.courts.ca.gov/documents/rebias.pdf.

7. More than sixty-five percent of noncitizens in removal proceedings in 2013 were from just four countries: Mexico, Guatemala, El Salvador, and Honduras. U.S. DEP'T OF JUSTICE, EXEC. OFFICE FOR IMMIGRATION REVIEW, *FY 2013 Statistics Yearbook* D1 (2014), *available at* http://www.justice.gov/eoir/statspub/fy13syb.pdf. Combined, all Latin American and Caribbean immigrants made up fifty-five percent of the immigrant population of the U.S. in 2013. PEW RESEARCH CTR., *Changing Patterns of Global Migration and Remittances* 8 (2013), *available at* http://www.pewsocialtrends.org/2013/12/17/changing-patterns-of-global-migration-and-remittances/. On the disproportionate targeting of Hispanic communities for immigration enforcement, *see also* Adam B. Cox & Thomas J. Miles, *Policing Immigration*, 80 U. CHI. L. REV. 87, 112-115 (2013).

8. In 2012, Mexican and Central American immigrants faced poverty rates of twenty-eight and twenty-two percent, respectively, compared to an overall poverty rate in the U.S. of sixteen percent. PEW RESEARCH CTR., *Statistical Portrait of the Foreign-Born Population in the United States, 2012* (2014), *available at* http://www.pewhispanic.org/2014/04/29/statistical-portrait-of-the-foreign-born-population-in-the-united-states-2012/.

9. Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37, 46-51 (2010).; *see also* BOSTON BAR ASS'N TASK FORCE ON THE CIVIL RIGHT TO COUNSEL, *The Importance of Representation in Eviction Cases and Homelessness Prevention* 15 (2012), *available at* http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf; *see generally* D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 927 (2013); Nabanita Pal, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCHOOL OF LAW, *Facing Foreclosure Alone: The Continuing Crisis of Legal Representation* 8 (2011) (documenting the high number of unrepresented litigants in foreclosure cases); URBAN INST., *National Foreclosure Mitigation Counseling Program Evaluation: Preliminary Analysis of Program Effects* 3 (2010) (documenting the positive outcomes for homeowners who receive assistance from housing counselors in foreclosure cases).

10. Engler, *supra* note 9, at 51-55; *see also* Laura K. Abel & Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 SEATTLE J. SOC. JUST. 139, 151-53 (2010).

11. FIRST STAR & CHILDREN'S ADVOCACY INST., *A National Report Card on Legal Representation for Abused and Neglected Children* 8, 12 (2009), *available at* http://www.firststar.org/documents/Final_RTC_2nd_Edition.pdf, *quoting* A.E. Zinn & J. Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County* (2008), *available at* http://www.chapinhall.org/article_abstract.aspx?ar=1467 (finding that children who are represented during dependency proceedings reach permanency more quickly, but that only sixty-three percent of states mandate the appointment of an attorney in these cases).

12. Engler, *supra* note 9, at 55-58.

13. One study in New York found that seventy-four percent of non-detained immigrants with counsel prevailed in their cases, compared to only thirteen percent of non-detained immigrants without counsel. *See* N.Y. Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, 33 CARDOZO L. REV. 357, 363-64 (2011). Another recent study of undocumented immigrant children reported similar findings, with nearly half of those with lawyers being permitted to stay in the country, while ninety percent of those without lawyers were ordered to leave. TRAC Immigration, *New Data on Unaccompanied Children in Immigration Court* (July 2014), http://trac.syr.edu/immigration/reports/359/.

14. Amy Myrick, Robert L. Nelson & Laura Beth Nielson, *Race and Representation: Racial Disparities in Legal Representation for Employment Civil Rights Plaintiffs*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 705, 710 (2012).

15. Engler, *supra* note 9, at 58-59; *see also* N.H. CITIZENS COMM'N ON THE STATE COURTS, *Report and Recommendations* 10-11 (2006), *available at* http://www.courts.state.nh.us/press/2006/cc_report.pdf (finding that unrepresented individuals typically do an inadequate job of self-representation, resulting in compromised justice).

16. LEGAL SERVS. CORP., *Budget Request: Fiscal Year 2015*, at 8 (2014), *available at* http://www.lsc.gov/sites/lsc.gov/files/LSC/pdfs/LSCFY2015BudgetRequest.pdf, *citing* ABA COAL. FOR JUSTICE, *Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts* (2010).

17. 372 U.S. 335 (1963) (requiring counsel be appointed for indigent defendants in state court facing imprisonment due to felony charges); *see also Argersinger v. Hamelin*, 407 U.S. 25 (172) (requiring counsel for indigent defendants in state court facing imprisonment due to misdemeanor charges).

18. U.N. Human Rights Comm., *Concluding Observations on the Fourth Periodic Report of the United States of America*, ¶¶ 15-16, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014) (recommending that the U.S. take measures to ensure that immigrants facing deportation have access to legal representation and to improve provision of legal representation to women victims of domestic violence); Comm. on the Elimination of Racial Discrimination, *Concluding Observations—United States of America*, ¶¶ 18, 23, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014) (noting that "the lack of a generally recognized right to counsel in civil proceedings . . . disproportionately affects indigent persons belonging to racial

and ethnic minorities" and recommending that the U.S. "allocate sufficient resources to ensure effective access to legal representation . . . in civil proceedings," and "guarantee[] access to legal representation in all immigration-related matters"); Comm. Against Torture, *Concluding Observations on the Third to Fifth Periodic Reports of United States of America*, ¶ 18(d) (Advance Unedited Version) (Nov. 2014), *available at* http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_COC_USA_18893_E.pdf (urging the U.S. to review its immigration removal procedures and to "guarantee access to counsel" in order to ensure full compliance with the Convention's non-refoulement provision).

19. Special Rapporteur on Adequate Housing, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, ¶ 69, U.N. Doc. A/HRC/22/46 (Dec. 24, 2012) (by Raquel Rolnik). More recently, the Special Rapporteur noted the importance of counsel in ensuring security of tenure. Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Guiding Principles on Security of Tenure for the Urban Poor*, U.N. Doc. A/HRC/25/54, ¶ 80 (Dec. 30, 2013) (by Raquel Rolnik).

20. U.N. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance on the Implementation of General Assembly Resolution 65/199*, ¶¶ 10, 35, U.N. Doc. A/HRC/18/44 (July 21, 2011) (by Githu Muigai).

21. *See* U.N. Special Rapporteur on Violence Against Women, Its Causes & Consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, International, Regional and National Developments in the Area of Violence against Women (1994–2003), ¶ 90, U.N. Doc. E/CN.4/2003/75 (Jan. 6, 2003) (by Radhika Coomaraswamy) ("States should establish, strengthen or facilitate support services to respond to the needs of actual and potential victims, including . . . legal aid . . . ."); U.N. Special Rapporteur on Violence Against Women, Its Causes & Consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶ 83, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (by Yakin Ertürk) ("States must ensure that quality physical and psychological health services and legal assistance are provided to victims of violence.").

22. Special Rapporteur on the Human Rights of Migrants, *Promotion and Protection of All Human Rights, Civil Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 46, U.N. Doc. A/HRC/7/12 (Feb. 25, 2008) (by Jorge Bustamante); *see also* Special Rapporteur on the Human Rights of Migrants, *Specific Groups and Individuals: Migrant Workers*, ¶ 24, U.N. Doc. E/CN.4/2003/85 (Dec. 30, 2002) (by Gabriela Rodríguez Pizarro) ("When the migrant must take the initiative for such [administrative] review, lack of awareness of the right to appeal and lack of access to free legal counsel can prevent the migrant from exercising his/her right in practice.").

23. Special Rapporteur on Extreme Poverty and Human Rights, *Report on Access to Justice for People Living in Paverty*, ¶ 62, U.N Doc. A/67/278 (Aug. 9, 2012) (by María Magdalena Sepúlveda Carmona).

24. U.N. Special Rapporteur on the Independence of Judges and Lawyers, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, ¶ 20, U.N. Doc. A/HRC/23/43 (Mar. 15, 2013) (by Gabriela Knaul).

25. *Id.* ¶ 28.

26. "[The right to fair trial] may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case." Airey v. Ireland, 2 Eur. Ct. H.R. 305, ¶¶ 24-26 (1979).

27. *See* Steel & Morris v. United Kingdom, 22 Eur. Ct. H.R. 403 (2005).

28. *See* Raven Lidman, *Civil Gideon: A Human Right Elsewhere in the World*, 40 Clearinghouse Rev. J. Poverty L. & Pol'y, 288, 291 (July–August 2006).

29. Charter of the Org. of Am. States art. 45, *opened for signature* Apr. 30, 1948, 1609 U.N.T.S. 119, *amended by* Protocol of Buenos Aires, O.A.S.T.S. No. 1-A (1967), *further amended by* Protocol of Cartagena, O.A.S.T.S. No. 66 (1985), *further amended by* Protocol of Washington, OEA/Ser.A/2 Add. 3 (SEPF) (1992), *further amended by* Protocol of Managua, OEA/Ser.A/2 Add. 4 (SEPF) (1993).

30. Inter-Am. Comm'n on Human Rights, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*, at 1–2, OEA/Ser.L./V/II.129 Doc. 4 (Sept. 7, 2007).

31 Press Release, Organization of American States, IACHR Wraps up Visit to the United States of America, OAS press Release No. 110/14 (Oct. 2, 2014), http://www.oas.org/en/iachr/media_center/PReleases/2014/110.asp (last visited Dec. 8, 2014).

32. *See* LEGAL SERVS. CORP., *History: The Founding of LSC*, http://www.lsc.gov/about/what-is-lsc/history (last visited Dec. 4, 2014).

33. LEGAL SERVS. CORP., *LSC Funding*, http://www.lsc.gov/congress/lsc-funding (last visited Dec. 4, 2014).

34. BRENNAN CTR. FOR JUSTICE, *Civil Legal Services: Low-Income Clients Have Nowhere to Turn Amid the Economic Crisis* 1, *available at* http://brennan.3cdn.net/ed5d847dfcf163a02a_exm6b5vya.pdf (last updated June 25, 2010).

35. Alan Houseman, CTR. FOR AM. PROGRESS, *The Justice Gap: Civil Legal Assistance Today and Tomorrow* 15 (2011), *available at* http://www.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/justice.pdf.

36. U.S. DEP'T OF JUSTICE, ACCESS TO JUSTICE INITIATIVE, *Four-Year Anniversary Accomplishments* 9 (2014), *available at* http://www.justice.gov/atj/accomplishments.pdf.

STATEMENT SUBMITTED FOR THE RECORD

Community/Police relations and the Militarization of Urban Police Forces

Although, the 3/5 clause of the U.S. Constitution and The Dred Scott Decision have both been 'officially struck-from-the-record'; current, recent and past events are clearly indicative of an unwritten mandate that is understood and upheld by 'far-too-many' American born European descendants subscribing to the notion that Afrikan descended People are sub-human and, therefore, need not be afforded the consideration and rights due to respectable men and women. This particularly holds true for those in law enforcement. What else can account for the epidemic of deadly shooting incidents carried-out by policemen along with the abuse, disparities, excesses and double-standards which are so 'all-pervasive' in every aspect of American society in terms of the mistreatment meted-out to People of Afrikan descent in this land of "liberty and justice for all".

When it comes to Afrikan descended People, the American establishment, and society 'at-large' have, thus far, condoned and sanctioned the systemic violation of the most basic, precious, universally recognized human right: 'the right to life'. The long, drawn-out rhetoric of the Attorney General along with that of the interim Director of the U.S.D.O.J. Civil Rights Division is a case of 'too little, too late'. They speak as though the atrocities that are the subject of their comments have just been discovered; as though they just commenced last week or the week before. Such 'double-speak' is an insult! The executive, legislative and judicial branches of the U.S. government, along with the entire institution of law enforcement, are all complicit and culpable in the murders of young boys and men of Afrikan descent.

Historically, the police were started as a deterrent to slaves 'breaking-away' and 'running-off' to freedom. Their main purpose was, and continues to this day to be, the containment and control of People of Afrikan descent. The relationship between the police and the Afrikan descended community is one of 'occupier' and 'the occupied'. The militarization of urban police forces is a clear indication that this dichotomy is deliberate in its content, construct and intent. Hence, in light of the many internationally recognized human rights articles, covenants and treaties to which the U.S. government is a signatory; this relationship between the community and the police along with the trend to militarize law enforcement must be seen for what it is: an obvious, insidious, sinister plan to repress and terminate any aspirations of independence, self-assertion and/or self-determination that may be considered or entertained by Afrikan descended People or any collective existing from amongst them. This is all to be considered in light of the unwritten mandate alluded to in the opening paragraph above.

The current systemic onslaught being carried-out by law enforcement against People of Afrikan descent is in clear violation of Item 1 Article 6 of International Covenant on Civil and Political Rights which reads: *"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of life."*

The U.S. government needs to take heed to those whom have taken to the streets of 'urban America' and address the continuous violations of international law that have been, and continue to be, committed against People of Afrikan and Latino descent as well as the Native People indigenous to this land.

As an initial step towards resolving the overall problem, the U.S. government should acknowledge, recognize and endorse the Durban Declaration and all of it's content and develop a practical 'plan of action' for reparations towards American born People of Afrikan descent in addition to, finally, honoring all of the broken treaties it breached in its negotiations with the Native Peoples indigenous to this land.

Statement for the Record

The State of Civil and Human Rights in the United States

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
December 9, 2014

Submitted by: Latrina Kelly-James, concerned citizen, Charlotte, North Carolina

Senator Durbin and members of the Committee:

I submit this testimony today not as a leader of member of any organization, institution or government agency. I testify as a member of the human race. As countries around the world, from Brazil to Palestine, recognize the oppression of people of color in the United States, particularly the oppression of Black Americans, it is appalling that America, a country that promotes human rights as fundamental to democracy, in reality does not practice its fundamental teachings.

As we hurt, as we grieve, as we escalate in frustration over the countless deaths of men of color at the hands of those who are called to protect and serve, I and we must ask the question: why is murder by police justified? Why is it that Black men are 21 times more likely to be murdered by police than their White counterparts? Why can White people in America freely admit that that they have committed crimes more punishable than those in which Eric Garner is alleged to have committed, more gruesome than those Michael Brown was alleged to have committed, and yet they can freely convey their evading of the law, or caught by police and given a slap on the wrist, a laugh, or a ride home? Why is my six-year old daughter afraid that the Black boys in her class will be killed by police? Why does she believe this country hates her? America has failed. There is no true democracy when its people are not safe, do not feel safe, do not feel that "protect and serve" is real, only an ideology to pacify citizens. There is blatant violation of civil and human rights by systems in this country. As long as we fail to recognize the devaluing and dehumanization of Black lives, we, as a country have failed.

The discounting of human rights by the United States and its legislators is both problematic and disheartening to non only its citizens, but to leaders across the world. In the United Nations Human Rights Committee's *Concluding Observations on the fourth periodic report of the United States* under the International covenant on Civil and Political Rights -ICCPR (April 2014), the Committee stated it "regrets that the State party continues to maintain the position that the Covenant does not apply with respect to individuals under its jurisdiction."

On the most fundamental level, the U.S. government does not believe that its people are worthy of human rights. Most explicitly, people of color, Black men in particular, are not valued as human beings.

Further, recommendations under the section, *Excessive Use of Force by law enforcement officials*, the Human Rights Committee recommends that the U.S. Government:

"Improve reporting of violations involving the excessive use of force and ensure that reported cases of excessive use of force are effectively investigated; that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; that investigations are reopened when new evidence becomes available; and that victims or their families are provided adequate compensation." (Sec. C, 11 (c))

The lack of indictment of local police for the killing of unarmed Black men leaves a large segment of this country to believe that police may kill at will on the basis of suspicion, or lack thereof. The Human Rights Committee suggests alleged perpetrators are prosecuted, yet the message sent by the grand jury in Ferguson, MO, New York, NY and other jurisdictions across this country, is that police are not perpetrators, but the very idea of a Black man is without regard. A Black man can never be a victim, only a preconceived notion of a criminal by society and the system that enforces this idea.

As long as the federal government refuses to acknowledge international covenants that set parameters for human rights of all people, regardless of geographic location, human rights at home is dead. It is your responsibility, Senator Durbin and members of this committee, as our elected officials, to put human rights first. If human rights are put first, we are half way to ensuring civil rights.

We cannot maintain a democracy that justifies murder by law enforcement as necessary while we reprimand other countries for human rights violations. Senator Durbin, this hypocrisy cannot continue. As a human being, I demand the right to be treated as such.

I offer the following recommendations to this Committee as it moves forward in its discussion of civil and human rights in America:

1. Acknowledge that Black lives matter. We are human beings. This is a critical first and necessary step for our nation. Our blood and our tears have blanketed this nation long enough. We will not be target practice for police. We will not be disproportionately criminalized and incarcerated by the justice system. We will not be conceived as criminals first, and humans possibly somewhere along the spectrum.

2. Elimination of deadly force among all local, state and federal law enforcement, and implement methods of force and adequate training that will focus on diffusing situations and not simply defaulting to death.

3. Create national human rights committee to address human rights violations. This committee can coordinate with the Department of Justice to ensure accountability and transparency regarding potential investigations of human rights violations.

4. Create adequate data collection and analysis methods to track lethal use of force by law enforcement. Currently, the Federal Bureau of Investigations (FBI) reports "justifiable homicides" by police, defined as killing of a felon by law enforcement in the line of duty. This explicit definition does not account for non-felons murdered by police. We must expand the definitions of homicide by police and better track all uses of lethal force.

These recommendations are only a starting point for a larger discussion of the human rights of Blacks in America. The problem is systemic, spanning beyond law enforcement, and is woven into the economic, social and political fabric of this nation.

I am aware that the United States was built on the premise that a Black person was 2/3 of a human being. The Constitution and structured laws that organized the democracy were not inclusive of Black people. With the abolition of slavery did not come a new constitution, a reassessment of reassessment of laws. We know that the system was not built for our people. But we will fight every day until the current system is replaced by one in which Black lives are valued, and where discrimination, perception and injustice do not exist.

In communities across the United States, we will protest, we will die-in, we will make demands of our public officials and law enforcement. We will stand before this committee to let you know that as the federal government you have not done enough to protect Black lives. We will organize to make our governments accountable. The life of a Black person is of little to no value in this country. Until the lives of Black men and boys, and the killing of Black men and boys becomes as important as the killing of any White man or boy, we will not rest. We cannot rest.

BLACK LIVES MATTER.

MIAMI COMMITTEE ON STATE VIOLENCE
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December 8, 2014

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
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Re: The State of Civil and Human Rights in the United States

Dear Chairman Durbin, Ranking Minority Member Cruz, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

On behalf of the Miami Committee on State Violence, we welcome the opportunity to bring attention to the civil and human rights crisis facing our country through this hearing on Dec. 9, 2014before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights. We were formed in response to the greater Miami area's police forces' egregious disregard for the civil and human rights of people of color. Most fundamentally, the human right to life that has been stripped of far too many Black lives. We believe that structural injustices keep our communities insecure; that we must invest in healing; demand accountability from decision makers; and that we are stronger when we come together.

While our brothers and sisters in Ferguson, New York, Ohio, Los Angeles, and countless other communities across the country mourn their losses of Black and Brown lives to police brutality, we have similar wounds left untreated. Israel "Reefa" Hernandez was an 18 year old award-winning artist who was killed by Miami Beach Police over a year ago for the simple act of writing his name on an abandoned building. His killer, Jorge Mercado, remains on the police force and no charges have been filed against him. This cycle of tragedy and refusal to hold police accountable is nothing new in Florida. This week marks twenty-five years since the last time a police officer was convicted, tried or prosecuted for a shooting.[1]

[1] http://wlrn.org/post/miami-s-last-cop-shooting-conviction-left-legal-legacy

The ability of the police to brutalize our communities with impunity cannot be tolerated. On Friday, Dec. 5, 2014[2] and again on Sunday, Dec. 7, 2014[3], the people of Miami took to the streets in mass, peaceful protest demanding enforcement of our collective and individual civil and human rights. We engaged in civil disobedience on both days, blocking a major highway because business can no longer go on as usual as our sons and daughters are being wiped out by the same people who are supposed to protect them. This was not the beginning of our struggle and it will not be the end.

We stand in solidarity with the people of Ferguson who have called on the federal government[4] to:

- Use its power to prosecute police officers that kill or abuse people;
- Defund local police departments that use excessive force or racially profile the citizenry. Instead of having the Department of Justice (DOJ) wholesale giving more than $250 million to local police departments annually, DOJ should only fund departments that agree to adopt DOJ best practices for training and meaningful community input;
- Demilitarize local police departments and end the 1033 program that provides military equipment to the police; and
- Invest in programs that provide alternatives to incarceration, such as community-led restorative justice programs and community groups that educate people about their rights.

We ask that you use your position as Chairman of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights to bring continued attention to the urgent need for redress of our civil and human rights and act on these demands.

Here in Miami, Florida, we have also called on our local police departments to fundamentally reexamine their relationships with the community and have put forward a vision for transformative policing to repair those relationships.

I. Demilitarize the police

Military weapons and armored vehicles have no place in local policing. The police should not be at war with their own communities. However, the stockpiling of war machines and weaponry leaves us with the impression that they are preparing for just that. Furthermore, the suggestion that this equipment is necessary to fight domestic terrorist threats is unfounded. When the police are militarized this force is turned on local residents and citizens. So long as the equipment is there, police agencies will find reasons to use it. This is borne out by the examples of Ferguson, MO and the 2004 FTAA protests in Miami.

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[2] http://fusion.net/story/31913/protesters-shut-down-highway-and-bring-activism-to-miamis-posh-art-basel-weekend/
[3] http://fusion.net/story/32312/miami-art-basel-eric-garner-protests/
[4] http://fergusonaction.com/white-house-meeting/

As a first step towards transforming the police from a force of control into a community resource, the police should:

a. Return or properly dispose of all currently stocked military equipment;
b. Stop participating in the Federal 1033 program that funnels military equipment to local police departments;
c. Commit to take a stand against the police tactics in Ferguson and never use armored vehicles, LRADs or other military weaponry against your own community; and
d. Commit to ***not*** send officers to Israel to be trained in paramilitary tactics designed to repress urban populations.

II. Stop Participating in the War on Drugs

The war on drugs has devastated Black and Latino communities around the country. Harsh sentencing and overzealous policing in communities of color have terrorized our families and filled the prison system with our loved ones. While the war on drugs is backed by federal policy, there are steps that the police can take to end Miami's participation in this war.

Some of these steps include, but are not limited to:

a. Stop arresting and prosecuting individuals for minor non-violent offenses such as marijuana possession;
b. End the practice of using SWAT and other tactical forces to conduct searches or issue warrants;
c. End the practice of seizing the personal property of individuals suspected of being involved in a drug related crime; and
d. Take leadership in advocating that public budgets prioritize drug treatment and mental health services rather than increased law enforcement.

III. End Racial and Class Profiling

Racial profiling by police produces a cloud of anxiety in communities of color in Miami. Not only are the policies and practices of racial profiling unjust, they are ineffective and have lasting effects on the mental health of targeted communities. They increase tensions between police and community residents and prevent meaningful collaborations that create safer more secure environments.

We must end racial profiling and the tactics that enable and support it:

a. Stop the disproportionate allocation of police in low-income Black and Latino communities;
b. End the constant monitoring and surveillance of public housing and other low-income housing developments;

c. Don't arrest homeless people for carrying out basic life-sustaining activities such as bathing, cooking, or sleeping in public;
d. Take leadership in advocating that resources be used to support the housing and service needs of the homeless and that public funds not be used to criminalize homelessness;
e. Don't erode the trust of the community by cooperating or coordinating with ICE to enforce federal immigration policies;
f. End any ticket or arrest quotas that the department may currently have for its officers; and
g. Require all police officers to undergo trainings to understand and combat their own implicit biases.

IV. Restorative Justice – *NOT Punishment and Incarceration*

When conflict and harm occurs in our communities, we need resolutions that address the needs of those who are impacted, hold individuals accountable, and strengthen our communities without isolating, ostracizing, or stigmatizing offenders. The criminal legal system fails to deal directly with the harm caused by crime or the root causes of wrongdoing. In fact, the forms of punishment executed by our current system have been shown to escalate conflict, reinforce violence, and further contribute to the deterioration of community relationships. Therefore we call for an end to the use of harsh punishments as a means of correcting harmful behavior. Instead we ask that officials utilize community based restorative justice as an alternative to arrests and prosecution.

V. End Police Killings and Abuses & Establish Community Policing Policies and Practices

In the past 25 years, none of the dozens of police killings in Florida have resulted in a prosecution by state or federal authorities. Effective policing must be based in community trust, and to reestablish that trust police departments and prosecutors must take several concrete steps:

a. Investigate and hold accountable police officers who use excessive force and/or deadly force as assertively and with the same timeline as you would community members who commit violent crime;
b. Utilize restorative practices to hold officers accountable to individuals, families, and communities;
c. Include the community in major decision making, such as the hiring of a new Police Chief and determining annual budget priorities;
d. Commit to ongoing engagement with community members to develop and implement sustainable solutions to address crime and increase public safety;

e. Work with community members to strengthen the oversight of the Civilian Investigative Panel, including allowing for the CIP to have independent subpoena power; and
f. Commit to a prompt and on-going dialogue with the broader community in times of crisis, i.e., following mass disturbances or incidents of gross police misconduct.

Thank you for the opportunity to submit testimony for the written record and for your continued work to finally bring the promises of the Bill of Rights to fruition for communities of color. Until that time, we will continue to organize, strategize, and build power in our communities until our people our truly free.

Sincerely,

The Miami Committee on State Violence

MR. ISRAEL HERNANDEZ
[redacted]

December 8, 2014

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510
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RE: The State of Civil and Human Rights in the United States

Dear Chairman Durbin, Ranking Minority Member Cruz, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

On behalf of my family, I want to thank you for hosting the Dec. 9, 2014 hearing on the State of Civil and Human Rights in the United States.

My 18-year-old son, Israel "Reefa" Hernandez Llach was shot by police officers from the Miami Beach Police Department on August 6, 2013. This took place in the area of Collins Avenue and 71st Street in Miami Beach during early morning hours while my son was engaged in urban art with two friends on a vacant property that contained prior graffiti. At no time was my son neither armed nor suspected of carrying a weapon and he was not under the influence of any known drugs, as toxicology tests eventually revealed. Although the alleged offense was in all likelihood a second degree misdemeanor under Florida law and that the officers had no reasonable basis to fear for their own safety or the safety of the public or that my son was a danger to them or anyone else, multiple police officers aggressively pursued my son and used a weapon known as an electronic control device or "Taser" to apprehend him.

After a foot chase, police officer Jorge Mercado "taser" zapped my son in the chest. He immediately collapsed and subsequently was pronounced dead when taken to Mt. Sinai Hospital. Witnesses at the scene have come forward to inform that the police officers were celebrating and "high-fiving" one another while my son was lying on the ground mortally injured or while in medical duress or near death. I have reason to believe that the police officers recklessly disregarded the life and safety of my son by not diligently seeking medical treatment after reviewing the time it took to inform emergency medical services from the moment he was "tased."

The loss of my son has been devastating for me, my wife, and daughter. We cannot feel any consolation while the perpetrators of our son's death remain unpunished. The least we seek is a thorough and objective investigation. The Miami Beach police and the State Attorney's Office are too cozy with each other and are not willing or capable of processing one of their own. The Florida American Civil Liberties Union has called on

local police to reform their policies and reduce the "accidental deaths" due to the use of "tasers." But the Miami Beach Police, Miami Police and Miami-Dade Police have publicly stated they have no plans to alter their policies as to the use of "tasers."

The surrounding circumstances of my son's death together with the recent Miami-Dade County Medical Examiner's report concluding that my son's cause of death was from the use of "taser," should provoke an independent investigation as to excessive force by means of this device by the police in Miami-Dade County and cities within, and by all law enforcement agencies around the Nation. Therefore, I respectfully request your assistance in promoting an investigation by the Department of Justice on this matter.

In November 2014, we submitted a report on our son's case to the United Nations Committee Against Torture, highlighting the egregious violations of Articles 1, 12 and 16 of the Convention Against Torture. In their concluding remarks, the Committee specifically named our son's case:

> *27. The Committee is concerned about numerous, consistent reports that police have used electrical discharge weapons against unarmed individuals who resist arrest or fail to comply immediately with commands, suspects fleeing minor crime scenes or even minors. Moreover, the Committee is appalled at the number of reported deaths after the use of electrical discharge weapons,* ***including the recent cases of Israel "Reefa" Hernandez Llach in Miami Beach, Florida,*** *and Dominique Franklin Jr. in Sauk Village, Illinois. While taking note of the information provided by the State party on the relevant guidelines and available training for law-enforcement officers, the Committee observes the need to introduce more stringent regulations governing their use (arts. 11, 12, 13, 14 and 16).*

A selection from our submission is below:

> This report addresses the killing of Israel "Reefa" Hernandez Llach, an 18 year-old artist and asylee, at the hands of the Miami Beach Police Department. It details the litany of indignities suffered by his family, friends and witnesses following his killing, and the lack of accountability provided by local, state and federal government agencies for this and numerous analogous incidents. Hernandez's intentional killing by Miami Beach Police Officer Jorge Mercado's unwarranted use of an electroshock device ("Taser"), amounts to torture under Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention").
>
> a. *Background*
>
> Israel came to the United States from his native Colombia at the age of thirteen, along with his parents and older sister. The family was forced to flee their home after threats by guerilla forces and state-

sanctioned violence left them no other choice. After being granted asylum, they believed they had found refuge from violence in the United States.

Israel was a talented artist and excelled at his coursework in this area, garnering several awards for his work and participating in numerous exhibits, including in the prestigious Art Basel. He was active in the graffiti art scene, a medium that had received increasing attention and acceptance as Miami has encouraged the placement of public murals and graffiti to draw business and tourist dollars to convert the once-depressed Wynwood neighborhood into the Wynwood Arts District.[i]

The offense for which Israel was targeted was minor under Florida law. Florida Statutes cover graffiti under its criminal mischief section punishable as a misdemeanor unless the property damage exceeds $1,000.[ii] A related local ordinance instructs officers to "issue a notice of violation" when confronted with graffiti violations.[iii]

b. *The Killing of Israel "Reefa" Hernandez Llach*

In the early morning hours of August 6, 2013, Israel and two young friends, both Latino immigrants, set out to "tag" a shuttered McDonald's restaurant on Miami Beach. Shortly thereafter, they were spotted by Miami Beach police officers. The young men each ran off in different directions, and the police officers called for backup and gave chase. On official audio recordings made during the pursuit, the officers can be heard saying, "This is a misdemeanor. We are not going to be bringing out dogs for this."[iv]

Despite the relative insignificance of Israel's acts, backup officers continued their pursuit for seven minutes and eventually found Israel. At this point, his two friends had found their way back to him and witnessed the next few tragic moments. Witness statements reported by *Fusion* describe the officers grabbing him from behind and pushing Israel forcefully into a wall as soon as they caught up to him.[v] He sank to the ground, motionless and without making a sound. As he lay there, Officer Jorge Mercado removed his electroshock device, pointed it at Israel's chest and released a powerful volt of energy onto his helpless body. According to witnesses interviewed for the report, the officers proceeded to laugh, make jokes about Israel and give each other jovial high-fives over his seemingly unconscious body as the electricity coursed through him.[vi]

Just thirty seconds after the officers reported to dispatch that he was in custody, the officers then called for medical assistance for what they believed was a possible seizure. Israel was taken to a nearby hospital and declared dead at 6:18 A.M., less than an hour since their chase began.

Israel was unarmed, and an autopsy released seven months after his death confirmed that his death was a result of "sudden cardiac death" from a "conducted energy device discharge."[vii] This was the first time in Florida that a death has been officially attributed to an electroshock device.[viii] A subsequently released toxicology report showed only trace amounts of marijuana were found in Israel's blood stream--no amphetamines or other substances that could have, in combination with the electroshock device's charge, led to death.

c. *Mistreatment of Family and Witnesses by Law Enforcement*

Despite the fact that the site of Israel's death was only a short walk from his parents' home and the hospital only blocks away, officials inexplicably waited almost twelve hours after the death to notify the parents, depriving them of the opportunity to say goodbye to their son.[ix]

Immediately following the incident, Israel's two friends on the scene were placed under arrest. They were taken to the precinct and questioned for over ten hours under harsh and threatening conditions, made to remove their shirts and shiver in a cold room during the interrogations. After the killing, the witnesses were systematically intimidated by the police, who placed police cars around their homes at all hours of the day and night.

d. *Public Pressure to Respond to Case by Civil Society*

The family has engaged in tireless efforts to attain justice for their son, organizing numerous public rallies and protests, and utilizing the limited avenues available through the civil court system. In addition, the family and their supporters have requested assistance from a number of local, state, federal and even international bodies. These include:

- August 2013 – A letter from the parents of Israel Hernandez to the City Commission of Miami Beach through the Americas Community Center Inc.

- Sept. 7, 2013 – A letter from the parents of Israel Hernandez to U.S. President Barack Obama.

- Sept. 23, 2013 – A letter from the parents of Israel Hernandez to U.S. Department of Justice, Civil Rights Division, urging a federal investigation. They received a form letter response on November 13, 2013 signed by a paralegal specialist, saying that they would need to wait for the local investigation to be completed to take any action.

- Dec. 19, 2013 – Letters from U.S. Representative Debbie Wasserman Schultz to the Miami-Dade Chief Medical Examiner, Florida Department of Law Enforcement, Miami Beach Police Department, Miami-Dade State

Attorney, and the U.S. Department of Justice.

- April 28, 2014 – A second letter from the father of Israel Hernandez to U.S. President Barack Obama.

- May 6, 2014 – A letter from the father of Israel Hernandez to the U.S. Attorney General.

- July 10, 2014 - A letter from the Ambassador Luis Carlos Villegas to a U.S. Deputy Assistant Attorney General urging a prompt investigation.

In addition, the family appealed to the Colombian Consulate in Miami for their support. Various officers from the Consulate communicated to the Attorney General and other officials on the family's behalf to request an investigation.

Several advocacy and grassroots groups are also supporting this cause. The American Civil Liberties Union of Florida released an official statement about the case and the use of electroshock devices.[x] Justice for Reefa continues to organize and keep Israel's memory alive. In August 2014, seven young members of the Dream Defenders and one mother of the Miami Workers Center were arrested after engaging in civil disobedience calling for justice and accountability for Israel's death.[xi] The protestors had requested a meeting with the U.S. Attorney for the Southern District of Florida of the U.S. Department of Justice to demand a federal investigation into Israel's murder.

Media coverage of Israel's death has been comprehensive, sustained and far-reaching – with local outlets, nationally renowned periodicals and international media staying on top of the story to the present day.

e. *Persistent Lack of Accountability*

To this day, none of these efforts have yielded action by the Miami Beach Police Department, State Attorney's Office, or U.S. Federal Government. Instead, public officials have shown a clear reluctance to pursue justice for Israel and his family, and a complete lack of action in the prosecution of his killer. Not only has Officer Jorge Mercado avoided arrest and prosecution, but over a year later he is still on the job with full benefits and pay. He remains a continued threat to residents and an affront to the family and friends of Israel who still live in Miami Beach. The Police Department has yet to release a photo of Mercado to the public. In one instance, the Miami-Dade State's Attorney's Office informed activists inquiring about the investigation into Israel's death that "not all tragic deaths will be dealt with by the criminal justice system."[xii]

At the higher levels, both the state and federal governments have a long history of sanctioning state violence in Florida. According to records released by the Miami-Dade State's Attorney's Office "neither the state nor the federal government has prosecuted a police officer in Florida for the use of deadly force in 25 years."[xiii] At the same time, an investigative report by the local NBC affiliate found that "since 1999, Florida police shot 574 people."[xiv] In every instance, the police officer's actions were deemed justified and the State Attorney's office pursued no prosecution of the officers.

The disproportionate impact of excessive force and police brutality on communities of color and immigrant communities in the United States is particularly troubling. Members of these marginalized groups also face additional obstacles when seeking redress through the U.S. court system. The inability for the family to obtain justice or redress in Israel's case is yet another demonstration of the pervasiveness of these structural and institutional problems.

e. *Use of Electroshock Devices in Florida*

While the United States maintains that electroshock devices are "non-lethal" weapons, medical researchers have described the risk of sudden cardiac arrest as a "scientific fact"[xv] and found significant bias in previous research studies to the contrary.[xvi] The problem became so acute in South Florida, in particular, that medical professionals provided guidelines on managing injuries resulting from the devices.[xvii]

In its most recent study of deaths from electroshock devices, Amnesty International found that Florida had the second highest number in the United States with 65 deaths between 2001-2012.[xviii] Nearby Orange County, was an early adopter of the technology and has equipped every frontline officer with a device.[xix] Just over a year after their release, they had already become the most used method of force by officers. During that same period, the overall use of force increased by 37%.[xx] Their report noted numerous incidents of excessive use of these devices across the state, including two incidents where students were subjected to these devices on school grounds or school buses.

Since 2012, at least eleven additional victims have lost their lives as a result of police electroshock devices in Florida:

- Mar. 2012: Nehemiah Dillard dies after Alachua County Sherriff used an electroshock device to subdue him while under the care of a mental health facility.[xxi]

- Mar. 2012: James Barnes dies after being shocked three times by Pinellas County Police as family looks on, begging them to stop.[xxii]

- April 2012: 21-year old George Salgado dies after West Miami Police Department uses an electroshock device on him multiple times.[xxiii]

- July 2012: 21-year old Joshua Savanto is killed by Marion County Sherriff's officers as he retreated from officers.[xxiv]

- Sept. 2013: 20-year old Danielle Maudsley dies after living in an extended vegetative state. Two years earlier, a Florida Highway Patrol trooper had used an electroshock device while Danielle was handcuffed and running away from the trooper, she fell and suffered severe brain damage.[xxv]

- Sept. 2013: Nelson Mandela's former bodyguard, Norman Oosterbroek, is killed by Miami-Dade Police.[xxvi]

- July 2013: Gerald Altamore is killed by St. Cloud Police after a car accident.[xxvii]

- Feb. 2014: Just six months after Israel's death, 21-year old Willie Sams is killed by Pinecrest Police.[xxviii]

- Feb. 2014: Maykel Antonio Barrera is killed by Miami-Dade Police.[xxix]

- Feb. 2014: Treon Johnson is killed by Hialeah Police after fighting off a neighbor's dog that had bitten him.[xxx]

- Aug. 24, 2014: Timothy Griffis is killed by police in Lake City.[xxxi]

None of these cases have led to a criminal prosecution or a federal investigation into the officers or departments involved.

As you turn to examine the state of civil and human rights, we ask that you encourage the Department of Justice to start an immediate investigation into our son's death and the use of "taser" devices by law enforcement. Thank you for the opportunity to submit written testimony for the record and for your attention to our son's case.

Most respectfully,

Israel Hernandez

[i] Associated Press, *Miami Grafiti Artists Free to Leave their Mark*, July 13, 2011 http://www.washingtontimes.com/news/2011/jul/13/miami-graffiti-artists-free-to-leave-their-mark/?page=all

[ii] Fla. Stat. § 806.13

[iii] Code of the City of Miami Beach Sec. 70-123

[iv] Miami New Times, *Israel Hernandez Killing Miami Beach Police Release 911 Tape*, August 14, 2013, http://blogs.miaminewtimes.com/riptide/2013/08/israel_hernandez_killing_miami.php

[v] Fusion, *Tasered The Israel Hernandez Story,* August 5, 2014, http://fusion.net/Justice/video/tasered-israel-hernandez-story-919999

[vi] *Id.*

[vii] WLRN, *Friends Of Israel "Reefa" Hernandez Respond To Autopsy Report*, March 10, 2014, http://wlrn.org/post/friends-israel-reefa-hernandez-respond-autopsy-report

[viii] Fusion, *Tasered The Israel Hernandez Story*

[ix] *Id.*

[x] *ACLU of Florida Statement on Death of Teen Tasered by Miami Beach Police*, August 8, 2013 https://aclufl.org/2013/08/08/aclu-of-florida-statement-on-death-of-teen-tasered-by-miami-beach-police/

[xi] Huffington Post, *8 Activists Arrested In Miami During Protest Over Michael Brown's Death,* August 15, 2014, http://www.huffingtonpost.com/2014/08/15/miami-protestors-arrested-michael-brown-israel-hernandez_n_5680681.html

[xii] Fusion, *Tasered The Israel Hernandez Story*

[xiii] Fusion, *Tasered The Israel Hernandez Story*

[xiv] NBC 6, *A Closer Look at Police Involved Shootings,* 2014, http://www.nbcmiami.com/news/local/A-Closer-Look-at-Police-Involved-Shootings-267553051.html

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[xvii] Journal of Emergency Nursing, *Uncommon cause of death the use of taser guns in South Florida,* August 2008, http://www.ncbi.nlm.nih.gov/pubmed/18640409

[xviii] *Amnesty International Urges Stricter Limits on Police Taser Use as U.S. Death Toll Reaches 500,* February 15, 2012, http://www.amnestyusa.org/news/press-releases/amnesty-international-urges-stricter-limits-on-police-taser-use-as-us-death-toll-reaches-500

[xix] Amnesty International, *USA Excessive and Lethal Force? Amnesty International's Concerns about Deaths and Ill-treatment involving Police Use of Tasers*, November 2004 http://www.amnesty.org/en/library/info/AMR51/139/2004

[xx] *Id.*

[xxi] The Gainesville Sun, *Man Dies after Being Shot Twice with Taser*, March 5, 2012, http://www.gainesville.com/article/20120305/ARTICLES/120309835?tc=ar

[xxii] Tampa Bay Times, *Man dies as differing accounts emerge of Tasering at Honeymoon Island,* September 22, 2014, http://www.tampabay.com/news/publicsafety/man-dies-as-differing-accounts-emerge-of-tasering-at-honeymoon-island/1220837

[xxiii] CBS 4 Miami, *West Miami Man Dies in Police Custody, Family Wants Answer*, April 17, 2012, http://miami.cbslocal.com/2012/04/17/west-miami-man-dies-in-police-custody-family-wants-answers/

[xxiv] Courthouse News Services, Immunity Denied as to Fatal Florida Police Stop, May 14, 2014, http://www.courthousenews.com/2014/05/14/67880.htm

[xxv] Bay News 9, *Woman tased by FHP trooper in Pinellas Park dies*, September 16, 2013, http://www.baynews9.com/content/news/baynews9/news/article.html/content/news/articles/bn9/2013/9/15/woman_tased_by_fhp_t.html

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[xxvii] WFTV 9, *Police Reckless driver dies after being shocked by Taser after crash,* July 10, 2013, http://www.wftv.com/news/news/local/police-reckless-driver-died-after-being-shocked-ta/nYkzY/

[xxviii] Miami New Times, *Another Young Man Dies After Being Tasered, This Time by Miami-Dade Police,* February 28, 2014, http://blogs.miaminewtimes.com/riptide/2014/02/another_young_man_tasered_to_d.php

[xxix] The Miami Herald, *Two men die after being targeted by Miami-Dade police Tasers,* February, 28, 2014, http://www.miamiherald.com/news/local/community/miami-dade/article1960861.html

[xxx] NBC 6, *Family, Friends Mourn Man Fatally Shot With Police Taser*, March 16, 2014, http://www.nbcmiami.com/news/local/Family-Friends-Mourn-Man-Fatally-Shot-With-Police-Taser-250479101.html

[xxxi] First Coast News, *Lake City Man Tasered by Deputy Dies after Arrest*, August 25, 2014, http://www.firstcoastnews.com/story/news/local/2014/08/25/lake-city-death-taser--timothy-shad-griffis/14583233/

National Task Force
to End Sexual and
Domestic Violence Against Women

Statement on Behalf of the National Task Force to End Sexual and Domestic Violence Against Women
Submitted for the hearing on

The State of Civil and Human Rights in the United States

United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

December 9, 2014

The Steering Committee of the National Task Force to End Sexual and Domestic Violence, comprised of national leadership organizations advocating on behalf of sexual and domestic violence victims and women's rights, submit this testimony to highlight the harmful impact of mandatory minimum sentences on civil and human rights in the United States and to urge passage of the Smarter Sentencing Act of 2014, a bill that would provide for meaningful federal prison sentencing reform by making incremental changes to certain mandatory minimum sentences for drug offenses.[i]

The Harmful Impacts of Mandatory Minimum Sentences
Mandatory minimum sentences without judicial flexibility often adversely affect victims, some of who end up entangled in non-violent drug crimes through the coercive and abusive actions of others (including abusive partners, pimps, traffickers, and others). Victimization becomes a criminal act. Victims need support, not incarceration.

Equally important, excessive mandatory minimum sentences have an adverse impact on communities of color. While African-Americans make up 13.2% of the U.S. population[ii], they comprise 37.4% of all federal prisoners[iii] and 40.4% of drug offenders subject to mandatory minimums at sentencing[iv]. Similarly, although Latinos/Hispanics make up only 17.1% of the general population[v], they constitute 34.5%[vi] of the federal prison population, and 39.6% of offenders subject to mandatory minimums at sentencing[vii]. White prisoners are subject to mandatory minimums at half the rate of communities of color; only 18% of offenders sentenced to mandatory minimums are white[viii]. Federal policies that magnify the impacts of racism on communities of color must change.

Additionally, the federal prison system is strained to the breaking point. A 2012 study found federal prisons are operating at 39% over capacity[ix]. The Bureau of Prisons (BOP) consumes one quarter of the U.S. Department of Justice's total budget[x]. This budgetary burden will only increase in future years, increasing to almost one third of the Justice Department's budget by 2020[xi]. This increase reflects only the most basic financial costs of incarcerating so many non-violent prisoners for long mandatory sentences.

These sentences are often irrationally out of proportion with sentences for serious violent offenses that are years, and in some cases, decades shorter. Shockingly, some mandatory minimums for drug offenses can result in life sentences[xii], but sentencing for sexual assault and other violent crimes can be capped at twenty years[xiii]. Given the financial costs, we need to reserve expensive incarceration for those offenders who cannot be effectively managed in the community or whose serious offenses truly require long terms of imprisonment.

Opportunity Costs

The annual funding increases for incarceration come at the expense of other core functions of the Department of Justice (DOJ). Victims of violent crime in Indian Country, for example, suffer the impact of strained DOJ resources, because many Native communities rely on the FBI and United States Attorneys to investigate and prosecute domestic violence, sexual assault, stalking, and trafficking cases. More agents and prosecutors working in Indian Country will benefit Native victims far more than long periods of incarceration for non-violent offenders.

Not only does the increasing BOP budget burden the Department's ability to carry out its investigative and prosecutorial functions, it will drain desperately needed funding from the Department's grant programs crucial to the safety and stability of victims of domestic violence, dating violence, sexual assault, and stalking. This includes programs authorized under the Violence Against Women Act, the Byrne Act, the COPS program, the Juvenile Justice and Delinquency Prevention Act, and the Victims of Child Abuse Act. True justice prioritizes victims of violent crimes' legal and service needs over incarcerating low-level, non-violent drug offenders.

For lower-level, non-violent drug offenders, we support a re-examination of mandatory sentencing. Mandatory sentencing is both financially and societally costly. We urge the Committee to ensure that all changes furthering true justice are implemented as robustly in federal women's prisons as in federal men's prisons.

After the Smarter Sentencing Act

The Smarter Sentencing Act (SSA) is key to addressing the disproportionate incarceration of persons from Communities of Color, overcrowding of federal prisons, the burgeoning BOP budget, the weak prosecutorial response to crimes of domestic and sexual violence on Tribal lands, and the restoration of funding to victim services programs. But the SSA can only address the latter two concerns if BOP savings are reinvested directly into critical areas of need: the hiring of federal prosecutors to fill currently empty positions in order to ensure robust prosecution of domestic violence, sexual assault crimes, and stalking on Tribal lands and the restoration of funding to the programs that serve victims of domestic violence, dating violence, sexual assault, and stalking. We would also like to see more resources invested in the reduction of custodial sexual assault and prosecution of those responsible. While this bill's focus on working with offenders to reduce recidivism is laudable, lawmakers must also acknowledge the reality that when offenders are preyed upon while in custody or in prison, such

victimization adversely affects the likelihood and scope of re-offense. With a variety of discussions about law enforcement reform taking place in Congress and elsewhere, we urge the Judiciary Committee to ensure that every effort is made to protect people in custody from physical abuse and sexual assault, and to hold those who are responsible accountable.

Growing Need for Services

The needs of victims of domestic and sexual violence are growing. As demonstrated in a national survey of service providers conducted by the National Network to End Domestic Violence, in just one 24 hour period in 2012, domestic violence programs served 64,362 victims and answered 20,821 hotline calls. On that same day, however, there were 10,471 unmet requests for services.[xiv] As a result of sequestration and state budget cuts, in 2013 alone, domestic violence programs *lost* funding for more than 1600 staff[xv]. Lack of available grant funding has devastating impacts on victims of sexual assault; the vast majority of victims do not report the crime to law enforcement but still need supportive services.

According to a 2013 survey by the National Alliance to End Sexual Violence, half of the nation's 1300 rape crisis centers, already struggling to provide a frontline response to rape on shoestring budgets, lost staff during the past year, and one third have waiting lists for crisis services.[xvi] This leaves countless victims of sexual assault without the support they need to heal and regain their lives. Victims' needs are growing, but victim assistance funding is shrinking.

We are also concerned that non-violent offenders sentenced for immigration offenses are among the fastest growing segments of the federal prison population. We see the negative impact of this expanded detention on immigrant victims of violence and their families, who are driven further into the shadows and are more vulnerable to abuse and exploitation. While SSA does not address this growing segment of the federal prison and detention population, the topic is certainly within the scope of this hearing. We hope that future efforts to focus on smarter sentencing reform will also address this critical issue.

Recommendations

The National Task Force to End Sexual and Domestic Violence believes public safety would be improved through the passage of the Smarter Sentencing Act. The legislation would liberate scarce resources currently directed at unnecessarily long mandatory minimum sentences to be used for re-entry programs, crime prevention, and more robust law enforcement efforts. Additionally, we see the passage of the SSA as an effective mechanism for supplementing the woefully insufficient resources allocated to address domestic violence, sexual assault, dating violence and stalking.

Reducing prison costs by reducing incarceration of non-violent drug offenders will address both the overrepresentation of communities of color in the federal prison system and the need to free resources at the U.S. Department of Justice to better serve victims. Achieving both of these goals will improve the broader criminal justice system response

to crime. For these reasons, we support the Smarter Sentencing Act and urge all members of the Senate Judiciary Committee to work vigorously for its swift passage.

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The State of Civil and Human Rights in the United States

The Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Testimony of The Center for HIV Law and Policy

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December 8, 2014

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We thank the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for the opportunity to submit testimony regarding ongoing civil and human rights challenges. **The Center for HIV Law and Policy** (CHLP) is a national legal and policy resource and strategy center working to reduce the impact of HIV on vulnerable and marginalized communities and to secure the civil and human rights of people affected by HIV. CHLP supports and increases the advocacy power and HIV expertise of attorneys, community members, and service providers, and advances policy initiatives that are grounded in and uphold social justice, science, and the public health.

CHLP also founded and coordinates the **Positive Justice Project** (PJP), a national coalition of organizations and individuals working to end HIV criminalization in the United States. PJP's members engage in federal and state policy advocacy, resource creation, and support of local advocates and attorneys working on HIV criminal cases. PJP organizes and mobilizes communities and policymakers in the United States. PJP's advocacy has resulted in the decision of multiple medical, public health, and policymaking organizations to issue statements calling for an end to the use of the criminal law to target the conduct of people living with HIV and other communicable diseases.[1]

Our testimony focuses on the continuing use of the criminal law to target people on the

[1] *See* Presidential Advisory Council on HIV/AIDS (PACHA), *Resolution on Ending Federal and State HIV-Specific Criminal Laws, Prosecutions, and Civil Commitments* (2013) (noting that the criminalization of HIV-affected people fuels HIV stigma), *available at* http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/PACHA_Criminalization_Resolution%20Final%20012513.pdf; American Medical Association (AMA), *Modernization of HIV Specific Criminal Laws* (2014), *available at* http://hivlawandpolicy.org/news/ama-adopts-a-resolution-opposing-hiv-criminalization; HIV Medicine Association (HIVMA), *Repeal of HIV-Specific Criminal Statutes* (2012), *available at* www.hivma.org/uploadedFiles/IDSA/Careers_and_Training/Opportunities_for_Students_Residents/ID_Career_Paths/HIVMA%20Policy%20Statement%20on%20HIV%20Criminalization.pdf; Association of Nurses in AIDS Care (ANAC), *HIV Criminalization Laws and Policies Promote Discrimination and Must Be Reformed* (2014), *available at* http://www.nursesinaidscare.org/files/public/ANAC_PS_Criminalization_December12014.pdf; National Alliance of State and Territorial AIDS Directors (NASTAD), *Nat'l HIV/AIDS Strategy Imperative: Fighting Stigma and Discrimination by Repealing HIV-Specific Criminal Statutes* (2011), *available at* www.nastad.org/Docs/114641_2011311_NASTAD%20Statement%20on%20Criminalization%20-%20Final.pdf; U.S. Conference of Mayors, *Resolution on HIV Discrimination and Criminalization* (2013), *available at*www.usmayors.org/resolutions/81st_Conference/csj11.asp; Positive Justice Project (PJP), *National Consensus Statement on the Criminalization of HIV* (2012), *available at* www.hivlawandpolicy.org/resources/positive-justice-project-consensus-statement-criminalization-hiv-united-states-positive (exhibiting more than 1000 organizational and individual endorsements from across the United States); U.S. Dep't of Justice, *Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors* (July 15, 2014), *available at* http://aids.gov/federal-resources/national-hiv-aids-strategy/doj-hiv-criminal-law-best-practices-guide.pdf.

basis of health and disability status that is associated with stigmatized identities in the United States, including people from communities of color, and members of lesbian, gay, bisexual, transgender, economically marginalized and immigrant communities. In particular, we call for the need to provide leadership and funding support for state policy makers to expedite the modernization of criminal laws that target the consensual sexual and otherwise-legal conduct of people living with HIV.

HIV, sexually transmitted infections, tuberculosis (TB), hepatitis, and meningococcal disease are all are poorly understood, stigmatized conditions that disproportionately affect and often intersect in vulnerable and marginalized communities with limited social or political capital. The stigma associated with these health conditions is a manifestation of a much broader set of "social disease": homophobia, transphobia, racism, sexism and the related "othering" that is done to marginalize, criminalize, and imprison individuals who make mainstream people feel afraid or uncomfortable. This unconscious overreaction by the criminal justice system is part of a larger problem of identity-based policing and criminalization practices.[2]

Increasing media reports have raised awareness about the pervasive profiling and discriminatory treatment by local, state, and federal law enforcement officials based solely on actual or perceived suspect classifications, such as race, ethnicity, gender, gender identity, gender expression, sexual orientation, religion, economic status, housing status, immigration status, age, or other determinants. The gross ignorance that drives these practices is not isolated to law enforcement; it is entrenched throughout the entire criminal justice system. This is particularly evident through unnecessary prosecutions, judicial decisions exhibiting bias or reliance on inaccurate information, and failures to address blatant misconduct and misuse of the criminal justice system. Overreliance on criminal laws to single out and stigmatize marginalized communities has been a particularly troubling issue for people living with HIV and at-risk communities, including communities of color, LGBT people, sex workers, youth, women, drug-users, and immigrants. One of the more alarming issues for people living with HIV has been the prospect of law enforcement harassment, and criminal prosecution for acts of consensual sex and

[2] *See, e.g.*, The Center for HIV Law and Policy, *et al.*, *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People with HIV* (2014), *available at* http://hivlawandpolicy.org/resources/a-roadmap-change-federal-policy-recommendations-addressing-criminalization-lgbt-people-and.

for conduct, such as spitting and biting,[3] which poses no measurable risk of HIV transmission.

Thirty-four U.S. states and territories have laws that criminalize the conduct of people living with HIV based on perceived exposure to HIV and without any evidence of intent to do harm.[4] Additionally, prosecutions for allegations of non-disclosure, exposure, or transmission of HIV have occurred in at least thirty-nine states under HIV-specific laws or general criminal laws, including aggravated assault, attempted murder, and even bioterrorism[5] statutes. Most of these laws were adopted before the availability of effective antiretroviral treatment for HIV and when data about the limited routes and risks of HIV transmission were not widely available. As a result, these laws have effectively institutionalized widespread ignorance about HIV and how it is transmitted.

HIV stigma and its relation to misconceptions about HIV transmission have been repeatedly documented.[6] Extensive misperceptions about the most basic facts of the routes and relative risks of HIV transmission are entrenched and persistent. A recent survey found that "levels of knowledge about HIV transmission have not improved since 1987."[7] Studies also

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[3] CDC, *HIV Transmission* (Sept. 2014), *available at* http://www.cdc.gov/hiv/basics/transmission.html ("HIV cannot be spread through saliva."); *see also Henderson v. Thomas*, No. 11-CV-224, slip op. at 2 (M.D. Ala. Dec. 21, 2012) ("A person would have to drink a 55-gallon drum of saliva in order for it to potentially result in a transmission.").

[4] The Center for HIV Law and Policy, *Ending and Defending Against HIV Criminalization: A Manual for Advocates, State and Federal Laws and Prosecutions, Vol. 1* (updated 2014), *available at* http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Criminalization%20Manual%20%28Revised%2012.5.13%29_0.pdf; *see also* J. Stan Lehman, Meredith H. Carr, Allison J. Nichol, Alberto Ruisanchez, David W. Knight, Anne E. Langford, Simone C. Gray, Jonathan H. Mermin, *Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States*, AIDS AND BEHAVIOR (2014), *available at* http://hivlawandpolicy.org/resources/prevalence-and-public-health-implications-statelaws-criminalize-potential-hiv-exposure.

[5] K. Sinclair, *Michigan Judge Rules That HIV-Positive Man Not a Bioterrorist*, 15(1) HIV/AIDS POLICY LAW REV. 27-8 (2010), *available at* http://www.ncbi.nlm.nih.gov/pubmed/21413616 (noting that Michigan judge dismissed charges against an HIV positive man brought under the state's "bioterrorism" statute).

[6] The Henry J. Kaiser Family Foundation, *Survey of Americans on HIV/AIDS: Summary of Findings on the Domestic Epidemic* (2009) at 4, 21, *available at* http://www.kff.org/kaiserpolls/upload/7889.pdf (finding that "[o]ne third of Americans (34 percent) harbor at least one misconception about HIV transmission, not knowing that HIV cannot be transmitted through sharing a drinking glass (27%), touching a toilet seat (17%), or swimming in a pool with someone who is HIV-positive (14%); and that "[n]otable [segments of the public] say they would be uncomfortable with an HIV-positive co-worker (23%), child's teacher (35% of parents), or roommate (42%), and fully half (51%) of adults say they would be uncomfortable having their food prepared by someone who is HIV-positive").

[7] *Id.* at 4-5, 22-23.

show that many people do not get tested because of stigma and their fear of discrimination.[8]

People living with HIV also face more severe penalties because law enforcement, prosecutors, courts, and legislators continue to view and characterize them as inherently dangerous, and their bodily fluids as "deadly weapons."[9] In fact, nine states add mandatory sex offender classification and registration to those convicted under these laws. Felony convictions and sex offender registration requirements cause irreparable damage to most aspects of defendant's lives, including, their ability to work, to choose where they live, educational opportunities, even to continue relationships with their own children or other minor relatives.[10]

Despite the growing consensus that HIV specific criminal laws and prosecutions need to be reformed,[11] criminalization based on an individual's health status remains pervasive. Many states have "communicable" or "contagious disease" control statutes that criminalize STI exposure, which may or may not include HIV.[12] Most of these statutes are antiquated and were enacted prior to the discovery of HIV. While these statutes have typically not been enforced, there is an increasing trend to use these statutes to target the behaviors of people living with HIV and individuals with other stigmatized health conditions.[13] Another disturbing occurrence is that

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[8] Peter A. Vanable, Michael P. Carey, Donald C. Blair, and Rae A. Littlewood, *Impact of HIV-Related Stigma on Health Behaviors and Psychological Adjustment Among HIV-Positive Men and Women*, 10(5) AIDS BEHAV. 473 (2006) (summarizing research), *available at* http://www.ncbi.nlm.nih.gov/pubmed/16604295; *see also* Ronald A. Brooks, et al.,*Preventing HIV Among Latino and African American Gay and Bisexual Men*, 19(11) AIDS PATIENT CARE STDS 737, 738 (2005), *available at* http://www.ncbi.nlm.nih.gov/pubmed/16283834.

[9] *See, e.g.*, *People v. Plunkett*, 19 N.Y.3d 400, 408-9 (2012) (rejecting prosecutor's argument that an HIV positive person's saliva is a "dangerous instrument").

[10] American Bar Association (ABA) Commission on Effective Criminal Sanctions and the Public Defender Service for the District of Columbia, *Internal Exile: Collateral Consequences of Conviction in Federal Laws and Regulations* (2009), *available at* http://www.americanbar.org/content/dam/aba/migrated/cecs/internalexile.authcheckdam.pdf; *see* National Institute of Justice & ABA Criminal Justice Section, *National Inventory of the Collateral Consequences of Conviction* (2013), *available at* http://www.abacollateralconsequences.org/; *see also* Legal Action Center, *After Prison: Roadblocks to Reentry, A Report on State Legal Barriers Facing People with Criminal Convictions* (2004), *available at* http://www.lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf.

[11] *See supra* note 1 (collecting statements against the criminalization of HIV and other infectious diseases from medical, public health, and policymaking organizations).

[12] *See, e.g.*, Cal. Health & Safety Code § 120600; La. Rev. Stat. Ann. § 40:1062; Mont. Code Ann. § 50-18-112; N.Y. Pub. Health Law § 2307; S.C. Code Ann. § 44-29-60 (2009); Tenn. Code Ann. § 68-10-107; Vt. Stat. Ann. Tit. 18 § 1106; W. Va. Code § 16-4-20.

[13] *See, e.g.*, Katie Lucia, *Man Gets 6 Months for Spreading HIV*, DESERT DISPATCH (July 26, 2012), *available at* http://www.desertdispatch.com/news/spreading-13329-barstow-gets.html; *State v. Richardson*, 209 P.3d 696, 701 (Kan. 2009) (noting that the communicable disease criminal law required the prosecution to

state legislatures are attempting to expand the criminalization of health conditions by adding more communicable or infectious diseases to existing HIV specific criminal statutes. For instance, in June 2014, Iowa's legislature expanded its existing HIV-specific criminal statute to include hepatitis, tuberculosis (TB), meningococcal disease, and "any other disease determined to be life threatening."[14] Similarly driven by gross ignorance and misconceptions, legislatures in other states are attempting to implement similar measures.[15] This expansive use of criminal laws to address public health issues is particularly troubling because it is in direct conflict with federal advancements on this issue.

The National HIV/AIDS Strategy (NHAS), released in 2010, includes a statement on the problem and public health consequences of HIV criminalization and maintains that many state HIV-specific criminal laws reflect long-outdated misperceptions of HIV's modes and relative risks of transmission.[16] The NHAS recommends that legislators reconsider whether these laws further the public interest and support public health approaches to preventing and treating HIV.[17] These recommendations were reaffirmed in the Presidential Advisory Council on AIDS (PACHA) Resolution on Ending Federal and State HIV-Specific Criminal Laws, Prosecutions, and Civil Commitments, which noted that the criminalization of HIV positive people fuels HIV stigma.[18] In response to growing national support, bipartisan proposed legislation has been introduced in Congress to encourage modernization of current criminal law approaches to HIV.[19] More recently, in July 2014, the U.S. Department of Justice issued guidance providing technical assistance to states to ensure that HIV-related criminal laws reflect the contemporary medical

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prove that the defendant knew he was infected with HIV and intentionally engaged in sexual intercourse with the specific intent to expose another person to HIV).

[14] Iowa Code § 709D.3.

[15] *See, e.g.*, S.B. 1130, 97th Leg., Reg. Sess. (Mich. 2014) (attempting to add Hepatitis C to Michigan's HIV-specific criminal statute).

[16] NHAS *available at* http://www.whitehouse.gov/sites/default/files/uploads/NHAS.pdf.

[17] *Id.*

[18] PACHA, *Resolution on Ending Federal and State HIV-Specific Criminal Laws, Prosecutions, and Civil Commitments* (2013) (noting that the criminalization of HIV-affected people fuels HIV stigma), *available at* http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/PACHA_Criminalization_Resolution%20Final%20012513.pdf.

[19] Repeal Existing Policies that Encourage and Allow Legal (REPEAL) HIV Discrimination Act, H.R. 1843 (May 2013), *available at* https://www.govtrack.us/congress/bills/113/hr1843; *see also* LOS ANGELES TIMES, Editorial, *Get Rid of those Outdates HIV Laws* (June 6, 2013), *available at* http://articles.latimes.com/2013/jun/06/opinion/la-ed-hiv-state-laws-review-2013060.

and scientific understanding of HIV.[20] The stark disconnect between state legislative actions, law enforcement and prosecutorial practices, and federal government guidance demonstrates that all of these entities must be engaged in comprehensive education to ensure effective solutions.

Identity-based policing, prosecutorial policies, and criminal statutes are the consequence of fear and stigma fueling policymaking instead of actual understanding of relevant data. This is most evident through the highly controversial "broken windows" policing practice that fails to consider the social and economic factors that contribute to crime and disorder in communities of color,[21] and HIV-specific prosecutions that continuously ignore or intentionally misstates current scientific and medical data regarding HIV transmission risks and treatment.[22] This approach to policymaking is an inefficient use of the criminal justice system, and it only serves to perpetuate the harm these flawed policies seek to address. Thus, it is necessary for community members, law enforcement, prosecutors, criminal defense attorneys, judges, and legislators to be engaged in comprehensive education, and federal funding must be even distributed to support the necessary education of all these groups.

For too long, federal and state public health authorities have accepted the persistent, widespread public ignorance about the actual routes, real risks, and current-day consequences of HIV transmission by neglecting the need for frank, accurate information that is essential to sound sexual health. As the criminal justice treatment of HIV demonstrates, ignorance is the furthest thing from bliss for those individuals whose decision to get tested for HIV opens the door for felony prosecution.

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[20] U.S. Dep't of Justice, *Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors* (July 15, 2014), *available at* http://aids.gov/federal-resources/national-hiv-aids-strategy/doj-hiv-criminal-law-best-practices-guide.pdf.

[21] *See* Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Space: A New Look at Disorder in Urban Neighborhood*, 105(3) AM. J. SOC. 603 (Nov. 1999) (finding that disorder does not cause crime; rather, disorder and crime co-exist, and both are caused by similar social and economic factors); Randall G. Shelden, Center on Juvenile and Criminal Justice, *Assessing "Broken Windows": A Brief Critique* (2013), *available at* http://www.cjcj.org/uploads/cjcj/documents/broken.pdf (noting that "with so many arrests on minor charges, more and more people (especially young minority males) will have a record, thus hindering their job prospects in the future and perhaps even propelling them into more crime, especially drug crimes").

[22] *See* Carol Galletly & Steven Pinkerton, *Conflicting Messages: How Criminal HIV Disclosure Laws Undermine Public Health Efforts to Control the Spread of HIV*, 10(5) AIDS BEHAV. 451 (Sept. 2006) (finding that HIV specific laws undermine HIV prevention efforts on consistent condom use and reduce health-seeking behavior among people living with HIV); *see also* CDC, PACHA & HRSA/DHHS Joint Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Care, *HIV Disclosure Summit* (June 2012), *available at* http://aids.gov/federal-resources/pacha/meetings/2013/feb-2013-joint-letter-to-sec-of-health.pdf (recognizing that mandatory disclosure laws may deter populations at risk for HIV from seeking testing).

In conclusion, to address this educational need, we recommend the following:

- The Department of Justice and other appropriate federal agencies should fund qualified organizations experienced in working with the criminal defense and prosecution bar to provide basic HIV education and training for law enforcement officials, prosecutors, criminal defense attorneys, judges, and state legislators. This educational training should cover HIV transmission routes and risk, the realities of an HIV diagnosis under current treatment, and an overview of the socio-economic factors that fuel the epidemic.
- The Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) should mandate development and support of accurate, age-appropriate and LGBT-inclusive HIV and STI literacy programs for students and staff of all federally supported school systems as a condition of federal funding.
- CDC must develop and distribute more direct and explicit public service announcements on the routes, risks and consequences of all sexually transmitted infections, including HIV, dispelling myths that fuel HIV criminalization via mainstream and new media.
- CDC's and other related websites, including AIDS.gov, should prominently include information on the actual routes, relative risks, and consequences of HIV and other STI transmission that reflects real-life risk reduction choices (e.g., oral sex as a very low-to-no-risk alternative; the impact of drug therapies on the already low transmission risk of HIV).
- HHS, the Health Resources and Services Administration (HRSA), and other responsible federal agencies should require proof of written policies and standards for the provision of sexual health care and HIV-inclusive sexual health literacy programs for police lock-ups, juvenile facilities, and correctional and detention settings receiving federal funds. Staff education should include training on avoiding discriminatory enforcement of regulations against people living with HIV and on maintaining HIV status confidentiality.

We thank you for your consideration of these comments, and welcome the opportunity to discuss them further with you and your staff.

Written Testimony of Julie Stewart,
President and Founder
Families Against Mandatory Minimums

Submitted to the
U.S. Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights

For the Hearing on
The State of Civil and Human Rights in the United States
December 9, 2014

On behalf of the more than 70,000 supporters of Families Against Mandatory Minimums (FAMM), I would like to thank Subcommittee Chairman Durbin, Ranking Member Cruz, and the members of the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Human Rights for holding this important hearing, and for the opportunity to submit written testimony.

FAMM is a nonprofit, nonpartisan organization advocating for sentencing laws that fit the crime and the offender, protect the public, use taxpayer dollars wisely, and strengthen and preserve families. In our view, mandatory minimum sentences are never appropriate because they produce unjust outcomes, exponentially increase prison populations and costs, harm families and children, and are unnecessary to protect public safety. Mandatory minimum sentencing laws also contribute to unacceptable racial disparities in sentencing in the federal criminal justice system.

Fortunately, Congress can reform or repeal mandatory minimum sentencing laws, and several reasonable bipartisan proposals to do so already exist. Enactment of the Smarter Sentencing Act (S. 1410), a reform introduced by Chairman Durbin and co-sponsored by Ranking Member Cruz, has unprecedented bipartisan support and would make incremental but positive first steps toward increasing fairness in the federal criminal justice system. Another important bill, the Justice Safety Valve Act (S. 619), sponsored by Judiciary Committee Chairman Patrick Leahy (D-VT) and Senator Rand Paul (R-KY), could help alleviate racial disparities linked to certain mandatory minimum sentences for gun offenses.

Below, we present four sources of racial disparity in the application of mandatory minimum sentences and explain how pending legislation would, if enacted, help alleviate these disparities and improve our justice system.

Disparity Caused by Mandatory Minimum Sentences Overall

Research over the years has consistently shown that the use of mandatory minimum sentences in federal courts systematically and disproportionately affects minority groups. As early as 1991, the nonpartisan U.S. Sentencing Commission concluded that "[t]he disparate application of mandatory minimum sentences . . . appears to be related to the race of the defendant, where Whites are more likely than non-Whites to be sentenced below the applicable mandatory

minimum."[1] The report observed that 67.7% of Black and 57.1% of Hispanic defendants received sentences at or above the mandatory minimum, compared with 54% of White defendants.[2] A greater proportion of Black and Hispanic defendants than Whites were initially charged with offenses carrying mandatory minimum sentences.[3] Downward departures from mandatory minimum sentences (available to defendants who provide "substantial assistance" to the government in the investigation or prosecution of others) were most frequently granted to Whites and least frequently to Hispanics.[4] According to a Federal Judicial Center report published in 1990, Blacks were 21% and Hispanics 28% more likely than Whites to receive a mandatory minimum sentence for offenses that carried such penalties.[5]

These disparities have not disappeared over time and persist today. A 2011 U.S. Sentencing Commission report[6] found that 38.5% of all offenders who received mandatory minimum sentences were Black, 31.8% were Hispanic, and 27.5% were White.[7] While some of these differences were attributable to legally relevant factors or demographics pertaining to particular offenses,[8] the Commission concluded that these disparities nonetheless create perceptions of unfairness that can undermine the effectiveness of the federal criminal justice system.[9]

The result of the disproportionate application of mandatory minimum sentences to people of color is that their sentences are lengthier than those for Whites. Average sentence lengths for Blacks increased dramatically shortly after Congress's passage of most mandatory minimum drug sentences. In 1986, average sentences for Blacks were 11 percent higher than those for Whites. By 1990, that percentage had increased to 49 percent.[10] In its 2011 report on mandatory minimum sentences, Blacks had significantly longer average sentences than Whites across the board, both when they received mandatory minimum sentences and when they were relieved of those sentences.[11]

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[1] U.S. SENTENCING COMM'N, SPECIAL REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM ii (1991), *available at* https://www.ncjrs.gov/pdffiles1/Digitization/137910NCJRS.pdf.
[2] *Id.* at 76.
[3] *Id.* at 81-82.
[4] *Id.* at 82.
[5] BARBARA S. MEIERHOEFER, THE GENERAL EFFECT OF MANDATORY MINIMUM PRISON TERMS 20 (Federal Judicial Center, 1992), *available at* http://www.fjc.gov/public/pdf.nsf/lookup/geneffmm.pdf/$file/geneffmm.pdf.
[6] U.S. SENTENCING COMM'N, REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2011), *available at* http://www.ussc.gov/news/congressional-testimony-and-reports/mandatory-minimum-penalties/report-congress-mandatory-minimum-penalties-federal-criminal-justice-system.
[7] *Id.* at 123-24, Tbl. 7-1, *available at* http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_07.pdf.
[8] *Id.* at 101-102, *available at* http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_05.pdf.
[9] *Id.* at 354 (regarding mandatory minimum drug sentences); 363-64 (regarding mandatory minimum gun sentences), *available at* http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_12.pdf.
[10] MEIERHOEFER, at 20-21.
[11] U.S. SENTENCING COMM'N, REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 139, Tb. 7-3, *available at* http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_07.pdf.

The imposition of lengthier punishments for people of color who commit the same crimes as Whites undermines the goals of certainty and uniformity in punishment. It also puts an enormous burden on families and communities of color and erodes their sense that the criminal justice system is fair and colorblind.

Congress can and should remedy some of this disparity with the passage of reform legislation like the Smarter Sentencing Act. That bill would reduce the existing mandatory minimum sentences only for nonviolent drug offenses, producing punishments that are more proportionate to the crime, less costly to taxpayers, and less devastating to families.[12] Because mandatory minimum drug sentences disproportionately apply to people of color, the Smarter Sentencing Act could also help reduce the existing racial disparities in sentencing. Additionally, the bill's reductions to mandatory minimum drug sentences would ease prison overcrowding and reduce prison costs, saving more than 690,000 prison bed years and more than $10.6 billion over 20 years, according to a Department of Justice estimate.[13]

Disparity Caused by Crack Cocaine Sentences

Prior to 2010, five grams of crack cocaine – about the weight of five sugar packets – and 500 grams of powder cocaine garnered the same five-year mandatory minimum sentence. Fifty grams of crack – about the weight of a candy bar – and five kilograms of powder cocaine triggered the same 10-year mandatory minimum. These drug weights created the so-called "100-to-one" disparity between crack and powder cocaine mandatory minimum sentences.[14] This disparity resulted in overly harsh sentences for predominantly young Black men. Though to this day Blacks and Whites use crack at about the same rate,[15] 80 percent of all federal crack offenders sentenced in 2009 were Black.[16] FAMM, the U.S. Sentencing Commission, and other sentencing experts criticized this unacceptable racial disparity in punishment and advocated for its reform for 20 years.

In 2010, Congress made history with its unanimous passage of the Fair Sentencing Act (FSA),[17] a bill introduced by Chairman Durbin. This law repealed a mandatory minimum sentence for the first time since the Nixon Administration: Since the FSA's enactment on August 3, 2010, people no longer receive a five-year mandatory minimum sentence for simple possession of five grams of crack cocaine. More importantly, the FSA reduced the racially discriminatory 100-to-one ratio

[12] S. 1410, § 4 (1st Sess., 113th Cong.). The bill would reduce 20-year mandatory minimum drug sentences to 10-year terms; 10-year terms to five-year terms, and five-year terms to two-year terms. The current 20-year mandatory penalties for drug crimes involving the death or serious bodily injury of others would remain unchanged.
[13] U.S. Dep't of Justice, Cost Savings Estimate of Smarter Sentencing Act of 2013, at 8, *available at* http://famm.org/wp-content/uploads/2014/02/DOJ-SSA-Cost-Savings-Estimate-2014.pdf.
[14] *See* U.S. SENTENCING COMM'N, REPORT TO CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 2-3 (May 2007), *available at* http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf.
[15] *See* Substance Abuse and Mental Health Data Archive, Nat'l Survey on Drug Use and Health, 2011, *at* http://www.icpsr.umich.edu/quicktables/quickoptions.do (last visited Dec. 9, 2014) (showing that 5% of Blacks and 3.4% of Whites reported using crack cocaine).
[16] U.S. SENTENCING COMM'N, 2009 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Tbl. 34 (2009), *available at* http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2009/Table34.pdf.
[17] Pub. Law 111-220 (111th Cong.).

between crack and powder cocaine to a fairer ratio of 18-to-one. Thousands of federal crack offenders each year now receive fairer sentences and are reunited with their families sooner because of the FSA. In FY 2013, more than 80 percent of federal crack offenders were Black, and they were all sentenced under the 18-to-one ratio.[18]

Unfortunately, Congress did not make the FSA retroactively applicable to those sentenced before August 3, 2010, and still serving the repudiated 100-to-one sentences. The Smarter Sentencing Act would remedy this congressional oversight and enable approximately 8,800 federal prisoners, 87.7 percent of which are Black, to petition courts for sentence reductions in line with the 18-to-one ratio.[19] Making the FSA retroactive would also save more than 31,000 prison bed years and more than $380 million over 20 years, according to a Department of Justice estimate,[20] helping to alleviate prison overcrowding and high prison costs.

Some have expressed concerns about making the FSA retroactive because of the burden it might put on the courts. While these concerns are understandable, they are not sufficient to deny justice to 8,800 people whose sentences have been inappropriately lengthy since their creation. Courts, prosecutors, probation officers, and public defenders ably handled even larger numbers of similar requests for retroactively applicable crack guideline sentence reductions from 25,000 and 13,000 applicants in 2007 and 2011, respectively.[21] Efficiency should not trump justice.

Fear also should not trump fairness. Under the Smarter Sentencing Act, no retroactive FSA sentence reductions would be automatic. Rather, prisoners would petition the court for a sentence reduction, and prosecutors would be permitted to oppose and argue against a sentence reduction. Courts could deny the reductions in the interest of public safety. Beneficiaries from the retroactive 2007 crack guideline sentence reductions actually re-offended at slightly *lower* rates than those who received no reduction.[22] This recent history teaches us that making a sentence-reducing provision retroactive does not mean a crime wave will ensue.

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[18] U.S. SENTENCING COMM'N, 2013 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Tbl. 34 (2013), *available at* http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/Table34.pdf.

[19] Statement of Judge Patti Saris, Chair, U.S. Sentencing Comm'n, submitted to the U.S. Senate Judiciary Committee for the Hearing on "Reevaluating the Effectiveness of Mandatory Minimum Sentences," Sept. 18, 2013, at 10 *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Submissions/20130918_SJC_Mandatory_Minimums.pdf (using sentencing data from FY 2012).

[20] U.S. Dep't of Justice, Cost Savings Estimate of Smarter Sentencing Act of 2013, at 9-10, *available at* http://famm.org/wp-content/uploads/2014/02/DOJ-SSA-Cost-Savings-Estimate-2014.pdf.

[21] *See* U.S. SENTENCING COMM'N, PRELIMINARY CRACK COCAINE RETROACTIVITY DATA REPORT Tbl. 1 (Apr. 2011), *available at* http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/2007-crack-cocaine-amendment/20110502_USSC_Crack_Cocaine_Retroactivity_Data_Report.pdf (showing that federal courts have granted 16,433 of 25,515 requests for sentence reductions); U.S. SENTENCING COMM'N, PRELIMINARY CRACK RETROACTIVITY DATA REPORT, FAIR SENTENCING ACT Tbl. 1 (July 2014), *available at* http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/fsa-amendment/2014-07_USSC_Prelim_Crack_Retro_Data_Report_FSA.pdf (showing that federal courts have granted 7,706 of 12,951 requests for sentence reductions).

[22] U.S. SENTENCING COMM'N, RECIDIVISM AMONG OFFENDERS RECEIVING RETROACTIVE SENTENCE REDUCTIONS: THE 2007 CRACK COCAINE AMENDMENT 3 (May 2014), *available at* http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-

Most importantly, though, Congress should pass legislation to make the FSA retroactive as soon as possible because it is the right thing to do and will increase respect for the justice system. Every day since the FSA's passage, FAMM has received confused and saddened letters and phone calls from family members whose loved ones continue to serve excessive crack sentences solely because they were unlucky enough to receive them before August 3, 2010. Many of these prisoners have already served many years in prison and have made successful efforts to rehabilitate themselves. This lingering inequity creates a very real perception that the justice system perpetuates racially disparate outcomes for Blacks. Making the FSA retroactive would help heal the wounds caused by a sentencing policy that has had a devastating impact on Black communities for the last three decades.

Disparity in "Safety Valve" Relief from Mandatory Minimum Drug Sentences

FAMM was honored to work with Congress to support the 1994 passage of one of the only exceptions to mandatory minimum drug sentences, the so-called "safety valve" in 18 U.S.C. § 3553(f). Under this provision, federal drug offenders who are facing a mandatory minimum term may be sentenced below the applicable minimum if the person has one or fewer criminal history points under the federal sentencing guidelines, pleads guilty and confesses his/her involvement in the crime to prosecutor, did not possess a gun or weapon, used no violence or threats of violence, did not play a leadership role in the crime, and the crime did not result in death or serious bodily injury to others.[23] Since its creation, the safety valve has ensured more proportionate sentences for more than 90,000 low-level, nonviolent drug offenders and saved taxpayers potentially billions of dollars in unnecessary incarceration costs.

Unfortunately, the drug safety valve does not benefit all racial groups equally. Blacks are less likely to be eligible for the safety valve because they have a higher rate of prosecution than similarly situated White defendants, which can lead to the accumulation of more criminal history points.[24] According to the U.S. Sentencing Commission, more than 75 percent of black drug offenders who were convicted of a mandatory minimum penalty offense in FY 2010 were excluded from eligibility for the safety valve due to having more than one criminal history point, which could be triggered by even minor misdemeanors such as trespassing or driving without a license.[25] As originally introduced, the Smarter Sentencing Act, if passed, would increase, from one to three, the number of criminal history points a person may have to qualify for the safety valve.[26] This expansion would exempt hundreds of people with minor or misdemeanor prior convictions from excessive mandatory minimum sentences each year.[27]

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surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf (showing that 43.3% of recipients of retroactive sentence reductions recidivated, compared with 47.8% of those who did not).

[23] 18 U.S.C. § 3553(f) (2014).

[24] U.S. SENTENCING COMM'N, FIFTEEN YEARS OF GUIDELINE SENTENCING 134 (Nov. 2004), *available at* http://www.ussc.gov/research-and-publications/research-projects-and-surveys/miscellaneous/fifteen-years-guidelines-sentencing.

[25] U.S. SENTENCING COMM'N, REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE CRIMINAL JUSTICE SYSTEM 354, *available at* http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_12.pdf.

[26] S. 1410, § 2 (1st Sess., 113th Cong.).

[27] Statement of Judge Patti Saris, Chair, U.S. Sentencing Comm'n, submitted to the U.S. Senate Judiciary Committee for the Hearing on "Reevaluating the Effectiveness of Mandatory Minimum Sentences," Sept. 18, 2013, at 10 *available at*

Disparity Caused by Application of Mandatory Minimum Gun Sentences

The use of other mandatory minimum sentences contributes to racial disparities in sentencing in the United States. For example, 18 U.S.C. § 924(c) carries severe, consecutive mandatory minimum sentences for the possession or use of even a legally-owned gun during a drug trafficking offense.[28] The Armed Career Criminal Act (ACCA) requires a 15-year mandatory minimum sentence for anyone who possesses a gun and has three prior convictions for a serious drug offense or violent felony.[29] Overwhelmingly, Blacks face these charges, and receive their accompanying mandatory minimum sentences, far more than Whites. There is currently no safety valve exception to the mandatory minimum terms for these offenses. The only way a person can be sentenced below the mandatory minimum term is to provide "substantial assistance" that helps prosecutors arrest, charge, and convict others.[30] Prosecutors possess unreviewable discretion to charge people with § 924(c) and ACCA violations, as well as to judge whether the information a defendant provides is sufficiently valuable to warrant a sentence below the mandatory minimum term.

For reasons that are not entirely clear, Blacks are disproportionately charged and convicted of these gun offenses and disproportionately fail to receive the benefit of the "substantial assistance" exception that would permit a sentence below the mandatory minimum term. According to the U.S. Sentencing Commission,

> There are notable demographic differences in the application of mandatory minimum penalties for firearm offenses. Black offenders constitute the majority of offenders convicted of an offense under section 924(c) (55.9%) and the majority of offenders who remain subject to its mandatory minimum penalties at sentencing (55.7%). Black offenders constitute an even greater proportion (61.0%) of offenders convicted of multiple counts of an offense under section 924(c). By contrast, White and Hispanic offenders constitute only 15.1 and 21.2 percent of offenders convicted of multiple counts of an offense under section 924(c), respectively. Similarly, Black offenders constitute a majority of offenders who qualify for the Armed Career Criminal Act's 15-year mandatory minimum penalty (63.7%) and of offenders who remain subject to its mandatory minimum penalty at sentencing (63.9%). White and Hispanic offenders, by comparison, constitute only 29.5 percent and 5.2 percent of offenders who qualify for the Armed Career Criminal Act's 15-year mandatory minimum penalty, respectively. The effects of these demographic differences are two-fold. First, to the extent the mandatory minimum penalties for firearm offenses are unduly severe, these effects fall on Black offenders to a greater degree than on offenders in other racial

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http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Submissions/20130918_SJC_Mandatory_Minimums.pdf (describing how potentially 820 people would be eligible for relief under expanded safety valve provision).

[28] 18 U.S.C. § 924(c). The statute requires mandatory minimum terms of 5 years for gun possession, 7 years for gun brandishing, and 10 years for gun discharging during a crime of violence or drug trafficking offense, and 25 years for second and subsequent offenses. All mandatory minimum terms must run consecutively with the underlying sentence for the drug or violent offense and with any other sentences for § 924(c) violations.

[29] 18 U.S.C. § 924(e).

[30] 18 U.S.C. § 3553(e).

> groups. Second, as in drug offenses, demographic differences in the application of mandatory minimum penalties for firearm offenses create perceptions of unfairness and unwarranted disparity.[31]

Congress can help alleviate the racially disparate impact of the mandatory minimum sentences for these gun offenses with passage of the Justice Safety Valve Act (JSVA, S. 619). This bill would create a safety valve that would apply to all mandatory minimum terms in the federal code. It would permit judges to sentence those convicted under 18 U.S.C. § 924(c) or ACCA to a term below the mandatory minimum to avoid violating one of the purposes of punishment listed in 18 U.S.C. § 3553(a). Those purposes of punishment include not just the timeless requirement that the punishment fit the crime, but also "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"[32] – including, for example, avoiding vastly different sentences for White and Black or Hispanic offenders with similar records who committed similar gun offenses. Enactment of the JSVA will allow courts to fix such disparities by ensuring that defendants who are similar in every way save skin color receive similar sentences.

Conclusion

Undeniably, 30 years of data confirm that federal mandatory minimum sentencing laws disproportionately impact defendants and communities of color. Since the creation of mandatory minimum sentences in the 1980s, the percentages of both Blacks and Hispanics charged in federal courts have grown. Blacks in particular today are far more likely than Whites to be charged with and convicted of a mandatory minimum-bearing crime, and sentenced to the mandatory minimum prison term.

Reforming mandatory minimum sentencing laws through passage of bills like the Smarter Sentencing Act and the Justice Safety Valve Act will help decrease racial disparities in sentencing and increase respect for the criminal justice system in all communities. These bills have unprecedented bipartisan support in both houses of Congress as well as in the advocacy community. The Smarter Sentencing Act has hundreds of supporters, including dozens of faith groups, Heritage Action, ACLU, the NAACP, the Association of Prosecuting Attorneys, the American Correctional Association, the Council of Prison Locals, the Police Executive Research Forum, and the Major Cities Chiefs Association, to name a few. While FAMM believes that eliminating mandatory minimum sentences is the only sure way to prevent the racial disparities they cause, we nonetheless believe that passage of reforms like the Smarter Sentencing Act and the Justice Safety Valve Act is necessary, doable, and a positive step in the right direction.

Chairman Durbin and Ranking Member Cruz, we are grateful for your leadership and support for mandatory minimum sentencing reform, and we look forward to continuing to work with you to ensure that our sentencing laws are fair and cost-effective for all the communities they impact.

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[31] U.S. SENTENCING COMM'N, REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE CRIMINAL JUSTICE SYSTEM 363, *available at* http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_12.pdf.

[32] 18 U.S.C. § 3553(a)(6).

US HUMAN RIGHTS NETWORK
BUILDING A PEOPLE-CENTERED MOVEMENT

USHRN Statement for the Record: The State of Civil and Human Rights in the United States Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

To: Durbin_Testimony@Judiciary-dem.Senate.gov
From: Thenjiwe McHarris, USHRN Human Rights at Home Campaign Director, tmcharris@ushrnetwork.org

I. Introduction

The US Human Rights Network (USHRN) is a national network of over 250 organizations working to build and strengthen a people-centered human rights movement in the United States. USHRN is the primary coordinating body for U.S. based groups that engage UN mechanisms to hold the U.S. Government accountable to its human rights obligations. We have coordinated participation of over 200 groups in the three UN reviews of the U.S. Government that took place this year – the International Covenant on Civil and Political Rights (ICCPR), the International Convention on All forms of Racial Discrimination (CERD), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) – and are coordinating the participation in the upcoming Universal Periodic Review (UPR) of the US. In addition, we travelled to the United Nations in Geneva with families who have lost loved ones to police violence including Leslie McSpadden and Michael Brown Sr., the parents of Michael Brown; Sybrina Fulton, the mother of Trayvon Martin; Ron Davis, the father of Jordan Davis; and Martinez Sutton, the brother of Rekia Boyd. USHRN prioritizes leadership that is centered on those most directly affected by human rights violations in the country. While our membership is primarily grassroots, we partner closely with a number of national groups.

II. The United States & Human Rights Implementation

The United States has historically been seen as a **champion for human rights** around the globe and was instrumental in drafting the **Universal Declaration of Human Rights (UDHR)**—the birth-document of **legally enshrined human rights** around the globe. However, many individuals within the jurisdiction of the United States **face egregious human rights violations in nearly every area imaginable.** This coupled with the failure of the United States government to **support the full enforceability of human rights law** ensures that the United States is not held accountable to the same human rights standards and laws **that it insists on for other countries**. Further, it undermines our ability to demonstrate leadership by example on human rights implementation.

In addition to signing the UDHR, the United States has formally accepted and ratified three out of the ten core human rights treaties. The treaties that the United States has ratified include the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all forms of Racial Discrimination (CERD), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The United States has **not ratified treaties** that would advance the rights of women, children, persons with disabilities, and migrant workers, or that would advance economic, social and cultural rights. Accepting some human rights and the rejecting others is problematic because "all human rights are universal, indivisible, interdependent and interrelated."

When the United States ratifies treaties, it has done so with qualifications known as **Reservations, Understandings, and Declarations (RUD)**, which typically **limit the enforceability of the treaties**. U.S. domestic law is insufficient to meet the standards enshrined in human rights laws, which has left people living in the United States vulnerable to human rights abuses. Seeing human rights as **normative responses to experiences of oppression** and domination provides the key to understanding how human rights function and how they hang together to form a unit. We cannot enjoy civil and political rights unless we enjoy economic, cultural and social rights, and likewise, we cannot avail ourselves of our economic, social and cultural rights, unless we can exercise our civil and political rights. Or, as **Martin Luther King, Jr.** famously said about the Greensboro Lunch Counter sit-ins, "What good is having the right to sit at a lunch counter if you can't afford to buy a hamburger?" **Ratification** of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other core human rights treaties **without qualifications**, would serve as an important step to combating inequality and preventing the suffering created by economic downturns. By recognizing the United States government's obligation to respect, protect and fulfill core human rights, we will ensure that like many people around the world, people in America can also enjoy the right to housing, education, health, work, and social security.

The United States has repeatedly affirmed that state and local governments, who are on front lines of addressing "key human rights issues, are vital to comprehensive human rights implementation within and throughout the country." Given this reality**, no national institutionalized effort exists** to "encourage, coordinate and support human rights education, monitoring or implementation at the state and local levels." The federalist system does, in fact, present unique challenges, but the federal government itself has **much to address** regarding its **mass surveillance** and **indefinite detention** programs. These dilemmas, among many others, pose a threat to the **credibility** of the United States government both at home and abroad.

Overall, the United States **lacks strong structures** to hold the government accountable for its human rights obligations. The Civil Rights Division of the Department of Justice in partnership with the Department of State's Bureau of Democracy, Human Rights, and Labor launched a federal level inter-agency **Equality Working Group** in March 2012 **to coordinate federal agencies** around human rights. While a commendable development, **the Equality Working Group**'s mandate "will need to be expanded to include **all human rights obligations**, and it will need to be institutionalized" in order to be fully effective as a human rights implementation body. **It** will also need to engage with state and local governments. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has long encouraged the growth of **National Human Rights Institutions (NHRIs)**, which are organizations that **promote and monitor the implementation** of international human rights standards at the national level. Although there are over 150 state and local civil and human rights agencies that enforce federal, state, and local human and civil rights laws, conduct research, issue policy recommendations, and engage in education and training, the United States **does not have an NHRI**.

In August 2014, the Committee on the Elimination of Racial Discrimination (CERD Committee) recommended that the United States government create a **permanent coordinating mechanism** such as a national human rights institution to "ensure the effective implementation and monitoring of CERD at the federal, state and local levels." The CERD Committee also raised concerns about the **absence of a plan to combat racial discrimination** and recommended that the United States government adopt a **National Action Plan to combat structural racial discrimination** and promote human rights education. Combating institutionalized racism is key to fully implementing human rights in the United States. **Human rights education** is a key component for building a culture of accountability. There is currently **no comprehensive national framework or plan for human rights education** within K-12 education, higher education, or the training of educators. Where it exists, human rights education is often taught through a strictly historical lens, without attention to its contemporary application.

III. Recommendations

1. The U.S. government should authorize an independent **national human rights institution** to institutionalize and expand the mandate and effective use of the Equality Working Group as a federal focal point for coordination and implementation of human rights obligations.
2. The federal government should adopt a **National Plan of Action** for Racial Justice to address systemic forms of racial discrimination
3. The U.S. government should comprehensively coordinate and advance implementation of ICCPR, CERD, and CAT and the recent concluding observations of each of the related treaty body committees at all levels of U.S. government, as well as the 2011 UPR recommendations.
4. The U.S. government should implement all resolutions adopted by the United Nations Human Rights Council, the findings of Commissions of Inquiry, special procedures, and the universal periodic review related to human rights in the United States.
5. The U.S. government should ratify without RUDs the: Convention on the Rights of the Child (CRC), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of Persons with Disabilities (CRPD), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

PROJECT VOTE

Testimony of Project Vote
The State of Civil and Human Rights in the United States
Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
December 9, 2014

These comments are submitted on behalf of Project Vote. Project Vote is a national nonpartisan, non-profit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, litigation, and advocacy to ensure that our constituencies can register, vote, and cast ballots that count.

We are grateful for Senator Durbin's leadership in convening this hearing. The end of a Congress is indeed a good time to take stock: of progress made, of work left undone, of prospects for the future. With the imminent change in the balance of power, the end of this Congress is a particularly good time. We will restrict our comments to issues related to the right to vote in this country, though of course there are many other civil and human rights to be considered by the Subcommittee.

Lamentably, there is more to do in this area than ever. As noted in the hearing announcement, many state legislatures have passed bills in derogation of the right to vote at an alarming pace. Since the passage of the Fifteenth Amendment, the right to vote has expanded, slowly but surely—to African Americans, women, and 18-20 year olds. Expanded, that is, until the past five years, when the trend line abruptly went the other way. Though the state legislation passed in recent years has not explicitly denied the right to vote to any of these groups, the effect of many of the voting changes has been to diminish or deny their rights in more subtle ways. We will not argue here the breadth of Congress's power to arrest the trend toward constriction of voting rights. Suffice it to say that, at least with respect to federal elections, that power is considerable, and largely unused.

A review of just *some* of the legislation pending before Congress right now illustrates what needs to be done—and remains undone.

- When the Supreme Court issued its decision in *Shelby County v. Holder* in 2013, it struck down one of the most important and useful voting protections in federal law, the preclearance of voting changes for jurisdictions with egregious records of racial discrimination in voting. Seven months later, the **Voting Rights Amendment Act, S. 1945/H.R. 3899,** was introduced in Congress, where it has languished all year. The Voting Rights Amendment Act is a common-sense compromise that restores preclearance, using a formula that takes account of only jurisdictions' recent histories of legal challenges to their voting rules, rather than historical data.

- Research has shown conclusively that the disenfranchisement of former prisoners affects minority citizens much more than whites because of their overrepresentation in the prison population. (And recent events in Missouri and New York have reminded us of their disparate treatment in the criminal justice system generally.) The **Democracy Restoration Act, S. 2235/ H.R.4459**, has now been introduced in the 110th, 111th, 112th, and 113th Congresses and has never progressed. It would set a uniform floor for state disenfranchisement legislation, which is confusing and widely varied, so that a prisoner who has served his jail or prison time would automatically have his voting rights restored for federal elections, if the state's law presently requires more than that. Another restoration bill, though not quite as expansive, was introduced by Senator Rand Paul (R-KY): The **Civil Rights Voting Restoration Act, S. 2550.**

- In January of 2014, the bipartisan Presidential Commission on Election Administration released its report, offering some simple steps that states could take to streamline and modernize our system of voting. Among the Commission's recommendations was the provision of online voter registration to offer another method whereby citizens can register or update their information in the voter roll. (Early voting and improved access to registration were also recommended.) In September, Senator Kirsten Gillibrand (D-NY) introduced a federal bill to provide for online registration. The **Voter Registration Modernization Act, S. 2865**, requires states to make online registration and online updates available on an official public website and would appropriate funds to enable states to set up such a system.

- Several bills have been introduced in response to the long lines and long waits so prevalent in the 2012 election, or to make the voting process more convenient and efficient generally. The **FAST Voting**

Act, S. 85/H.R. 97, would allow states to submit applications for federal grants to fund innovations that would simplify registration and expedite voting. The **SIMPLE Voting Act, H.R. 50**, would impose a 15-day early voting period, require equitable resource allocation at polling places, and prescribe standards for counting provisional ballots. The **LINE Act, S. 2017**, requires state remedial plans to minimize wait times. The **Same Day Registration Act, S. 532**, would require states to institute same day registration on Election Day and any early voting day.

- Finally, the **Voter Empowerment Act of 2013, S. 123/H.R. 12,** an omnibus election bill, incorporates the subject matter of many of the above bills, as well as increased attention to the challenges facing voters with disabilities, penalties for disseminating false or misleading voting information, requirements for election audits and other security-oriented safeguards, development of model poll worker training, and many other improvements.

In addition to the wealth of legislation already written and introduced, only some of which is outlined above, Congress has other duties with respect to voting rights that also merit some attention.

First, Congress has oversight responsibility for the Department of Justice (DOJ), which has authority over the National Voter Registration Act (NVRA). The Justice Department's enforcement of the NVRA's mandate of increased avenues for voter registration has been far from energetic. In fact, only two NVRA cases have been brought by DOJ in the almost six years of the Obama Administration. While we realize that other voting statutes have demanded a lot of attention from DOJ, Section 7 of the NVRA provides a powerful remedy for states' failures to offer voter registration consistently and pursuant to prescribed procedures at all agencies mandated to do so. Litigation brought by nongovernmental organizations, which have stepped in to fill the gap left by DOJ's lack of enforcement, has shown clearly that many states are not fulfilling these responsibilities to their citizens. The Justice Department's extensive resources and its ability to file such lawsuits on behalf of the United States (without another named plaintiff) make it an indispensable partner—and it should be the leader—in enforcing the NVRA.

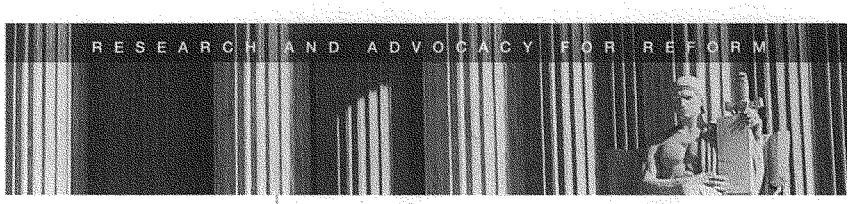
In addition, the NVRA requires all federal agencies, "to the greatest extent practicable, [to] cooperate with the States" in the designation of agencies that shall offer voter registration. Despite many state requests to agencies for designation, however, in the early years of this Administration, the federal

agencies, with few exceptions, have remained uncooperative in this effort. Congress should use its oversight power to look into this failure as well. The Presidential Commission on Election Administration's report prominently mentioned NVRA agency registration as a potential source of growth in voter registration numbers, which are embarrassingly low. Congress should take advantage of every opportunity to exert pressure to fulfill this potential.

The Election Assistance Commission was conceived by the Help America Vote Act of 2002 as an agency that would regulate the federal voter registration form, collect data on the conduct of elections, and report to Congress biennially on the state of America's election system. It has operated without any Commissioners since 2011. Four Commissioners have now been nominated, and three of them voted out by the Senate Committee on Rules and Administration. Congress must expeditiously confirm these qualified nominees to ensure that the Election Assistance Commission is operating at full strength and able to meet its crucial duties in our electoral system.

Project Vote remains willing and able to provide its support and expertise as Congress tackles these important issues in the days ahead. Obviously, much work remains to be done, and we appreciate the opportunity to contribute to this hearing as a necessary first step. To discuss these issues further, please do not hesitate to contact Project Vote's Legislative Director, Estelle Rogers, at erogers@projectvote.org, or 202-546-4173, ext. 310.

THE SENTENCING PROJECT



Statement of The Sentencing Project

To the Senate Judiciary Committee, Subcommittee on The Constitution, Civil Rights and Human Rights

Hearing on "The State of Civil and Human Rights in the United States"

December 9, 2014

Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

I am Marc Mauer, Executive Director of The Sentencing Project, an organization which has long been engaged in research and advocacy on federal sentencing policy, felony disenfranchisement, and racial disparities in the criminal justice system. I am submitting this statement on behalf of The Sentencing Project for inclusion in the record of the Subcommittee's hearing on "The State of Civil and Human Rights in the United States."

We commend the Subcommittee for continuing its examination of these important issues. In this written testimony, I seek to highlight the unsustainable rise in mass incarceration, the policies and practices that contribute to excessive imprisonment, associated racial disparities throughout the criminal justice system, and the deeply problematic policy of felony disenfranchisement. I urge the members of this Committee and the Congress as a whole to take action to address these problems.

MASS INCARCERATION IN THE UNITED STATES

The United States maintains the world's largest criminal justice system. Approximately seven million individuals are under some form of correctional control, including 2.2 million incarcerated in prisons or jails.[1] The U.S. incarcerates its people at a rate five to eight times that of the world's other liberal democracies.[2]

In the past three decades, the number of federal prisoners has grown at a breathtaking rate of nearly 800%.[3] Even more so than in state prisons, this growth has largely been caused by the War on Drugs. In 1980, about 4,700 individuals were incarcerated in federal prisons for a drug offense.[4] By 2011, the number had grown to 94,600—a 20-fold increase in 30 years.[5] In the past two decades, the number of

[1] U.S. Bureau of Justice Statistics, Correctional Populations in the United States, 2012.
[2] See International Centre for Prison Studies, World Prison Brief.
[3] See The Sentencing Project, Trends in U.S. Corrections, 2014 (citing Bureau of Justice Statistics Prisoners Series).
[4] Id.
[5] Id.

annual drug trafficking cases has increased 79%, from 13,721 cases in 1992 to 24,563 cases in 2012.[6] Today half of federal prisoners are incarcerated for a drug offense.[7]

Racial disparity pervades the U.S. criminal justice system. People of color are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, they are more likely to receive longer sentences. African-American males are six times as likely to be incarcerated as white males and Latino males are 2.5 times as likely. If current trends continue, one of every three black American males born today can expect to go to prison in his lifetime, as can one of every six Latino males—compared to one of every seventeen white males.[8] Racial and ethnic disparities among women are less substantial than among men but remain prevalent.

At the federal level, the heavy proportion of drug offenders has contributed to significant racial and ethnic disparities. In 2012, 74.4% of persons sentenced for federal drug trafficking offenses were either black (26.5%) or Hispanic (47.9%).[9] For cases involving powder cocaine, crack cocaine, or heroin, more than 80% of offenders were black or Hispanic.[10]

The source of such disparities is deeper and more systemic than explicit racial discrimination. The U.S. in effect operates two distinct criminal justice systems: one for wealthy people and another for poor people and minorities. The former provides a vigorous adversarial system replete with constitutional protections for defendants. Yet the experiences of poor and minority defendants within the criminal justice system often differ substantially from that model due to the influence of policy and practice decisionmaking, allocation of resources, implicit bias, and other factors.

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[6] See USSC Webcast: Analysis of Drug Trafficking Offenders and Guidelines (available at: http://www.ussc.gov/videos/webcast-analysis-drug-trafficking-offenders-and-guidelines).
[7] See The Sentencing Project, Trends in U.S. Corrections, 2014.
[8] Id.
[9] U. S. Sentencing Commission, 2013 Sourcebook of Federal Sentencing Statistics (available at: http://www.ussc.gov/research-and-publications/annual-reports-sourcebooks/2013/sourcebook-2013).
[10] Id.

THE IMPACT OF MANDATORY MINIMUM PENALTIES IN FEDERAL SENTENCING

In 2011, the United States Sentencing Commission released an exemplary report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*, which provides a comprehensive assessment of the impact of mandatory minimum penalties on federal sentencing. The Commission's analysis revealed that mandatory minimum penalties have contributed significantly to the overall federal prison population.

As Judge Patti Saris, chair of the U.S. Sentencing Commission, wrote to the Senate Judiciary Committee last year, "the bipartisan seven-member Commission unanimously agrees that [federal] mandatory minimum sentences in their current form have led to unintended results." Federal minimum penalties have not improved public safety but have exacerbated existing racial disparities within the criminal justice system.

Federal Mandatory Minimums Have Not Improved Public Safety

To date, there is virtually no data that demonstrates a direct link between federal mandatory penalties in particular and a decline in crime. Further, a broad range of research suggests that it is quite unlikely that these penalties would have such an impact.

In examining the effect of federal mandatory penalties, the key data problem is that the federal court system handles only a small fraction, less than 10%, of all criminal cases. Therefore, attempting to draw any conclusions about the specific impact of federal mandatory penalties on crime rates is fraught with imprecision. To state that the adoption of such penalties by Congress in the 1980s was directly responsible for reductions in a wide variety of crimes that are generally prosecuted in state courts requires a great leap of faith that is not supported by the evidence.

We can see this most clearly in the realm of drug offenses, the category in which federal mandatory penalties most often apply. Since drug offenses are widely prosecuted in both state and federal courts, a potential offender has no means of knowing in which court system he or she would be likely to be prosecuted (assuming, of course, that the offender is even thinking about the prospects of apprehension).

Therefore, it is virtually impossible to break out any uniquely federal impact of mandatory sentencing. Even aside from this problem, measuring the impact of harsh sentencing policies on crime rates is a complex undertaking. While it is the case that crime rates have generally been declining since the early 1990s and that this has taken place at a time when the prison population was rising, this does not necessarily suggest that there is a clear and unambiguous relationship between these two factors. Just prior to the beginnings of the crime decline, in the period 1984-1991, incarceration rates increased substantially and yet crime rates increased as well.

While incarceration has some impact on crime, this effect is generally more modest than many believe. In its comprehensive 2014 report, *The Growth of Incarceration in the United States,* the National Research Council concluded that "...studies support the conclusion that the growth in incarceration rates reduced crime, but the magnitude of the reduction remains highly uncertain and the evidence suggests it was unlikely to have been large."[11] While there is little relevant data on the overall impact of federal mandatory penalties, there is nonetheless a broad range of evidence which suggests that it is unlikely that mandatory penalties for drug offenses have a significant impact on enhancing public safety. This is the case for several reasons:

• *Deterrence is primarily a function of the certainty, not severity, of punishment.* To the extent that sentencing policies may deter individuals from engaging in crime, the research literature generally shows that increases in the certainty of punishment are much more likely to produce an effect than enhancements to the severity of punishment, particularly when punishments in American courts are already severe. Merely extending the amount of punishment that will be imposed, when most offenders don't believe they will be apprehended, does little to add to any deterrent effect. In this regard, mandatory penalties increase severity, but have no direct impact on increasing certainty, and are therefore not likely to provide any significant additional deterrent effects.

• *Mandatory penalties are particularly ineffective in addressing drug crimes.* Drug offenses are particularly immune to being affected by more and longer prison terms. This is largely due to the "replacement" nature of these offenses, the fact that there is a

[11] National Research Council, The Growth of Incarceration in the United States, 2014.

virtually endless supply of potential offenders in the drug trade. Since the vast majority of incarcerated drug offenders are from the lower and middle ranks of the drug trade, their imprisonment in effect creates a "job opportunity" for someone else seeking to earn some quick money. As long as there is a demand for illegal drugs, there will be a large pool of potential sellers.

• *Mandatory penalties may adversely affect recidivism.* Whatever one may think about the wisdom of mandatory sentencing, it is undeniable that such penalties serve to increase the length of time that offenders serve in prison by restricting the discretion of judges, corrections, and parole officials. By doing so, these policies may have a criminogenic effect. A 2002 review conducted by leading Canadian criminologists concluded that longer periods in prison were "associated with a small increase in recidivism" and that "the results appear to give some credence to the prison as 'schools of crime' perspective."[12]

• *Federal mandatory penalties increase the challenges for successful reentry.* While not a problem exclusive to mandatory sentencing, the combination of expanded federal prosecution of drug offenses along with the lengthier prison terms produced by mandatory penalties exacerbates the challenges of reentry. This is due to the fact that since federal prisoners can be housed anywhere in the country, many are in prisons far from their homes and are also serving long prison terms. This combination of circumstances contributes to eroding ties to family and community, the critical ingredients of successful reentry.

Mandatory Minimums Exacerbate Racial Disparity

In addition to the counterproductive effects of mandatory sentencing on public safety, mandatory minimum penalties also serve to exacerbate racial disparities within the criminal justice system. A combination of circumstances virtually ensures that this will be an inevitable outcome of such penalties.

We have seen for some time that racial disparities are produced in federal case processing. As far back as 1991, the U.S. Sentencing Commission documented that,

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[12] Paula Smith, Claire Goggin, and Paul Gendreau, "The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences," Solicitor General of Canada, 2002.

"The disparate application of mandatory minimum sentences in cases in which available data strongly suggest that a mandatory minimum is applicable appears to be related to the race of the defendant, where whites are more likely than non-whites to be sentenced below the applicable mandatory minimum." In its 2011 report on mandatory minimum penalties, the Commission found that of federal drug offenders convicted of an offense carrying a mandatory minimum penalty, 18.4% of white defendants were subject to a mandatory minimum penalty at sentencing, compared to 40.4% of black defendants and 39.6% of Hispanic defendants.[13]

Why, though, would mandatory penalties uniquely produce such disproportionate racial and ethnic effects? Several factors are key in understanding these dynamics. First, and most critical, is the fact that mandatory penalties in the federal system have most often been applied to the prosecution of drug offenses. As a wealth of documentation has shown, the drug war has had extremely disproportionate effects on African American communities in particular. This is not initially a function of sentencing policy, but rather law enforcement priorities; ultimately, this results in the application of harsh penalties to a population that is not necessarily representative of all persons who have violated the applicable laws. Blacks are no more likely to use or sell drugs than whites, and yet they have a significantly higher rate of arrests. African Americans encompass 14 percent of regular drug users but are 37 percent of those who are arrested for drug crimes. There is no more obvious example of this than the figure of African Americans constituting at least 80% of those being charged with federal crack cocaine offenses over a 20-year period, a finding that contributed to the adoption of the Fair Sentencing Act by Congress in 2010.

A second, and somewhat more subtle, effect of mandatory penalties is that many such policies provide increasingly harsh punishments to offenders based on prior convictions. This produces a disproportionate racial impact because defendants of color are more likely to have a prior record than are white defendants. Some people would argue that this is due to greater involvement in crime, while others would contend that this results from disproportionate processing by the criminal justice

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[13] U.S. Sentencing Commission, Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, 2011.

system. But regardless of one's perspective, it is undeniable that this will be the case. Therefore, it is virtually inevitable that minority defendants will experience these penalties disproportionately.

FELONY DISENFRANCHISEMENT

The United States is the most restrictive nation in the industrialized world in denying the right to vote to citizens convicted of crimes. A remarkable 5.85 million Americans are prohibited from voting because of a current or past felony conviction.[14]

Felony disenfranchisement policies vary widely by state.[15] Two states, Maine and Vermont, place no restrictions on voting, including for persons currently incarcerated in state prisons. The other 48 states and the District of Columbia deny the right to vote while incarcerated for a felony; 35 of these states disenfranchise persons on probation and/or parole as well; and in 12 states some or all individuals convicted of a felony lose the right to vote even after completing all conditions of their sentence. Incarcerated persons represent only about a quarter of the total disenfranchised population. The other 75 percent of disenfranchised citizens live in their communities, either under probation or parole supervision or having completed their sentence. This includes an estimated 2.6 million people, or 45 percent of the total disenfranchised population, who are disenfranchised in states that restrict voting rights even after completion of sentence.[16]

Rights restoration practices vary widely across states and are subject to the turns of political climate and leadership, which has led some states to vacillate between reform and regression.[17] In Florida, the clemency board voted in 2007 to automatically restore voting rights for many persons with non-violent felony

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[14] Uggen, C., Shannon, S., & Manza, J., The Sentencing Project, State-level estimates of felon disenfranchisement in the Unites States, 2010 (available at: http://www.sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf).

[15] See The Sentencing Project, Felony Disenfranchisement: A Primer (available at: http://www.sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf).

[16] Id.

[17] Id.

convictions. As a result, more than 100,000 people regained the right to vote. But with a new governor taking office in 2011, this decision was reversed and individuals must now wait at least five years after completing their sentence to apply for rights restoration. Similarly, in Iowa, then-Governor Vilsack issued an executive order in 2005 automatically restoring the voting rights of all persons who had completed their sentences, but this order was rescinded in 2011 by Governor Branstad.

Felony disenfranchisement policies have a disproportionate impact on communities of color. Black Americans of voting age are four times as likely to lose their voting rights than the rest of the adult population, with one of every 13 black adults disenfranchised nationally.[18] In three states – Florida (23 percent), Kentucky (22 percent), and Virginia (20 percent) – more than one in five black adults is disenfranchised. In total, 2.2 million African Americans are banned from voting.[19]

Public opinion surveys report that eight in ten U.S. residents support voting rights for citizens who have completed their sentence, and nearly two-thirds support voting rights for those on probation or parole.[20] In recent years, heightened public awareness of felony disenfranchisement has resulted in successful state-level reform efforts, from legislative changes expanding voting rights to grassroots voter registration initiatives targeting individuals with felony convictions. Since 1997, 23 states have modified felony disenfranchisement provisions to expand voter eligibility. Among these:

- Eight states either repealed or amended lifetime disenfranchisement laws.
- Two states expanded voting rights to persons on probation or parole.
- Ten states eased the restoration process for persons seeking to have their right to vote restored after the completion of their sentence.
- Three states improved data and information sharing. As a result of successful reform efforts from 1997 to 2010, an estimated 800,000 citizens have regained the right to vote.

[18] Id.
[19] Id.
[20] Id.

Although reform efforts have been substantial in recent years, the overall disenfranchisement rate has increased dramatically in conjunction with the growing U.S. prison population, rising from 1.17 million in 1976 to 5.85 million by 2010.

Restoring the vote to persons leaving prison can aid in their transition back into community life. The revocation of voting rights compounds the isolation of formerly incarcerated individuals from their communities. Civic participation has been linked with lower recidivism rates. In one study, among individuals who had been arrested previously, 27% of nonvoters were rearrested, compared with 12% of voters.[21] Although the limitations of the data available preclude proof of direct causation, the authors state that it is clear that "voting appears to be part of a package of pro-social behavior that is linked to desistance from crime."

The dramatic growth of the U.S. prison population in the last 40 years has led to record levels of disenfranchisement. Denying the right to vote to an entire class of citizens is deeply problematic to a democratic society and counterproductive to effective reentry. Fortunately, many states are reconsidering their archaic disenfranchisement policies, but there is still much work to be done.

CONCLUSION

Recent events in Ferguson, Missouri and in New York City have heightened awareness about our criminal justice system and highlight the need for a broad national examination of the policies and practices that contribute to excessive incarceration and racial disparities. For communities of color, confrontations with law enforcement are far too common. Excessive police encounters erode trust and cooperation, contribute to the over-representation of people of color in prisons and jails, and lead to the disproportionate rate of fatal police encounters among unarmed African American men. We can only hope that these tragedies will lead to a constructive response that brings national attention, and ultimately reform, to the problems of race and our criminal justice system.

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[21] Id.

Written Statement of the Council on American-Islamic Relations

The State of Civil and Human Rights in the United States

Submitted to the

Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

December 9, 2014

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Introduction

Chairman Durbin, Ranking Member Cruz, and other distinguished committee members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, the Council on American Islamic-Relations (CAIR), the nation's largest Muslim civil liberties and advocacy organization, appreciates the committee's ongoing oversight of the state of civil and human rights in the United States and respectfully submits this written testimony for your consideration.

The safety, rights and opportunities of Americans residing in the United States are largely dependent on race, faith, and socioeconomic status. As a nation comprised of diverse racial, ethnic, and religious communities, we all inhabit the same space, but do not share the same experience.

This hearing has been called for a great number of reasons, including the tragic and unnecessary deaths of Eric Garner, Michael Brown and Tamir Rice - all unarmed African Americans killed by police officers. In the cases of Eric Garner and Michael Brown local prosecutors and grand juries declined to bring their shootings to trial. Racial and religious disparities persist at many stages of the criminal justice system; spanning criminal prevention, detection, investigation, pursuit, prosecution, sentencing, imprisonment, and reform.

American Muslims are the most racially diverse religious group in the United States, with African-Americans, Arabs, and South Asians each making up a third of the religion's believers. The experiences of American Muslims shed light on many key civil and human rights issues and on the need to reform the criminal justice system and on how police-community relations are handled.

To this end, CAIR offers several recommendations on how Congress, the judicial system and federal and state law enforcement agencies can better protect the civil and human rights of all Americans. In detail, CAIR will address the extrajudicial killings of unarmed African-Americans and other U.S. minorities; the prevalent practice of racial and religious profiling; racially-and-religiously-biased training of federal and state law enforcement; blanketed surveillance of the U.S. Muslim community, leaders and groups; false entrapment of Muslims; and, the need for national moratorium on the death penalty.

Responding to the Extrajudicial Killings of Unarmed African Americans and other U.S. Minorities

Following the recent fatal police shootings of Brown and Rice and chokehold death of Garner and other similar cases nationwide, CAIR and other civil rights groups called for "national action" to address issues of racism and urgent reforms needed in police procedures and training.

In 2012 it was reported that an unarmed black male was killed by law enforcement or armed security guard or neighborhood watchman once every 28 hours.[1] While it is incredibly rare for a grand jury to not indict, in the cases of Garner and Brown and other U.S. minorities shot or killed by an agent of the law, juries are far less likely to proceed to trial and bring charges against an officer.[2] In all cases

[1] Malcom X Grassroots Movement (MXGM), Report on Black People Executive without Trial by Police, Security Guards and Self-Appointed Law Enforcers January 1-June 30, 2012 (Updated July 16, 2012). Website: https://mxgm.org/report-on-the-extrajudicial-killings-of-120-black-people/

[2] FiveThirtyEight, "It's Incredibly Rare For A Grand Jury To Do What Ferguson's Just Did" Ben Casselman, November 24, 2014. Website: http://fivethirtyeight.com/datalab/ferguson-michael-brown-indictment-darren-wilson/

mentioned below, an unarmed U.S. minority had been shot or killed by a law enforcement officer, yet no one was charged with a crime.

In response to Michael Brown's death, an 18-year-old African-American fatally shot in Ferguson, Missouri, CAIR joined the NAACP and other civil rights groups in calling for a special prosecutor to investigate the shooting. CAIR also questions the "problematic" grand jury process that resulted in a failure to indict the officer.

CAIR expressed deep dismay at the decision of a grand jury to not allow an open trial for an officer who placed Eric Garner, a 43-year-old African-American and father of six, in a chokehold that resulted in his death. Garner was unarmed and witnesses believe that he did not pose a threat to anyone.

Nearly two weeks ago, Tamir Rice, a 12-year-old African-American boy was killed by a police officer within two seconds after arriving in a patrol car. Last Friday, the DOJ released a long awaited report finding the Cleveland Police department has a pattern of "unreasonable and unnecessary use of force".[3]

In May, the Florida chapter of CAIR sent letters to DOJ, the state attorney's office and the FBI seeking investigations of the history of substantial allegations of official corruption, misconduct, abuse, and civil rights violations made against an FBI agent who shot and killed Ibragim Todashev, a unarmed-27-year-old Chechen American, while in FBI and Florida State Police custody during interrogation last year in his home apartment.[4]

In October, Dearborn, Michigan marked the fifth anniversary of the fatal shooting of Imam Luqman Ameen Abdullah, 43-year-old African-American community leader who was unarmed when killed by FBI agents in a sting operation. According to Dawud Walid, executive director for the Michigan chapter of CAIR, "Although neither Abdullah nor any of his congregants were charged with terrorism related crimes during that sting, the prior infiltration of his mosque by FBI informants was shaped through the narrow focus of viewing the Muslim community through the lens of national security."[5]

In addition to today's hearing, CAIR recommends that Congress hold a special hearing to investigate the broad pattern of unarmed minorities being shot and killed by federal and state law enforcement officers, without subsequent impartial and comprehensive court reviews. Congress should also provide the DOJ with more resources to dedicate to special prosecutors to independently investigate the police shooting of U.S. minorities. Congress should also press the DOJ and FBI to collect more complete statistics on such police shoots, as they are presumed to be undercounted and come from voluntary police reports.

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[3] New York Times, "Cleveland Police Cited for Abuse by Justice Department," Richard A. Oppel, Jr. December 4, 2014. Website: http://www.nytimes.com/2014/12/05/us/justice-dept-inquiry-finds-abuses-by-cleveland-police.html

[4] CAIR, "CAIR-FL Seeks Probes of Newly-Revealed Troubled History of FBI Agent Who Killed Ibragim Todashev," May 14, 2014. Website: http://cair.com/press-center/press-releases/12492-cair-fl-seeks-probes-of-troubled-history-of-fbi-agent-who-killed-ibragim-todashev.html

[5] Detroit News, Opinions + Editorial, Politics Blog, "In 5 years since killing of Dearborn imam, what have we learned?," October 29, 2014. Website: http://blogs.detroitnews.com/politics/2014/10/29/5-years-since-death-detroit-imam-policy-based-upon-fear/

Prevalence of Racial and Religious Profiling by Federal and State Law Enforcement

As previously mentioned in CAIR's April 2013 statement to the subcommittee during its hearing on "Ending Racial Profiling in America," since the tragic events of September 11, 2001, CAIR has received hundreds of reports from innocent Americans who have been wrongfully targeted by federal, state and local law enforcement officials because of their race, religion or national origin. They report having been searched, investigated and detained without reasonable suspicion. Since then, the American Muslim community has become the unfair target of numerous federal and state counterterrorism initiatives and surveillance programs.

In a recent investigative report published by *The Intercept*, based on leaked federal law enforcement documents, Dearborn, Michigan was ranked as second in the top five U.S. cities represented on federal watch lists.[6] The report stated that "at 96,000 residents, Dearborn is much smaller than the other cities in the top five, suggesting that its significant Muslim population - 40 percent of its population is of Arab descent, according to the U.S. Census Bureau - has been disproportionately targeted for watch listing."

"The top five U.S. cities represented on the main watchlist for "known or suspected terrorists" are New York; Dearborn, Mich.; Houston; San Diego; and Chicago," said the report.

Distressingly, states with the largest number of mosques, Muslim houses of worship, correspond to this leaked list of top cities represented on the watchlist. New York is ranked the number one state with the largest number of mosques in the U.S., Michigan is eighth, Texas is third, California is second, and Illinois is fifth.[7]

Ranked number one on both lists, the city of New York is no stranger to racial and religious profiling.

As highlighted in CAIR's May 2013 written statement to the U.S. House Committee on Homeland Security on the Boston bombings, until recently the New York Police Department (NYPD) engaged in a blanketed surveillance program that targeted American Muslims across the mid-Atlantic region. This program was allegedly being conducted with the assistance of individuals linked to the CIA.

As reported by AP investigative reporters Matt Apuzzo and Adam Goldman in August 2011:
"The [NYPD] has dispatched teams of undercover officers, known as 'rakers,' into minority neighborhoods as part of a human mapping program, according to officials directly involved in the program. They've monitored daily life in bookstores, bars, cafes and nightclubs. Police have also used informants, known as 'mosque crawlers,' to monitor sermons, even when there's no evidence of wrongdoing. NYPD officials have scrutinized imams and gathered intelligence on cab drivers and food cart vendors, jobs often done by Muslims. Many of these operations were built with help from the CIA, which is prohibited from spying on Americans but was instrumental in transforming the NYPD's intelligence unit."[8]

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[6] *The Intercept*, "Barack Obama's Secret Terrorist-Tracking System, by the Numbers," by Jeremy Scahill and Ryan Deveraux, August 5, 2014. Website: https://firstlook.org/theintercept/2014/08/05/watch-commander/

[7] "The American Mosque 2011: Report Number 1, Basic Characteristics of the American Modque Attitudes of Mosque Leaders, Dr. Ihasan Bagby, Janurary 2012. Website: http://www.cair.com/images/pdf/The-American-Mosque-2011-part-1.pdf

[8] *AP*, "With CIA help, NYPD moves covertly in Muslim areas" Matt Apuzzo & Adam Godman, August 2011, Website: http://www.ap.org/Content/AP-in-the-News/2011/With-CIA-help-NYPD-moves-covertly-in-Muslim-areas

According to the AP, NYPD investigators have also "placed informants or undercover officers in the Muslim Student Associations at City College, Brooklyn College, Baruch College, Hunter College, City College of New York, Queens College, La Guardia Community College and St. John's University" as well as "Rutgers, in New Brunswick, New Jersey" and the "elite Ivy League colleges of Yale and the University of Pennsylvania."[9]

The NYPD reported that in the course of its six-year surveillance program it had "never generated a lead or triggered a terrorism investigation."[10] The yearly cost of this program is allegedly $62 million.[11]

In April, CAIR welcomed a decision by the NYPD to disband a special unit that conducted widespread warrantless surveillance of law-abiding Muslims. Still, the New York chapter of CAIR and its civil liberties allies questioned whether the policy of racial and religiously motivated profiling itself has been ended and that the department would no longer apply mass surveillance or other forms of biased and predatory policing to any faith-based community.

CAIR believes that in addition to costing taxpayers hundreds of millions of dollars, the program of racial and religious profiling has damaged the Muslim community's trust of the NYPD and made it difficult for the NYPD to maintain open lines of communication.

Likewise, CAIR and many other civil liberties and human rights organizations have worked for years to put an end to the NYPD's racially motivated stop-and-frisk program. A program that violated the constitutional rights of tens of thousands of the city's residents, NYPD documents reveal that between 2004 and 2012 police detained, questioned, and searched some 4.43 million people, and that 80 percent of those stopped were minorities.

In Boston, Massachusetts a similar stop-and-frisk program continues as it was recently reported by the Massachusetts chapter of the American Civil Liberties Union, that between "2007 and 2010, out of approximately 200,000 encounters that did not result in an arrest, 63 percent of people stopped and frisked by the BPD were African American. Only 24 percent of the city's population is black."[12]

CAIR believes that racially and religiously-motivated profiling by state and federal law enforcement remains a serious problem across the nation as well as at our ports of entry. Reports to CAIR from the Muslim community suggest that CBP agents may be racially and religiously profiling American Muslims or those perceived to be Muslim for extra scrutiny during border crossings at multiple points of entry.

These reports include numerous incidents of American Muslims being repeatedly stopped at the U.S.-Canada Border by CBP agents in a show of force displaying their weapons, unnecessarily handcuffing these travelers and placing them in prolonged periods of detention, conducting intrusive and demeaning searches of their persons and possessions, asking inappropriate questions that pertain to their religion and religious practices.

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[9] AP, "NYPD monitored Muslim students all over Northeast," Chris Hawley, February 2012. Website: http://www.ap.org/Content/AP-In-The-News/2012/NYPD-monitored-Muslim-students-all-over-Northeast

[10] AP, "NYPD: Muslim spying led to no leads, terror cases," Matt Apuzzo & Adam Godman, August 2012. Website: http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases

[11] Ibid 8.

[12] *Boston Globe*, "Boston Police Stop-and-Frisk Blacks Far More Than Whites, Says ACLU Study," Jordan Lebeau, Ocotber 9, 2014. Website: http://www.boston.com/news/local/massachusetts/2014/10/09/boston-police-stop-and-frisk-blacks-far-more-than-whites-says-aclu-study/aXg5rzNZWmeAxo4rkQpAuJ/story.html

Complainants allege that CBP agents have repeatedly questioned members of the American Muslim community about First Amendment protected activities. Questions include: What religion do you belong to? How religious are you? Why do you wear a beard? How many times a day do you pray? What do you pray for? Which mosque do you go to? Do you pray the Morning Prayer in the mosque? Who else prays in your mosque? Who is your religious leader?

While CBP has publicly responded to these allegations that it "strictly prohibits profiling on the basis of race or religion," complaints gathered from the DHS Office for Civil Rights and Civil Liberties and other civil liberties and human rights organizations contradict this policy.

CAIR believes that freedom to peacefully assembly and practice one's religion without any undue burden imposed by the government, including protections from state and federal law enforcement racially and religiously profiling American Muslims and invasively questioning community members about their beliefs and practices, is guaranteed by the First Amendment of the United States Constitution. Moreover, Congress adopted the 1993 Religious Freedom Restoration Act to prevent such laws or actions that place an undue burden on the free exercise of religion.

CAIR is concerned that the reported actions of racial and religious profiling by state and federal law enforcement, including the FBI and Border Patrol, could weaken the American Muslim community's trust in law enforcement, be in violation of the U.S. Constitution and public law, impact public safety by diverting limited law enforcement resources, and sidetrack such agencies from their mission to protect the U.S. citizens.

Concerning Biased Training of Federal and State Law Enforcement Agents

Following calls for reform by CAIR and other groups after revelations of apparently widespread anti-Muslim bias in the training of law enforcement, security and military personnel nationwide, in 2011 Obama administration removed biased and inaccurate materials about Islam from federal trainings.[13]

An 80-page report by Political Research Associates (PRA), titled "Manufacturing the Muslim Menace: Private Firms, Public Servants, & the Threat to Rights and Security," detailed a systemic failure to regulate content in counterterrorism training.[14]

In 2011, *Washington Monthly* magazine also published a major investigative article showing similar anti-Islam attitudes by private trainers of law enforcement agencies.[15]

However, recent headlines were made by the NSA's prejudiced use of the fake name "Mohammad Raghead" as a placeholder in agency documents describing how to properly format surveillance justification. While most of these federal training materials have since been purged, CAIR believes that the effects of such trainings still linger.

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[13] Wired, "Obama Orders Government to Clean Up Terror Training," Spencer Ackerman, November 29, 2011. Website: http://www.wired.com/2011/11/obama-islamophobia-review/

[14] Political Research Associates, "Manufacturing the Muslim Menace: Private Firms, Public Servants, & the Threat to Rights and Security," Thomas Cincotta, 2011. Website: http://www.publiceye.org/liberty/training/project-home.html

[15] Washington Monthly, "How We Train Our Cops to Fear Islam," Meg Stalcup and Joshua Craze, November 3, 2011. Website: http://www.washingtonmonthly.com/features/2011/1103.stalcup-craze.html

CAIR also expresses similar concerns about frequent reports that state and local law enforcement agencies are hosting anti-terrorism training sessions conducted by training groups that view all Muslims as being under suspicion of a connection to terrorism.

In August 2013, the Chicago chapter of CAIR worked with the Lombard Police Department and Elmhurst and Highland Park Police Departments in cancelling previously scheduled trainings featuring controversial anti-Islam trainer Sam Kharoba. Kharoba in the past has falsely taught police officers that "Islam is a highly violent radical religion that mandates that all of the earth must be Muslim."

In February 2014, CAIR worked with the Virginia's Department of Criminal Justice Services to withdraw its accreditation for a three-day training program on "Jihadi Networks in America" that was be offered by a notorious anti-Muslim conspiracy theorist John Guandolo.[16] John Guandolo bizarrely claims that the current CIA director is a secret Muslim and asserts that American Muslims "do not have a First Amendment right to do anything."

Kansas Sedgwick County Sheriff's Office also canceled a planned anti-terrorism training in May after being contacted by CAIR.[17] Unfortunately, Guandolo was then sponsored by Maricopa County Attorney Bill Montgomery to conduct a September 2014 training in Tempe, Arizona.[18]

In response to these anti-Muslim training materials and trainings, CAIR recommends Congress to request and independent Congressional Research Service study to review of DOJ and DHS national security and counterterrorism training programs and materials used to educate agents and officers on communities' cultures, beliefs, and practices, in addition to trainings on upholding civil rights and liberties of American citizens and persons residing inside the United States.

Such a review should also investigate how federal national security and counterterrorism training funds, grants, are distributed to state and local law enforcement agencies and to which trainers these funds are provided to.

CAIR also recommends Congress request the DOJ, FBI, and DHS to retain national security and counterterrorism officers and agents who, for the past decade, received such inaccurate and biased instruction with involvement from Arab, South Asian, Sikh, and Muslim organizations and ensure that First Amendment-protected activity and nonviolent civil disobedience is not improperly equated with terrorism.

Concerning Blanket Surveillance and Entrapment of Muslims

CAIR fully supports law enforcement counterterrorism investigations that are based on credible information, carried out to prevent criminal acts of violence, or to halt material support to would-be terrorists. CAIR believes that responsible enforcement of counterterrorism programs is what truly keeps Americans safe.

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[16] The Council on American-Islamic Relations (CAIR), "Virginia Agency Pulls Accreditation for Anti-Muslim Training," February 2, 2014. Website: https://www.cair.com/press-center/press-releases/12387-virginia-agency-pulls-accreditation-for-anti-muslim-training.html

[17] *The Wichita Eagle, "Kansas sheriff won't partner on training by John Guandolo," May 27, 2014. Website:* https://www.cair.com/press-center/cair-in-the-news/12503-kansas-sheriff-wont-partner-on-training-by-john-guandolo.html

[18] CAIR, "CAIR Asks DOJ to Protect Arizona Muslims' Civil Rights," September 2014. Website: http://cair.com/press-center/press-releases/12652-cair-asks-doj-to-protect-arizona-muslims-civil-rights.html

Since September 11, the FBI has made preventing the next act of terrorism its top priority. Out of its $8.2 billion yearly budget, $3.3 billion is spent on counterterrorism operations. During the last decade, the FBI has built a network of 15,000 registered informants, many of whom are paid to infiltrate American Muslim communities.

Of the 508 federal terrorism prosecutions during this period, nearly half have involved the use of an informant, with sting operations resulting in the prosecution of 158 defendants, out of which 49 defendants were ensnared by an informant who led the plot.

CAIR acknowledges the value of FBI sting operations in prosecuting individuals who would attempt to do our county harm. However, in recent years a number of troubling details have emerged about some informant-led plots.

According to *Mother Jones* magazine, all but three of the last decade's high profile terror plots were informant-driven FBI stings that targeted suspects which had no actual ties to overseas terrorist groups like al-Qaeda.

As CAIR addressed in its written testimony submitted to the U.S. House Committee on Homeland Security on missed opportunities concerning the April 2013 Boston bombings, recent details about some of these cases have CAIR and many other Muslim community leaders, civil rights groups, and media questioning whether most of these FBI stings were geared toward preventing operational terrorists or were actually cases of financially motivated informants going to great lengths over long periods of time to radicalize and enable unlikely and at times mentally ill individuals to commit acts of scripted terrorism.

CAIR recommends that the Congress investigate allegations that the FBI has engaged in unlawful or questionable practices of entrapment in the American Muslim community, as well as other religious communities and politically left- and right-leaning movements.

Concern Over Federal Law Enforcement Agencies Spying on Muslim Leaders

In July 2014, CAIR joined with a broad-based coalition of 45 organizations, led by the ACLU, in insisting that President Obama provide a full public accounting of surveillance of American Muslim leaders.

According to new revelations by journalists Glenn Greenwald and Murtaza Hussain, CAIR's own national executive director was among those U.S. Muslim leaders reported to be targeted for FBI and NSA surveillance under FISA.

Among other leaders spied on was Faisal Gill, an American citizen, U.S. Navy veteran, and former Bush administration DHS official. Of particular concern, Mr. Gill's nationality was marked "unknown" on a leaked FISA recap document.

Addressing targeting of American Muslim leaders, CAIR stated it was "an outrageous continuation of civil rights era surveillance of minority community leadership by government elements who see threats in all patriotic dissent."

As the Obama administration continues to allow some government agencies to treat all Americans as objects of suspicion, it is time for a full public accounting regarding surveillance of American minorities.

CAIR strongly recommends that Congress investigate and hold a hearing to review allegations that the FBI and NSA are spying on U.S. Muslim leaders and to ensure that government surveillance works within the bounds of law and the Constitution.

Addressing Racial and Religious Profiling Through New Federal and State Law

CAIR, like numerous other civil rights and advocacy organizations, recognizes the critical need for Congress to take action and put an end to racial and religious profiling by federal and state law enforcement agencies. The U.S. Constitution requires that federal and state law enforcement agencies respect the rights and freedoms of "all persons," regardless of race, religion, ethnicity, or national origin.

On Monday, CAIR expressed serious concerns about the newly-released DOJ revision of its "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies" retaining a "Muslim" carve-out on profiling by government agencies at airports and borders.

While the new guidelines extend the existing ban on federal law enforcement profiling on the basis of religion, national origin, gender, sexual orientation, and gender identity, it retains exemptions for DHS agents' use of religion, national origin and other characteristics to profile at airports and the border and allow the FBI to "map" minority communities to place informants.

CAIR is dismayed that at a time when our nation is struggling to come to terms with a series of high-profile police killings of unarmed African-Americans, the DOJ would release revised profiling guidelines that include loopholes for targeting Muslims and Hispanics.

The addition of religion, national origin and other characteristics to the guidance is a sign of progress. However, these additions remain only a symbolic gesture if the DOJ keeps carve-outs for DHS, TSA, and CBP to discriminate at airports and the U.S. border, and allows the FBI to 'map' minority communities to place informants.

Under these guidelines the DOJ will still authorize the FBI's racial mapping program to continue registering minority neighborhoods from across the nation for possible surveillance and community informants, spanning African Americans in Atlanta, GA to Asian Americans in the San Francisco Bay Area, CA to Arab and Muslim Americans in Dearborn, MI.

These guidelines will do nothing to stem the complainants CAIR receives American Muslims that CBP profiles them based on their religion at the northern border and when returning home from travel abroad by asking about First Amendment protected activities.

With the release of this new guidance, the rights of American Muslims at the airport, border and in their communities and houses of worship remain at risk.

There are several important steps Congress can take to support comprehensive reform of the nation's law enforcement policies and practices dealing with racial and religious profiling. To safeguard our communities' constitutional rights and freedoms, CAIR offers the following recommendations:

Congress should enact the End Racial Profiling Act (H.R. 2851/S.1038), introduced by Senator Cardin and Representative Conyers, and push for the DOJ to revisit its newly revised guidelines on profiling.

Congress should address the Attorney General's Guidelines for Domestic FBI Operations (AGG) and the FBI's Domestic Investigations and Operations Guide (DIOG), which permit the FBI to engage in racial and ethnic profiling in certain contexts, to initiate investigations, and to use intrusive investigation techniques absent any suspicion of wrongdoing.

Congress should also review how these guidelines and the DIOG impact law enforcement practices in Muslim communities -- and others -- and could help the attorney general to better understand the harmful effects of the policies.

Federal and State Moratorium on Death Penalty

Following the 2013 controversial execution of Troy Davis in Georgia for the murder of an off-duty police officer, CAIR once again called for a moratorium on the use of the death penalty.

Because of circumstances surrounding his trial and sentencing, Davis' execution captured worldwide attention. Seven of the nine key witnesses at Davis' trial later recanted their testimony. Some jurors say they have changed their minds about Davis' guilt. A man who was with Davis the night of the murder reportedly confessed that he actually shot the officer.

CAIR believes that this disturbing case demonstrated the urgent need for a moratorium on the use of the death penalty nationwide. As in this case, studies have clearly demonstrated that poor and minority defendants are more likely to be sentenced to death than members of the majority society who have adequate access to legal representation. Justice can never be served by the execution of the innocent.

CAIR calls on Congress to adopt legislation for a national moratorium on the use of the death penalty following the numerous wrongful executions that have come to light in the past decade.

Conclusion

The promise of racial and religious equality enshrined in the U.S. Constitution is left unfulfilled if we as a nation are not brave enough to see the inequality that currently exists and are too weak to hold our systems of justice accountable when it fails to preserve the rights of any minority community.

As a nation we have inherited a long history of institutional racism and unchecked privilege. While significant progress has been made in overcoming this history, as a society we still face an alarming crisis of racial and religious profiling that is condoned by some members of Congress and employed as a policy and a tactical response by the federal and state law enforcement agencies sworn to keep us safe.

CAIR hopes the committee will act on the above referenced issues and recommendations surrounding racial and religious profiling by state and federal law enforcement officers and agencies.

Once again, CAIR thanks the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for holding this important hearing on the state of civil and human rights in the United States.

centerforconstitutionalrights
on the front lines for social justice

Statement of the Center for Constitutional Rights
December 9, 2014

The State of Civil and Human Rights in the United States
Hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee:

The Center for Constitutional Rights (CCR) would like to thank United States Senator Dick Durbin, Ranking Member Cruz, and Members of the Subcommittee for holding this important hearing on the state of civil and human rights in the United States. This hearing is particularly timely as it follows the conclusion of three separate reviews of the U.S. government's human rights records by the U.N. Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee Against Torture. All three U.N. treaty bodies issued concerns and criticisms of the government's practices and failures to respect its obligations under international human rights law.

CCR is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. CCR has been on the front lines in advancing its advocacy and legal work to challenge unlawful and inhumane government practices.

In this Statement, we will focus on pressing human and civil rights concerns relating to our work on (1) police violence and discriminatory policing practices, particularly in New York; (2) abusive conditions of confinement in U.S. prisons; (3) immigrant justice; and the (4) unlawful, indefinite detention of Guantanamo detainees.

I. POLICE VIOLENCE AND DISCRIMINATORY POLICING PRACTICES

Systemic racism – which permeates too many of our local police departments – denies communities of color their entitlement to equal dignity and respect and fosters police violence. Moreover, inadequate internal police department disciplinary systems and repeat failures by the judicial system to hold officers accountable for illegal conduct ensure impunity for incidents of police violence and brutality. While other NGOs and grassroots organizations can surely speak to startling injustice from the failure to indict officers in New York City and Ferguson, Missouri for their killing of unarmed civilians, Eric Garner and Michael Brown, as well as the attendant militarization of police departments across the country, CCR would like to focus its concerns on the practices of the largest[1] and most influential municipal police department – the New York Police Department ("NYPD" or "the Department").[2]

[1] The NYPD's current uniformed strength is approximately 34,500. *See* http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml

[2] *See generally* The Center for Constitutional Rights, *Stopped, Seized and Under Siege: U.S. Government Violations of the International Covenant on Civil and Political Rights through Abusive Stop and Frisk Practices*, September 2013, available: http://ccrjustice.org/learn-more/reports/stopped-seized-and-under-siege. *See also* U.N. Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, April 22, 2014, ¶ 7, available: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=8&DocTypeID=5 (hereinafter "HRC 2014 Concluding Observations") (criticizing practices of the NYPD)

Between January 2004 and June 2012, the NYPD conducted over 4.4 million forcible pedestrian stops of New Yorkers. As the Subcommittee is likely aware, a vast majority of people stopped in that time, roughly 85%, were Black or Latino, even though they only represented 52% of New York City's population. Only approximately 10% of stops led to any further law enforcement action.[3]

CCR successfully challenged the NYPD's abusive stop and frisk practices,[4] as constituting widespread violations of the Fourth and Fourteenth Amendments of the U.S. Constitution. In August 2013, a federal judge found the NYPD liable for a widespread practice of unconstitutional and racially discriminatory stops.[5] The Court ordered the appointment of an independent monitor to oversee a collaborative reform process, echoing a similar process successfully implemented in Cincinnati, Ohio a decade ago. The collaborative process will bring together affected communities, elected officials, police officer organizations, the NYPD, and other stakeholders to collaboratively develop specific reforms to the Department's stop and frisk practices.[6] We are hopeful that this court-ordered joint remedial process, as the Cincinnati collaborative process did before, can serve as a model to develop meaningful, lasting and credible reforms to municipal police departments across the country.

Despite the court's findings, and recent reductions in the absolute number of stops recorded by NYPD officers, there is no indication that the Department is currently in compliance with the Constitution or has stopped its use of discriminatory policing practices. In addition, in 2014 the Department increased the overly aggressive and discriminatory enforcement of minor infractions and low-level offenses with a disproportionate impact on New York communities of color. In the first two months of 2014 alone, arrests of subway panhandlers and musicians increased by more than 300%, when compared to the same period in 2013.[7] Far from a minor inconvenience, this so-called "broken windows" style of policing, can lead to serious collateral consequences and as demonstrated by the case of Eric Garner, fatal ones as well.

Additionally, excessive use of force continues to be a problem in New York, particularly in communities of color. Black people represent 55% of all alleged victims in complaints received by the New York City Civilian Complaint Review Board (CCRB); another 24-27% are Hispanic.[8] Of all the complaints received by the CCRB, nearly half concern excessive or unnecessary use of force by the NYPD.[9]

Furthermore, the disciplinary policies and procedures of the NYPD routinely fail to meaningfully punish and deter officers for incidents of misconduct, and rarely in proportion with the misconduct in question.[10] Add to this, repeat failures to criminally prosecute officers who engage in brutality,[11] and the

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[3] CCR, *Stopped, Seized and Under Siege*.
[4] Learn more about *Floyd v. the City of New York* at www.ccrjustice.org/floyd.
[5] *See Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) ("Liability Opinion")
[6] *See Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. 2013) ("Remedial Opinion")
[7] Joseph Goldstein and David J. Goodman, "Arrests of Panhandlers and Peddlers on Subways Triple Under Bratton," NY TIMES, March 6, 2014 available: http://www.nytimes.com/2014/03/07/nyregion/arrests-of-panhandlers-and-peddlers-on-subway-increase-sharply-under-bratton.html
[8] Civilian Complaint Review Board, 2013 Annual Report, published March 14, 2014, available at: http://www.nyc.gov/html/ccrb/downloads/pdf/CCRB%20Annual_2013.pdf, page 8.
[9] *Id.*, pages 6-7.
[10] Communities United for Police Reform, Priorities for the New NYPD Inspector General: Promoting Safety, Dignity and Rights for all New Yorkers, June 2014, pages 9-11, available: http://changethenypd.org/resources/priorities-new-nypd-inspector-general-promoting-safety-dignity-and-rights-all-new-yorkers
[11] Madar, Chase, "Why It's Impossible to Indict a Cop: It's not just Ferguson-here's how the system protects police," THE NATION, November 24, 2014, available: http://www.thenation.com/article/190937/why-its-impossible-indict-cop

recent immunity granted by the Staten Island District Attorney during the grand jury process to several of the NYPD officers who participated in the incident that resulted in the killing of Eric Garner – demonstrate a worrying lack of accountability or consequence for police misconduct.

We are encouraged by Attorney General Holder's announcement of a civil rights investigation by the Department of Justice into the killing of Eric Garner. Given the authority that the NYPD holds in the direction of policing in this country, we would also strongly urge this Committee to undertake hearings on the NYPD's implementation of the "broken windows" theory of policing. We would urge those hearings to include a growing chorus of experts who question the efficacy of such a mode of policing – with its overtly discriminatory focus on over-policing communities of color – as well as from community leaders in New York who can speak to the way that "broken windows" policing contributes to the unfair harassment,

In addition to the foregoing New York-specific recommendations, we also would like to draw the Subcommittee's attention towards areas where we must make improvement on a national level. Those include:

- Withdrawal of federal support and funding for municipal police departments who routinely engage in discriminatory practices;
- DOJ's creation of a national database to track police shootings and other incidents of brutality and excessive use of force;
- Ending the Department of Defense's 1033 program;
- Passage of the federal End Racial Profiling Act (ERPA); and
- Revise the Department of Justice's Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to ban racial profiling on the basis of religion, sexual orientation, gender identity or national origin, and close loopholes in the Guidance that permit all forms of racial profiling in the national security and border contexts.

II. SUSPICIONLESS SURVEILLANCE OF MUSLIM COMMUNITIES AND THE INCREASED USE AND ABUSE OF MUSLIM INFORMANTS

Since 2002, the NYPD has engaged in another overtly discriminatory policy practice by targeted Arab, Muslim, and South Asian neighborhoods for surveillance and "infiltration" — without any suspicion of wrongdoing. The NYPD's surveillance program (hereinafter "Program") engaged in "human mapping" and mass surveillance of Muslim communities, infiltration of mosques and of Muslim Student Associations in the New York and New Jersey area. The Program expressly discriminates on the basis of religion and violates the U.S. Constitution. Notably, this Program life had not yielded a single criminal lead.[12]

The Program has had serious consequences in the lives of Muslim communities: altering the way they practice their faith and interact with other community members, and creating a pervasive climate of fear, suspicion and stigmatization. The Program has been the subject of several legal challenges, including one filed by Muslim Advocates and CCR on behalf of communities in New Jersey.[13]

[12] Adam Goldman & Matt Apuzzo, "NYPD: Muslim Spying Led to No Leads, Terror Cases," Associated Press, August 21, 2012, available: http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases.
[13] Learn more about CCR's case, *Hassan v. the City of New York* at http:// www.ccrjustice.org/hassan. .

Further, *federal* law enforcement agencies also have used coercive and intimidating tactics to recruit Muslim men to become informants within Arab, Muslim, and South Asian communities across the country. The FBI aggressively uses immigration status and the threat of criminal charges to intimidate individuals into working as informants and threatens people with placement on the federal government's secretive No Fly List. Thousands of persons, primarily Muslims, have been swept up on these lists, absent any threat to aviation security.[14] Additionally, there is no effective or transparent process for being taken off the List.[15] The increasing use of this unlawful, secretive tool to coerce law-abiding Muslim-Americans to become spies and informants on their communities destabilizing Muslim communities and doing those individuals who cannot travel to see loved ones or pursue work, real harm.

Moreover, the surveillance of Muslims by the NYPD and the FBI was the subject of concern by the U.N. Human Rights Committee dnring the review of the U.S. compliance with the International Covenant on Civil and Political Rights in March 2014,[16] and highlighted by the CERD committee in its Concluding Observations in August 2014.[17]

We recommend:

- No federal, state, or local law enforcement agency targets Arab, Muslim, and South Asian neighborhoods, businesses, mosques, schools, and organizations for surveillance, monitoring, and intelligence-gathering without particularized suspicion of wrongdoing;
- Hearings to investigate the use of unlawful or abusive pressure tactics by law enforcement to recruit informants and implement appropriate remedies; and the
- Development of federal administrative regulations to ensure that law enforcement agents do not make promises or threats involving the No Fly List or other coercive measures when engaging with informants or potential informants and provision of meaningful procedural protections to challenge a No Fly List designation.

III. THE EXTENSIVE USE OF SOLITARY CONFINEMENT IN U.S. PRISONS, JAILS, AND DETENTION CENTERS

Solitary confinement remains a critical issue for the Subcommittee's continued scrutiny. As we have previously detailed in written testimonies before Congress, the U.S. holds nearly 800 people in solitary confinement in federal facilities, and there are approximately 80,000 prisoners in solitary confinement in state and local jails, prisons, and detention centers across the country. At California's Pelican Bay State Prison alone, where CCR is challenging the constitutionality of prolonged solitary confinement,[18] approximately 1,000 prisoners are held in multi-year isolation. In fact, hundreds of the prisoners at Pelican Bay have been in solitary for over a *decade*.

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[14] See Jeremy Schahill and Ryan Devereaux, *Blacklisted: The Secret Government Rulebook for Labeling You a Terrorist*, The Intercept, July 23, 2014, available at: https://firstlook.org/theintercept/2014/07/23/blacklisted/

[15] *See* ACLU, Unleased And Unaccountable: The FBI's Unchecked Abuse Of Authority 46-48 (Sept. 2013).

[16] HRC 2014 Concluding Observations, ¶ 7.

[17] CERD Committee, Concluding observations on the combined seventh to ninth periodic reports of United States of America, August 29 2014, ¶ 8, available: http://www.ushrnetwork.org/resources-media/cerd-concluding-observations-2014, (hereinafter "CERD 2014 Concluding Observations")

[18] For more information about CCR's class action lawsuit challenging prolonged solitary confinement in California, *Ashker et al. v. Governor of California, et al.*, 09-cv-5796 (N.D. Cal.) (Wilken, J.) (N.D.Cal.), please visit www.ccrjustice.org/pelican-bay.

Wherever it is imposed, solitary confinement takes on brutal dimensions. Prisoners are typically warehoused in cramped, concrete, windowless cells in a state of near-total solitude between 22 and 24 hours a day.[19] They are deprived of any normal human interaction, stimulation, meaningful programming or vocational opportunities.

It is well-documented that solitary confinement, and particularly prolonged isolation, poses a grave risk of psychological and physical harm for all prisoners,[20] a harm that frequently persists even following release. The incidence of suicides, attempted suicides, self-harm and the development of mental illness are much higher among prisoners who have been in solitary confinement. Our clients at Pelican Bay have told us that they feel like they are "silently screaming" all day, and that they have forgotten what it feels like to touch another human being.

Moreover, despite litigation victories prohibiting solitary confinement for certain vulnerable populations – which are limited to a narrow set of jurisdictions – vulnerable populations, including people with mental disabilities, children, women, LGBTI persons and people in immigration detention continue to be disproportionately held in solitary confinement, as numerous reports have documented.[21]

At the federal Administrative Maximum ("ADX") facility in Florence, Colorado, more than 400 inmates spend 23 hours a day locked in concrete cells in conditions of extreme isolation.[22] In February 2014, several prisoners went on hunger strike at ADX and were force-fed.[23] A former warden of the facility has described ADX as "a cleaner version of hell."

Compounding the ill-effects of solitary confinement, the DOJ also imposes Special Administrative Measures (SAMs), on a number of prisoners in the federal system, which impose particularly harsh isolation, communication and classification restrictions akin to, and sometimes more severe than, those placed on Guantanamo detainees. SAMs are at times imposed pre-trial, placing undue pressure on detainees and impairing their ability to effectively assist in their defense. The DOJ has

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[19] Center for Constitutional Rights, et al., *The Use of Prolonged Solitary Confinement in United States Jails, Prisons and Detention Centers, September 2014, available at* http://www.ccrjustice.org/files/CCR_CAT%20Submission_SolitaryConfinement.pdf

[20] For a summary of the social science literature on the psychological effects of prolonged solitary confinement, see Declaration of Craig Haney, Ph.D., J.D., In Support of Plaintiffs' Motion for Class Certification, *Ashker*, Dkt. No. 195-4 (available at http://ccrjustice.org/files/195-4%20Exhibits%20T-Y.pdf). *See also* Fatos Kaba, MA, Andrea Lewis, PhD, Sarah Glowa-Kollisch, MPH, et. al, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442, 443 (Mar. 2014); http://thinkprogress.org/justice/2014/02/18/3303721/solitary-confinement-dramatically-alter-brain-shape-just-days-neuroscientist-says/#.

[21] Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYC. L. 104, 104-05 (2010). *See also* American Civil Liberties Union (ACLU) and Human Rights Watch, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the U.S.*, October 2012, available at http://www.aclu.org/files/assets/us1012webwcover.pdf; ACLU, *Alone and Afraid: Children held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, June 2014, available at https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf; ACLU, *Worse than Second-Class: Solitary Confinement of Women in the United States,* available at https://www.aclu.org/sites/default/files/assets/worse_than_second-class.pdf; Heartland Alliance's National Immigrant Justice Center & Physicians for Human Rights, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention*, September 2012, available at http://www.immigrantjustice.org/InvisibleinIsolation.

[22] Pardiss Kebraei, *The Torture that Flourishes From Gitmo to an American Supermax,* THE NATION, January 30, 2014, available at http://www.thenation.com/article/178172/torture-flourishes-gitmo-american-supermax

[23] Solitary Watch, *ADX H-Unit on Hunger Strike, Prisoners Being Force Fed*, February 25, 2014, available at http://solitarywatch.com/2014/02/25/adx-h-unit-hunger-strike-prisoners-force-fed/

withheld virtually all information about the use of SAMs, including who and how many are subject to the measures, where these individuals are being held, and what the measures entail.[24]

These conditions and the continued use of solitary confinement have been subject to international scrutiny. As the Committee is undoubtedly aware, the United States recently participated in a periodic review before the U.N. Committee Against Torture (CAT). While the U.S. government asserted that federal facilities are "safe, humane, and appropriately secure,"[25] the Committee found otherwise in its Concluding Observations.

The Committee recommended that the U.S. should limit the use of solitary confinement as a measure of last resort, for as short time as possible, under strict supervision and with the possibility of judicial review; prohibit any use of solitary confinement against juveniles, persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers in prison; ban prison regimes of solitary confinement such as those in super-maximum security detention facilities; and compile and regularly publish comprehensive disaggregated data on the use of solitary confinement, including related suicide attempts and self-harm.[26] The Committee also concluded that "full isolation for 22-23 hours a day in super-maximum security prisons is unacceptable."[27]

The U.S. should substantially curb the use of solitary confinement in this country, and eliminate the use of prolonged solitary confinement altogether. Specifically, the U.S. should:

- Prohibit solitary confinement in excess of 15 days in U.S. prisons, jails, and detention centers, except under exceptional circumstances;
- End the practice of solitary confinement for people in pre-trial detention;
- Ensure that those prisoners who are sent to solitary confinement are only sent for the most serious disciplinary infractions, where no other less restrictive alternatives exist, and receive meaningful process prior and subsequent to such confinement;
- Develop standards to ensure that actual or perceived race, political affiliation, religion, association, vulnerability to sexual abuse, and challenging violations of one's rights as a prisoner plays no role in the decision to confine a prisoner to solitary confinement; and
- Reveal criteria for placement of individuals under Special Administrative Measures and data about its use in federal detention facilities, offer meaningful administrative review procedures to permit challenges to SAMs designation, and ban the coercive use of SAMs for pre-trial detainees.

IV. IMMIGRATION DETENTION AND EXPEDITED DEPORTATION

While CCR welcomes President Obama's recent announcement of Executive Action to assist many undocumented immigrants, the policy fails to protect millions of immigrants and refugees from unjust and frequently long-term detention and expedited deportation and removal policies. Both matters have also been the subject of grave concern by the U.N. Committee Against Torture.

[24] The only available official data is from 2009, when DOJ reported that there were 44 prisoners subject to SAMs in Bureau of Prisons ("BOP") facilities. *See* U.S. DOJ, *Fact Sheet: Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System*, June 9, 2009, available at http://www.justice.gov/opa/pr/2009/June/09-ag-564.html.
[25] U.S. Dep't of State, Third to Fifth Periodic Reports of the United States to the Committee Against Torture ¶ 213 (Dec. 4, 2013), U.N. Doc. CAT/C/USA/3-5.
[26] CAT Committee, Concluding Observations on the third to fifth periodic reports of the United States of America, November 20, 2014, UN CAT/C/USA/CO/3-5 (hereinafter "CAT 2014 Concluding Observations" ¶ 9.
[27] CAT 2014 Concluding Observations.

1. Immigration Detention

As the Subcommittee is aware, every day, Immigration and Customs Enforcement (ICE) holds approximately 34,000 immigrants—about 400,000 each year—as part of a provision in annual appropriations acts known as the "detention bed mandate" or "bed quota." The 2014 Congressional Appropriations Act states that "funding made available … shall maintain a level of not less than 34,000 detention beds...." ICE has interpreted this wording as a requirement to fill 34,000 beds daily. As a result, immigration detention is expanding, at great profit to private corporations, even though approximately half of detained individuals have not been convicted of any crime, and the vast majority of the others are non-violent or low-level offenders. Our punitive immigration laws mandate detention for asylum seekers and other arriving immigrants as well as non-citizens who have already served time for certain crimes, including many non-violent crimes. Further, 30% of individuals in detention are not subject to mandatory detention, but are nevertheless held at the Department of Homeland Security's (DHS) discretion.

In the past year, DHS has resurrected the discredited practice of detaining families and children by creating new detention centers in remote locations to hold Central American women and children fleeing violence. These harsh and financially costly policies have been widely criticized for years in the United States and in the international community. In its Concluding Observations the CAT Committee also raised concerns about these practices, particularly the "plan to establish 6350 additional detention beds for undocumented migrant families," and the detention of unaccompanied minors in facilities "that closely resemble juvenile correctional facilities."[28]

Immigration detention is civil in nature, but many individuals are detained for months with no judicial review or opportunity to obtain bond. Indeed, at the end of December 2012 about 4,793 detainees had already been detained for at least six months, and many individuals have been held for almost a decade. Those held for the longest period of time are Lawful Permanent Residents who have families and community ties and are most likely to obtain immigration relief. Many non-citizens eligible for relief from deportation give up their viable legal cases and accept forced deportation away from their families and loved ones due to the continued psychological, economic, and/or physical hardships associated with prolonged detention.

Many detention facilities have come under scrutiny for ongoing inhumane treatment of detained persons, including prolonged solitary confinement, inadequate nutrition, inadequate medical and mental health treatment, lack of access to counsel, and verbal, physical and sexual abuse. Yet there is no accountability for U.S. government agents and contractors who have violated the rights of detained non-citizens, as the Performance-Based National Detention Standards issued by ICE take the form of mere guidelines rather than enforceable civil regulations, and are enforced only through internal inspections. Until adequate standards are codified into enforceable law, detained individuals have minimal protection from abuse.

The CAT Committee recommended the U.S. review its use of detention of immigrants, develop "community-based alternatives to immigration detention," move towards the elimination of family detention, and establish independent mechanisms that would work to investigate "allegation[s] of violence and abuse in immigration centers."[29]

[28] CAT 2014 Concluding Observations, ¶19.
[29] *Id.*

2. Expedited Removal and Accelerated Legal Proceedings

ICE reports that it deported 368,644 people in FY 2013, the highest number in history. Expedited removal procedures, often mandated by law, are increasingly employed by the U.S. Government in ways that deny due process to non-citizens, including torture survivors and asylum seekers, and keep individuals in need of international protection from being able to access asylum procedures in the United States. The United States Customs and Border Protection, often the first screening officials responsible for referring arriving non-citizens for interviews with USCIS if they fear returning home, frequently deny the right to seek asylum to non-citizens apprehended within the expedited removal process. Increasingly, refugees are denied access to credible fear interviews because CBP officers ignore pleas, deny interpreters, use physical intimidation, or hold non-citizens in substandard facilities with no access to even basic needs. Further, USCIS has recently revised its interpretation of the credible fear standard to make it more restrictive.

The U.S. government has also begun to implement highly accelerated procedures for children and families fleeing persecution and violence in Honduras, Guatemala and El Salvador despite their likely eligibility for asylum and other relief. In addition to detaining these families, DHS has begun to "fast track" their legal proceedings, inhibiting their ability to access counsel who can adequately develop their cases for asylum, Special Immigrant Juvenile Status, and other relief. These proceedings violate the United States' compliance with its own refugee protection laws as well as international treatics, including the Convention Against Torture, by sending refugees back to dangerous locations where they are likely to be persecuted, and doing so without due process.

As previously mentioned previously, the U.N Committee Against Torture also addressed removal-related human rights violations in its recent review, and made a number of recommendations to the U.S. government, including urging the United States to uphold more meaningfully the principle of non-refoulement, and providing special considerations for "minors, women, victims of torture or trauma and other asylum seekers with specific needs" during asylum procedures. [30]

3. Additional Recommendations

In addition to the recommendations made by the Committee Against Torture, we recommend that the United States:

- End all discretionary detention;
- Eliminate or significantly reduce the use of detention for non-citizens in removal proceedings, and implement alternatives to detention in the extreme cases where a restriction on liberty is warranted;
- Require regular and fair bond hearings for all detained individuals;
- Create binding, humane detention standards applicable to all facilities;
- Require access to counsel that ensures adequate representation for all detained non-citizens; Eliminate expedited processing and expedited removal procedures.

[30] *Id.* at ¶ 18.

V. GUANTÁNAMO AND INDEFINITE DETENTION

Despite repeated public assurances that the government is committed to closing Guantánamo, as of December 8, 2014, 136 men remain imprisoned. More than half of them – 67 – have been approved for transfer, most of them by the unanimous consent of an inter-agency task force over four years ago (and many of them multiple times). Of the remaining 136 detainees, 33 are slated for prosecution and 36 have been designated for continued detention – without charge or trial – indefinitely. Only 7 of the 33 are currently actively being prosecuted and a subset of the prosecutions are taking place in a system of military commissions, which CAT Committee recently identified as a "system that fails to meet international standards."[31]

The category of detainees that continue to be indefinitely detained without charge, presents a host of legal problems, particularly since it has not been accompanied by a meaningful mechanism to review the need for continued detention. The judicial process enabling detainees to challenge the basis for their detention has been rendered effectively meaningless by the DC Circuit Court of Appeals.[32] The Guantanamo Periodic Review Board (PRB), recently created for this purpose, has only managed to hold hearings for ten detainees. Neither process has led to orders compelling authorities to immediately release unlawfully held detainees.

Transfers of Yemenis, who now constitute the majority (84) of the prison population and the vast majority (54) of the cleared detainee population, continue to be at an impasse. The Obama Administration lifted its self-imposed moratorium on transfers to Yemen in May 2013, but, since July 2010 (a period of four and a half years), only four Yemenis have left the prison alive, and they were resettled in third countries. There appears to be no plan for gradual repatriation of Yemeni detainees based on an individualized assessment of their probability of successful adjustment to civilian life after release, or to resettle cleared Yemenis who would accept transfer to a third country, and no progress towards creating a rehabilitation center for former detainees in Yemen. We remain concerned about the possibility of Guantánamo devolving into an indefinite detention camp housing exclusively Muslim men from Yemen.

Reflecting on the legal status of those currently held at Guantánamo, the Committee Against Torture in the same report expressed "its deep concern about the fact that the State party continues to hold a number of individuals without charge at Guantánamo Bay detention facilities," noting that "indefinite detention constitutes per se a violation of the Convention."[33]

Numerous studies have shown that the atmosphere of persistent uncertainty about one's fate and the experience of effective indefinite detention has negative psychological impacts for the men at Guantánamo, with the potential for long-term ramifications long beyond release.[34]

Those detainees that have chosen to go on hunger strike to protest their unlawful detention and raise awareness about their plight have faced serious abuse. The twenty or so detainees currently on hunger strike have to undergo humiliating and painful forcible feeding that a medical expert described as "an extraordinary departure from customary medical practice." The feeding includes the daily re-insertion

[31] CAT 2014 Concluding Observations ¶ 14.
[32] Stephen Vladeck, *The D.C. Circuit After Boumediene*, available at: http://www.lawfareblog.com/wp-content/uploads/2011/12/Seton-Hall.pdf
[33] CAT 2014 Concluding Observations ¶ 14.
[34] *See, e.g.*, Physicians for Human Rights, *Punishment Before Justice: Indefinite Detention in the US* (Jun. 2011), http://physiciansforhumanrights.org/library/reports/indefinte-detention-june2011.html#sthash.8Q6ugnPs.dpuf.

of a tube that is wider than normally used in nasogastric feeding, infusing liquid nutrients at greater than standards speed and quantity, and other non-standard, painful procedures that are potentially dangerous to the detainees' health. During force-feeding, detainees are physically strapped down to a chair, where they remain for up to two hours. In its recent concluding observations, the CAT Committee stated that the "force-feeding of prisoners on hunger strike constitutes ill-treatment in violation of the Convention", and explicitly recommended that the U.S. "put an end to force-feeding of detainees in hunger strike as long as they are able to take informed decisions."

Long-term hunger strikers are also penalized for their protest through segregation in cell blocks where solitary confinement-like conditions are imposed, including stricter procedures as to searches, severely curtailed access to open air and exercise, and limited communication with their fellow inmates. Detainee abuse isn't limited to hunger strikers—our clients have told us, for example, that they regularly undergo humiliating genital search procedures whenever they are taken out of their cell for calls or meetings with their lawyers.

In light of these internationally recognized concerns, the U.S. government should:

- Exercise authority under the 2014 NDAA to effect additional transfers without further delay, including transfers to Yemen, of all men who are cleared and whom the government does not plan to charge to their home or resettlement countries;
- Provide the anticipated date by which the Administration expects to complete Periodic Review Board hearings for all detainees slated for review;
- Disclose the number of detainees currently on hunger strike and currently being forcibly fed;
- Disclose the number of detainees currently being held in solitary confinement at Guantánamo; and
- Adapt procedures for treatment of detainees on hunger strike, including medical counselling, in accordance with international recommendations for ethical procedures in protest hunger strikes and limited use of solitary confinement.

VI. CONCLUSION

We sincerely hope that this hearing will help usher in the continued engagement by this Subcommittee and Congress overall in the years that follow which will usher in policies and reforms that hold the U.S. accountable to its international obligations on key civil and human rights issues. Particularly in the year following the completed review of the U.S.' human rights record, and in the months before our universal periodic review process, we also remind the Subcommittee of the importance of all levels of government to uphold our human rights obligations. With strong leadership, sound practices, and a renewed commitment, the U.S. government can take strong steps towards fulfilling its international human rights obligations and upholding the Constitution.

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Hearing Before the Senate Judiciary Subcommittee on the

Constitution, Civil Rights, and Human Rights

December 9, 2014

Statement for the Record: Criminalization of Homelessness

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December 8, 2014

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The Allard K. Lowenstein Clinic at Yale Law School[1] appreciates the Senate's examination of the current state of civil and human rights in the United States. This submission[2] surveys the many human rights violations stemming from the criminalization of homelessness, affecting the millions of people who experience homelessness in the United States annually.[3] As the events in Staten Island, Ferguson, and elsewhere make plain, public scrutiny is critically needed to understand and to address interactions between police and society's most vulnerable members. While race is and should be a central focus, we also urge Members to consider how the policies and practices of local and state governments adversely affect individuals living in homelessness. From Florida to California, homeless people regularly experience cruel, inhuman, and degrading treatment, in violation of U.S. obligations under the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Across the country, homeless people face a web of state and local ordinances that effectively ban the most basic acts of survival.[4] Left with no access to safe housing or even to temporary shelter, many homeless people must resort to self-made solutions, such as forming alternative communities like tent cities[5] and performing basic human bodily functions – sitting, eating, sleeping, and going to the bathroom – in public. But rather than offering these individuals a safe harbor, many municipalities punish the use of public space by homeless people. That harsh treatment—intended to render homelessness invisible—serves to further the cycle of poverty and incarceration. Criminalization also discourages homeless people from seeking protection from the law and contributes to a climate that permits brutal violent crimes against homeless persons to take place.[6]

Recent years have seen a marked increase in homelessness. In 2007, the National Law Center on Homelessness and Poverty Law estimated that about 3.5 million people, including 1.35 million children, were likely to experience homelessness.[7] Those figures grew in the wake

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[1] The Clinic, in partnership with the National Law Center on Homelessness and Poverty, has issued two reports on homelessness and criminalization. See CRUEL, INHUMAN, AND DEGRADING: HOMELESSNESS IN THE UNITED STATES UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (2013) [hereinafter CRUEL, INHUMAN, AND DEGRADING], http://nlchp.org/Cruel_Inhuman_and_Degrading; WELCOME HOME: THE RISE OF TENT CITIES IN THE UNITED STATES (2012) [hereinafter WELCOME HOME], http://nlchp.org/documents/WelcomeHome_TentCities.

[2] Portions of this submission draw significantly from the most recent statement submitting to the Committee Against Torture by the NLCHP, with which the Lowenstein Clinic has collaborated on a number of reports concerning homelessness in the United States. See Criminalization of Homelessness in the United States of America, Submission to the United Nations Committee Against Torture for its 2014 Review of the United States of America September 15, 2014, http://www.nlchp.org/documents/No_Safe_Place_Advocacy_Manual.

[3] *See, e.g.*, NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2014) [hereinafter NO SAFE PLACE], http://www.nlchp.org/documents/No_Safe_Place; NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, CRIMINALIZING CRISIS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2011) [hereinafter CRIMINALIZING CRISIS], http://www.nlchp.org/Criminalizing_Crisis.

[4] UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS , (2012), [hereinafter USICH, SEARCHING OUT SOLUTIONS], www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.

[5] WELCOME HOME, supra note 1.

[6] NATIONAL COALITION FOR THE HOMELESS, VULNERABLE TO HATE: A SURVEY OF HATE CRIMES & VIOLENCE COMMITTED AGAINST HOMELESS PEOPLE IN 2013 (2014) [hereinafter NCH, VULNERABLE TO HATE], http://nationalhomeless.org/wp-content/uploads/2014/06/Hate-Crimes-2013-FINAL.pdf.

[7] NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, 2007 ANNUAL REPORT, 5 (2007), http://www.nlchp.org/content/pubs/2007_Annual_Report2.pdf.

of the 2008 fiscal and foreclosure crisis. According to a 2013 report by the National Center on Homeless Education, the number of homeless children identified by schools increased by almost 75% since the beginning of the economic crisis in 2007.[8] The National Alliance to End Homelessness reported in 2013 that a majority of states saw an increase in their homeless populations, with rises in family homelessness reported at about four percent.[9] Given the severe deficit of affordable housing in the United States[10] and the shortage of shelter space to meet even the emergency needs of homeless people,[11] the National Alliance found that nearly four in ten homeless people were living on the street, in a car, or in other places neither fit nor intended for human habitation.[12]

Despite their lack of alternatives, individuals engaging in self-help measures often face criminal sanctions.[13] A significant number of jurisdictions routinely and discriminately target homeless people under ordinances which prohibit particular behaviors—for example, obstructing sidewalks, loitering, panhandling, begging, trespassing, camping, being in particular places after hours, sitting or lying in particular areas, sleeping in public, erecting temporary structures, storing belongings in public places, or urinating in public.[14] These laws are common—and worse, their use is growing.[15] Under these laws, homeless people are regularly harassed by law enforcement officials and cycled through prisons and jails.[16]

Criminalization constitutes cruel, inhuman and degrading treatment, as it forces an impossible choice on homeless individuals: endure sleep deprivation, hunger, thirst, or denial of access to dignified sanitation or face criminal punishment for engaging in life-sustaining

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[8] National Center for Homeless Education, *Education for Homeless Children and Youths Program*, 4 (2013).

[9] National Alliance to End Homelessness, STATE OF HOMELESSNESS IN AMERICA, 10 (2013) (STATE OF HOMELESSNESS IN AMERICA), http://www.endhomelessness.org/page/-/files/SOH_2013.pdf. 2012 survey by the U.S. Conference of Mayors reached similar conclusions. The survey found that between 2011 and 2012 the majority of cities surveyed experienced a seven percent increase in homelessness, with an eight percent increase in homeless families. U.S. Conference of Mayors 2012 Survey on Hunger and Homelessness, 2, (2012), http://usmayors.org/pressreleases/uploads/2012/1219-report-HH.pdf. Survey cities also reported that an average of seventeen percent of homeless persons needing assistance did not receive it. In addition, sixty percent of survey cities expected an increase in the number of homeless families and fifty-six percent expected an increase in the number of homeless individuals. *Id.* at 3.

[10] *See, e.g.*, NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH (2013), http://nlihc.org/oor/2013; NLCHP, NO SAFE PLACE , *supra* note 3, at 7

[11] *See* NLCHP, NO SAFE PLACE *supra* note 3 at 14.

[12] STATE OF HOMELESSNESS IN AMERICA, *supra* note 9, at 9.

[13] For example, In St. Petersburg, Florida, advocates filed a 2009 class action complaint on behalf of the city's homeless, who were routinely penalized for using public space to perform basic bodily functions when they had nowhere else to go (Amended Complaint, Catron v. City of St. Petersburg, Case No. 8:09-cv-923-SDM-EAJ, at 59 (Dec. 15, 2009)).

[14] NLCHP, NO SAFE PLACE , *supra* note 3, at 7-9; NLCHP, CRIMINALIZING CRISIS, *supra* note 3, at 7-8; USICH, SEARCHING OUT SOLUTIONS, *supra* note 4, at 6-7 (citing NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY & NATIONAL COALITION FOR THE HOMELESS, HOMES NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2009) [hereinafter NLCHP, HOMES NOT HANDCUFFS]).

[15] NLCHP, NO SAFE PLACE , *supra* note 3, at 7-9; NLCHP, CRIMINALIZING CRISIS, *supra* note 3, at 8.

[16] For the effects of imprisonment on voting, for example, *see* Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination (United States of America)*, ¶ 27, U.N. Doc. CERD/C/USA/CO/6 (2008); Hirst v. United Kingdom (No. 2), 2005-IX Eur. Ct. H.R. 681; MATTHEW CARDINALE, TRIPLE-DECKER DISENFRANCHISEMENT: FIRST-PERSON ACCOUNTS OF LOSING THE RIGHT TO VOTE AMONG POOR, HOMELESS AMERICANS WITH A FELONY CONVICTION, THE SENTENCING PROJECT (2004).

behavior.[17] Numerous Special Rapporteurs and international authorities have thus condemned criminalization of homelessness as CIDT in both mission reports on the U.S. and in thematic reports on penalization of poverty and stigmatization.[18] On March 27, 2014, the U.N. Human Rights Committee condemned the criminalization of homelessness in the United States as discriminatory and as "cruel, inhuman, or degrading treatment" in violation of Articles 2, 7, 9, 17, and 26 of the ICCPR; the Committee called upon the U.S. government to abolish criminalization and take corrective action.[19] On November 13, 2014, the Committee against Torture again stressed the "implementation of the recommendations to decrease criminalization of the homeless" in the United States.[20] In the words of Sir Nigel Rodney, the Chair of the UN Human Rights Committee, and former U.N. Special Rapporteur on Torture: "I'm just simply baffled by the idea that people can be without shelter in a country, and then be treated as criminals for being without shelter. The idea of criminalizing people who don't have shelter is something that I think many of my colleagues might find as difficult as I do to even begin to comprehend."[21]

The criminalization of homelessness also places the United States out of step with the jurisprudence of peer nations and regional human rights systems.[22] Several U.S. courts of appeal

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[17] *See, e.g.* U.N. Committee against Torture, *Report of the Committee against Torture: General Assembly 52nd Session*, ¶. 56, 257, A/52/44 (September 10, 1997); Sendic v. Uruguay, 69 I.L.R. 183, 185-86 (U.N. Hum. Rts. Comm. 1981); U.N. Committee against Torture, *Concluding Observations – Finland*, ¶. 14, CAT/C/FIN/CO/5-6, (June 29, 2011); U.N. Committee against Torture, *Concluding observations of the Committee against Torture – Honduras* , ¶. 17 CAT/C/HND/CO/1, (June 23, 2009).

[18] *See* U.N. Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, Raquel Rolnik, Mission to the United States of America*, ¶ 95, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2012) [hereinafter UNHRC, *Report of Raquel Rolnik*]; U.N. Human Rights Council, *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶¶ 65, 66(c), U.N. Doc. A/HRC/21/39 (July 18, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶¶ 48-50, 78(c), U.N. Doc. A/67/278 (Aug. 9, 2012); Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, *USA: "Moving Away from the Criminalization of Homelessness, A Step in the Right Direction"* (Apr. 23, 2012), http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E; UNHRC, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Addendum, Mission to the United States of America*, A/HRC/18/33/Add.4, Aug. 2, 2011; Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Stigma and the Realization of the Human Rights to Water and Sanitation*, U.N. Doc. A/HRC/21/42 (July 2, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diéne, Mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009) [hereinafter UNHRC, *Report of Diéne*].

[19] U.N. Human Rights Committee, *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014) [hereinafter HRC, *Concluding observations*]..

[20] Committee Against Torture,*Committee Against Torture considers report of the United States*, Nov. 13, 2014. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15290&LangID=E.

[21] *See* National Law Center on Homelessness & Poverty, US ICCPR Review 2014: Cruel, Inhuman, and Degrading (2014), http://youtu.be/V3hm25LE75M?list=UUdJRWWjmVSQjFgsujA8-ITA.

[22] For example, the Inter-American Court of Human Rights used the concept of dignity to expand the scope of the right to life, as including "not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence." Inter-American Court of Human Rights, Case of the 'Street Children' (Villagran-Morales v. Guatemala, Judgment of Nov. 1999 (Merits), at para. 144. On this basis, the Court challenged the Guatemalan government for failing to provide necessary standards of care to street children. In elaborating the forms of treatment contained within CIDT protections under Article 3 of the European Convention on Human Rights, the European Court of Human Rights observed in *Pretty v. United Kingdom*: "Where treatment humiliates or debases an individual showing a lack of

have held that criminalizing homelessness when no realistic alternative exists may amount to cruel, inhuman treatment under the Eighth Amendment of the U.S. Constitution.[23]

Arrests for even minor offenses – such as loitering or pan-handling – can have severe and lasting effects. Unaffordable bail means that homeless persons are nearly always incarcerated until their trials occur – or until they agree to waive their trial rights in exchange for convictions.[24] While in jail, homeless people are subject to the poor physical conditions that already exist in these facilities. In one especially horrific case, on February 15, 2014, Jerome Murdough, a homeless veteran, "baked to death," dying of dehydration in an overheated jail cell on Rikers Island in New York City. Arrested for trespassing in a public housing stairwell where he sought shelter from sub-freezing temperatures, he was still in jail five days after his arrest for the "crime" of simply trying to survive.[25] Criminal convictions—even for minor offenses like loitering—can erect serious and lasting barriers to social integration and economic well-being. Employers are more likely to discriminate against those with criminal records.[26] And periods of unexpected imprisonment prevent homeless workers from showing up to their job, and may cost them opportunities to obtain shelter[27] or eligibility for benefits like public housing.[28]

Violations are especially severe for people of color, immigrants, gay, lesbian, bisexual, and transgender people, and people with disabilities, who are among the most likely to be rendered homeless; these particularly vulnerable populations are often subject to the harshest treatment by private actors and law enforcement officials when that occurs.[29] The 2010 Census

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respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3." 35 EHRR (2002) 1, at 33, para. 52. Cf. *Law v. Canada (Minister of Employment and Immigration)* [1999] 1 SCR 497, at para. 53 ("Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits.").

[23] *See* Pottinger v. City of Miami 76 F.3d 1154 (11th Cir. 1996); Johnson v. City of Dallas 61 F.3d 442 (5th Cir. 1995).

[24] Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, at 2 (Dec. 3, 2010), http://www.hrw.org/node/94574/section/1.

[25] Lindsey Bever, *Homeless veteran dies in overheated Rikers Island cell*, WASHINGTON POST (March 20, 2014), http://www.washingtonpost.com/news/morning-mix/wp/2014/03/20/homeless-veteran-dies-in-overheated-rikers-island-cell/.

[26] *See, e.g.*, Devah Pager, *The Mark of a Criminal Record*, 105 AMERICAN J. OF SOCIOLOGY 937-975 (2003); Gary Shaheen & John Rio, *Recognizing Work as a Priority in Preventing or Ending Homelessness* 28 J. PRIMARY PREVENTION 341 (2007). *See also* NLCHP, NO SAFE PLACE, *supra* note 3 at 32 (thirty-eight states allow employers to consider arrests, even if they never resulted in conviction, when making hiring decisions).

[27] *See, e.g.*, LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY 2009 UPDATE (2009), *available at* http://www.lac.org/roadblocks-to-reentry/upload/lacreport/Roadblocks-to-Reentry--2009.pdf.

[28] Public Housing Authorities often "use overly exclusive policies when determining whether an applicant with a criminal record is eligible for public housing" and may even reject applicants even if the charges against them are dropped. NLCHP, NO SAFE PLACE, *supra* note 3, at 33.

[29] *See* NATIONAL COALITION FOR THE HOMELESS, WHO IS HOMELESS? (2009), http://www.nationalhomeless.org/factsheets/who.html (based on a 2006 survey of 24 cities); NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, HATE VIOLENCE AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED COMMUNITIES IN THE UNITED STATES IN 2011 (2011), http://www.avp.org/storage/documents/Reports/2012_NCAVP_2011_HV_Report.pdf; Rudy Estrada & Jody Marksamer, *Lesbian, Gay, Bisexual, and Transgender Young People in State Custody: Making the Child Welfare*

estimated that roughly 25.2% of the U.S. population is non-white,[30] but non-white people represent about 60% of homeless people in shelters, and African Americans are by far the largest group (38%).[31] As the Special Rapporteur on racism noted, "the enforcement of minor law enforcement violations . . . take[s] a disproportionately high number of African American homeless persons to the criminal justice system."[32] Policymaking has also had racially disparate effects. States and municipalities cutting budgets during the recession have placed black and Latino families at a particularly high risk of homelessness; for example, in 2012, New York State eliminated housing assistance rental vouchers for 8,000 households that were overwhelmingly black or Latino.[33] Racial and ethnic minorities face barriers in accessing education, employment, health care, housing, and social services that interact with residential segregation, patterns of incarceration, and intergenerational poverty to make minority communities more susceptible to becoming or remaining homeless.[34]

The stark racial disparities among homeless individuals—and the role that criminalization plays in perpetuating them—are in direct contravention of the United States' obligations under the International Covenant on the Elimination of Racial Discrimination, which calls on states to eliminate racial disparities in the right to housing.[35] The Committee and the Special Rapporteur on Racism have condemned the racially disparate aspects of homelessness in the United States as a human rights violation.[36] On August 29, 2014, the Committee repeated these concerns and called for the abolition of criminalization of homelessness.[37]

The degrading and dehumanizing climate produced by criminalization ordinances also promotes hate crimes and violence against homeless people by private individuals. From 1999 to 2013, the National Coalition for the Homeless (NCH) documented 1,437 acts of violence against homeless individuals by housed perpetrators, in 47 states, Puerto Rico, and Washington, DC, resulting in 375 deaths.[38] Many more acts of violence likely go unreported, given the strained relations between homeless individuals and law enforcement officials who enforce criminalizing ordinances. The federal government does not currently recognize homelessness as a protected class under its hate crimes statute, but several states have done so, for sentencing and/or tracking purposes.[39] These crimes – including an array of atrocities such as murders, beatings, rapes, and even mutilation – are believed to have been motivated by the perpetrators' biases against homeless individuals and/or by their ability to target homeless people with relative ease. NCH found startling data in the number and severity of attacks, including that the most violent crimes

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and Juvenile Justice Systems Safe for All Youth through Litigation, Advocacy, and Education, 79 TEMP. L. REV. 415 (2006), http://www.nclrights.org/wp-content/uploads/2013/07/youth_in_state_custody_article.pdf.

[30] U.S. CENSUS BUREAU, THE WHITE POPULATION: 2010, at 3 (2011).

[31] OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, THE 2011 ANNUAL HOMELESSNESS ASSESSMENT REPORT TO CONGRESS 16 (2012) [hereinafter OCPD, 2011 REPORT TO CONGRESS].

[32] UNHRC, *Report of Diéne*, *supra* note 1836, at para. 64.

[33] David R. Jones, *Homelessness in America – A Racial Issue*, COMMUNITY SERVICE SOCIETY 2 (2012).

[34] Ralph da Costa Nunez, Matthew Adams & Anna Simonsen-Meehan, *Intergenerational Disparities Experienced by Homeless Black Families*, INSTITUTE FOR CHILDREN, POVERTY, AND HOMELESSNESS 1 (2012).

[35] International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (1969).

[36] UNHRC, Report of Diéne, supra note 18.

[37] Committee on the Elimination of Racial Discrimination, *Concluding Observations*, CERD/C/USA/CO/7-9, ¶ 12, Aug. 29, 2014 [hereinafter CERD, *Concluding observations*].

[38] NCH, VULNERABLE TO HATE, *supra* note 6, at 4.

[39] *Id.*

occur in states with the highest rates of criminalization, California and Florida.[40] Florida produced four of eighteen lethal hate crimes against homeless persons in 2013, including the story of Frank Rudolph, a 54-year-old homeless man beaten to death with sticks and punches by three teenagers in New Port Richey, FL.[41]

The U.S. government should be commended for its 2012 recognition that criminalization of homelessness may "violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights," and for actively engaging with NGOs to discuss strategies to deter criminalization.[42] However, as the above description demonstrates, the federal government's recognition that criminalization of homelessness is poor public policy and contrary to its legal obligations has not translated to improved treatment of homeless people.

In the absence of strong federal enforcement, local governments continue to enact restrictive ordinances that impose extreme hardships on homeless individuals, and state and local courts have ruled inconsistently on whether criminalization of homelessness violates prohibitions on "cruel and unusual punishment" under the Eighth Amendment of the U.S. Constitution.[43] While some courts have provided relief for individual plaintiffs or communities, pursuing such rulings demands time and effort from some of the country's poorest and most vulnerable people, and often only results in minimal compliance with legal obligations while ignoring the underlying problem of homelessness and the culture of degradation.[44] The result is wholly insufficient to bring the United States into compliance with Article 16 of the CAT; Articles 2, 7, 9, 17, and 26 of the ICCPR; and Articles 2 and 5(e) of the CERD.

We therefore stress and recommend, as did the U.N. treaty bodies cited above, that federal authorities work with urgency to fulfill the following:

1. Abolish the laws and policies criminalizing homelessness at state and local levels;
2. Ensure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professionals at all levels, to intensify efforts to find solutions for the homeless, in accordance with human rights standards; and

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[40] *Id., at* 8, 10.
[41] *Ibid.*
[42] USICH, SEARCHING OUT SOLUTIONS, *supra* note 4, at 7 (citing NLCHP, HOMES NOT HANDCUFFS, *supra* note 14); USICH, *Reducing the Criminalization of Homelessness*, http://1.usa.gov/15n4emv, Aug. 17, 2013; NLCHP, Organizing Federal Action to Combat Criminalization of Homelessness, http://bit.ly/12Pv83e/, July 18, 2013.
[43] Criminalization of an involuntary status was ruled unconstitutional by the U.S. Supreme Court. *Robinson v. California*, 370 U.S. 660, 667 (1962). Other courts have found that penalizing people "for performing innocent conduct in public places—in particular, for being in a park or on public streets at a time of day when there is no place where they can lawfully be—most definitely interferes with their right under the constitution to be free from cruel and unusual punishment," *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1579 (S.D. Fla. 1992), and that the enforcement of an anti-loitering law "at all times and in all places against homeless individuals who are sitting, lying, or sleeping in Los Angeles's Skid Row because they cannot obtain shelter violates the Cruel and Unusual Punishment Clause," *Jones v. City of Los Angeles*, 444 F.3d 1118, 1135 (9th Cir. 2006). Yet despite these holdings, criminalization remains the norm rather than the exception in U.S. communities.
[44] *See* Eric S. Tars, Heather Maria Johnson, Tristia Bauman, and Maria Foscarinis, *Can I Get Some Remedy? Criminalization of Homelessness and the Obligation to Provide an Effective Remedy*, 45 Col. HRLR 738 (2014), http://nlchp.org/documents/HLRL_Symposium_Edition_Spring2014_Can_I_Get_Some_Remedy.

3. Offer incentives for decriminalization and the implementation of such solutions, including by providing continued financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize the homeless.[45]

No person in the United States should face the degrading choices imposed on those living on the streets. Eliminating criminalization is essential, but the long-term goal should be to implement the human right to adequate housing. Homeless individuals are not nuisances whose presence must be restricted or managed. Rather, these men and women are resourceful and resilient, despite often overwhelming challenges. Their voices should be central to conversations on how to make our cities safe and vibrant communities for all people who call them home.

[45] *See* HRC, *Concluding observations*; CERD, *Concluding observations*, *supra* notes 5 and 6.

National Urban League | *Empowering Communities. Changing Lives.*

Statement of Marc H. Morial
President and CEO
National Urban League

Before the

Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

On

"The State of Civil and Human Rights in the United States"

December 9, 2014

Chairman Durbin, Ranking Member Cruz, members of the Subcommittee, we accept your invitation to offer the National Urban League's perspective and experience on the direction that this country is headed with respect to civil and human rights.

The convergence of the ongoing epidemic of tragic, unjust killings of African Americans at the hands of out-of-control police and the utter miscarriage of justice by our justice system; the decimation of the Voting Rights Act (VRA) by the U.S. Supreme Court's *Shelby County v. Holder* decision that removed the ability to provide additional protection to voters in states, counties and cities with a history of discrimination; the spate of voter ID and voter suppression laws spearheaded by the American Legislative Exchange Council (ALEC) in states across the country; the disproportionate mass incarceration of people of color; and the dismal economic conditions that plague urban communities across America ***have placed our nation in a state of emergency that is reawakening the cause of justice in our Nation. We demand national leadership at all levels of government for immediate, solutions-based action. Not just talk – we demand action and NOW!***

Law Enforcement and Criminal Justice Systems are Broken – Especially for African Americans

The recent litany of cases involving the use of excessive police force against unarmed African Americans is only the tip of the iceberg. They are the result of systemic failures within our law enforcement system and the subsequent prosecutorial process that are in dire and urgent need of immediate reform. One cannot begin to express the total outrage in the Black, as well as White, Latino and Asian communities, surrounding the following senseless deaths that have occurred since 2012:

- **Tamir Rice** – 12-year-old boy shot on November 22, 2014 at a Cleveland, OH recreation center by rookie police officer Timothy Loehmann; video shows Loehmann fired at Rice

within two seconds after the patrol car he was riding in pulled up next to the boy, who was playing with a toy gun, and that it took four minutes for officers to administer first-aid to the child after he was shot; Tamir died from his wounds the following day. (Nov. 23)

- **Akai Gurley** – 28-year-old unarmed father who was shot and killed on November 20, 2014 by rookie NYPD officer Peter Liang in an unlit housing-project stairwell in Brooklyn; Gurley has been called a "total innocent" by NYPD Commissioner Bill Bratton, who called the shooting "accidental"; Gurley's death has been ruled a homicide by the medical examiner's office.

- **Michael Brown** – unarmed teenager shot at least six times and killed on August 9, 2014 in Ferguson, Missouri by Officer Darren Wilson (whom the grand jury failed to indict).

- **John Crawford III** – 22-year-old shot and killed on August 5, 2014 by police in a Beavercreek, OH Walmart store after picking up an air rifle off a store shelf and carrying it in the store (grand jury decided in September to not indict the officers).

- **Eric Garner** – unarmed 43-year-old father and husband killed on July 17, 2014 in Staten Island, NY after being put in an illegal chokehold by NYPD Officer Daniel Pantaleo during an arrest for selling untaxed cigarettes (no indictment by grand jury despite a video and the coroner's report that ruled his death a homicide).

- **Marlene Pinnock** – 51-year-old homeless and mentally ill great-grandmother who was violently beaten on July 1, 2014 by California Highway Patrol officer Daniel L. Andrew along Interstate 10, west of downtown Los Angeles, after an attempted arrest for walking along the freeway.

- **Trayvon Martin** – the 2012 killing of unarmed 17-year old Trayvon Martin from Miami Gardens, Florida, by George Zimmerman, a neighborhood watch volunteer, in Sanford, Florida (who was subsequently acquitted in 2013).

The most recent decision by the Staten Island grand jury not to indict officer Daniel Pantaleo in the unlawful chokehold killing of Eric Garner in plain view and earshot of the public at-large via video and audio is a decision which itself defies common sense and calls for an urgent and immediate need for a new approach in this nation to police-community relations, the use of excessive force by law enforcement and police accountability for acts of misconduct. Most troubling are the findings of a recent report by the Wall Street Journal[i] that hundreds of police killings are uncounted in our federal statistics. According to the Journal's analysis:

- The latest data from 105 of the country's largest police agencies that provided figures, out of the 110 whose internal records were requested by the Wall Street Journal, found that more than 550 police killings between 2007 and 2012 were not included in records kept by the Federal Bureau of Investigation (FBI);
- Those internal figures show at least 1,800 police killings in those 105 departments between 2007 and 2012, about 45% more than the FBI's tally for justifiable homicides in those departments' jurisdictions, which was 1,242, according to the Journal's analysis. Nearly all police killings are deemed by the departments or other authorities to be justifiable.
- In the period analyzed by the Journal, 753 police entities reported about 2,400 killings by police. The large majority of the nation's roughly 18,000 law-enforcement agencies didn't report any.

The National Urban League supports the efforts of U.S. Attorney General Eric Holder and the U.S. Department of Justice in proceeding with a federal civil rights investigation into Eric Garner's death, promising that DOJ prosecutors "will conduct an independent, thorough, fair and expeditious investigation."[ii] We also support DOJ's ongoing federal civil rights investigation in the events surrounding the killing of Michael Brown by police officer Darren Wilson in Ferguson, Missouri. ***Congress can take immediate action to address the egregious police racial profiling practices that lead to these tragic outcomes by passing the "End Racial Profiling Act" and sending it to the President for his signature.***

Following the killing of Michael Brown, the National Urban League joined other national civil and human rights organizations and leaders committed to the protection of the rights of African Americans and all Americans in a "Unified Statement of Action to Promote Reform and Stop Police Abuse."[iii] The statement, while not all-inclusive, outlines a beginning strategy of reform efforts in our law enforcement system that includes, among others, the following **actions**:

- **A comprehensive federal review and reporting of all police killings, accompanied by immediate action to address the unjustified use of lethal and excessive force by police officers in jurisdictions throughout this country against unarmed people of color,**
- **A comprehensive federal review and reporting of excessive use of force generally against youth and people of color and the development of national use of force standards,**
- **A comprehensive federal review and reporting of racially disproportionate policing, examining rates of stops, frisks, searches, and arrests by race, including a federal review of police departments' data collection practices and capabilities,**
- **A comprehensive federal review and reporting of police departments' racial profiling and racially bias practices, as well as any related policies and trainings,**
- **A final update and release of the Department of Justice's (DOJ) June 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (hereinafter "Guidance"), with substantive reforms including updates that would 1) make the Guidance enforceable; 2) apply the Guidance to state and local law enforcement who work in partnership with the federal government or receive federal funding; 3) close the loopholes for the border and national security; 4) cover surveillance activities; 5) prohibit profiling based on religion, national origin, and sexual orientation,**
- **Required racial bias training and guidance against the use of force for state and local law enforcement that receive grants,**
- **The required use of police officer Body-Worn Cameras (BWC) to record every police-civilian encounter in accordance with and policy requiring civilian notification and applicable laws, including during SWAT deployments, along with rigorous standards regarding the retention, use, access, and disclosure of data captured by such systems,**
- **The universal use of dash cameras in police vehicles,**
- **Concrete steps to ensure that federal military weapons do not end up in the hands of local law enforcement and, if they do, to prevent the misuse of those weapons in communities of color,**

- **On the ground community training to educate residents of their rights when dealing with law enforcement,**

- **The elimination of the "broken windows" policing policy initiated in the 1980's which encourages overly aggressive police encounters for minor offenses and the promotion of community-based policing,**

- **Greater and more effective community oversight over the local law enforcement and policing tactics, and the establishment of a law enforcement commission to review policing tactics that would include in its composition leaders/experts from civil rights advocacy groups who represent the most impacted.**

The National Urban League believes that we can combine an accountable police force with public safety to bring down crime and reduce friction between police officers and the community. We cannot and will not tolerate officers who take it upon themselves to participate in blatant misconduct, whether excessive force or otherwise. We need a new generation of policing that ensures the safety of our citizens and communities, but does not violate the civil rights of anyone.

Our Civil and Human Rights Cannot be Protected without Ensuring Full Voting Rights for All Americans

When the U.S. Supreme Court issued its devastating 5-4 decision in *Shelby County v. Holder* last year, it dealt a crushing blow to voting rights by removing important protections for voters who had suffered —and still suffer—historic disenfranchisement. We are now left with a Voting Rights Act of 1965 (VRA) that is insufficient to protect our fundamental right to vote, particularly in those states and localities where racial discrimination in voting remains real, documented and ongoing.

The 2014 mid-term elections provide ample evidence of the need to immediately pass legislation to restore the protections of the Voting Rights Act struck down by the Supreme Court's Shelby County ruling. In their "Voting 2014: Stories from the States" series, the Brennan Center for Justice[iv] found that:

- In the 2014 election, new voting restrictions were in place in 21 states — 14 for the first time in a federal election. These laws ranged from voter ID requirements to early voting cutbacks to registration limits. For example:
    - Kansas's strict photo ID rule and proof of citizenship requirement made it difficult for thousands of voters to cast ballots in this year's election.
    - Ohio voters had fewer options for how to cast their ballots due to new restrictions on early voting, which had a particular impact on "Souls to the Polls" drives.
    - Texas already has one of the nation's lowest voter turnouts. This year, voters had to contend with the state's new harsh photo ID law, which left many confused, disheartened, and even disenfranchised.
    - Thousands of Iowans could not vote because of past criminal convictions, a burden that disproportionately falls on the state's African American population.

Additionally, a newly released report[v] by the Center for American Progress, LDF, and Southern Elections Foundation that focused on the impact of voting restrictions in Texas, Alabama, North Carolina, Virginia, and Georgia shows that available evidence from the 2014 election season

strongly suggests that the new restrictions on the right to vote disfranchised large numbers of voters.[vi]

To further ensure every American's right to vote is protected and their vote counted, Congress must also pass legislation to modernize our voter registration system that includes the *Voter Registration Modernization Act*. To restore the voting rights of returning citizens, the National Urban League also urges passage of the *Democracy Restoration Act* that restores voting rights in federal elections to the 4.4 million Americans who have been released from prison and are living in the community.

In light of the raw reality that discrimination in voting is not a thing of the past, there is the "urgency of now" that calls upon Congress to act before we risk keeping more and more voters from the polls and inflicting additional damage to our democracy.

There Can be No Civil and Human Rights without Economic Rights

No community can thrive when part of it is weighted down by economic, employment, housing and education disparities – especially by widespread unemployment of young people. The economic status of a population group is determined largely by the level and quality of its participation in the labor market. Income, consumer spending, saving, and investment, if not based on inheritance, will depend on the employment experience. The economic status of African Americans has long been characterized by racial inequality in American economic life. African Americans are 12 percent of the labor force, yet their unemployment rate continues to be more than twice that of whites. **The 2:1 unemployment disparity is one of the most enduring measures in recorded labor market statistics.** Added to this longstanding trend is the devastating impact of the Great Recession of 2007 to 2009 on African American employment, income, and wealth, where African Americans lost almost a million jobs during the downturn and their unemployment rate shot above 15 percent.

As stated in our *2014 State of Black America* report[vii], we are not challenged by a mass unwillingness to work. We are stifled by massive un- and under-employment that undermines our nation's principles of economic mobility. With a Black-white income equality of only 60 percent, and with Black households having just $6 in wealth for every $100 in wealth of white households, the situation is clear. The recovery has simply been insufficient in the job and wealth creation necessary to revive and restore all that was lost as the financial markets shook and progress began to crack. **What we see emerging is a State of Black America in severe economic crisis.**

The National Urban League and Urban League Affiliates Respond

The National Urban League and its 95 Urban League affiliates in 36 states and the District of Columbia are front-line witnesses to the convergence of the challenges faced daily by the under- and unemployed, the long-term unemployed, older low-income unemployed workers, the youth who are disconnected from our educational and workforce systems, the individuals and families who seek homeownership or are struggling to prevent foreclosure, and to those who still have not accessed affordable health care.

But, we are not only witnesses, we ACT! The National Urban League and its affiliates, grounded in 104 years of experience since our founding in 1910, continue to operate on a tripod strategy model that involves the government, corporate and nonprofit sectors bringing about substantive change in our nation. We are national and community based, and must respond holistically to the myriad of problems that arise in the lives of individuals and families that walk through our affiliate doors every single day.

In Ferguson, MO, since the killing of Michael Brown by police office Darren Wilson, the President and CEO of the Urban League of Metropolitan St. Louis, Michael McMillan, has not only provided exemplary leadership and services to the community, he is responding directly to what the youth have stated is their greatest need – a job! The Urban League announced[viii] a $250,000 grant from Wells Fargo & Co., parent company of St. Louis-based Wells Fargo Advisors, to support the Save Our Sons workforce training program for African Americans and other men aged 21 and over residing in Ferguson and surrounding North St. Louis County communities. The Urban League's Save Our Sons initiative is a workforce and job training program that will serve up to 500 men in St. Louis County over the next two years.

Through its **entrepreneurship** and **homeownership** programs, the National Urban League is working to secure economic stability and wealth building in underserved communities across the country:

- Annually, more than 12,000 small and minority business ownership have received assistance through the **National Urban League's Entrepreneurship Centers** that provide business consulting and training services to startup and existing businesses. These services allow these business owners to gain skills necessary to take advantage of new market and financial opportunities that have led to business growth and job creation. In 2014, clients of the Entrepreneurship Centers have received $11.5 million in new financing, $55.2 million in new business opportunities and $17.9 million in bonding.

    - Since the inception of the Entrepreneurship Center program seven years ago, more than 40,000 business owners have received business services which have led to more than $100 million in new financing, $500 million in new contracts and have created more than 9,000 new jobs.

    - Historically, minority businesses hire minority residents at a higher rate than non-minority businesses. As a result of the services provided by the Entrepreneurship Centers, 1,235 new jobs have been created by businesses that received services. These services increase the growth opportunities for minority businesses and allow them to continue to pursue opportunities in the public and private sector which increase the opportunity for increased income for the business owners and new jobs in underserved communities where most of these businesses are located.

- For generations, Americans have acquired wealth primarily through homeownership. However, in the wake of the Great Recession, far too many families of color found themselves barred from homeownership by high credit scores and down payment requirements. If urban America is to recover its wealth and begin to rebuild economically, policymakers must act to provide greater access to the traditional housing market.

    - For over 40 years, the National Urban League has been one of the nation's premier providers of housing counseling services. Nearly 50 of our 95 affiliates provide pre-purchase housing counseling services to ensure communities of color are well informed of their options and their rights in the housing market. Funded primarily by the U.S. Department of Housing and Urban Development's (HUD) Housing Counseling Assistance Program, our Comprehensive Housing Counseling Program levels the economic playing field for minority homeowners, renters and the homeless by making housing opportunities accessible and sustainable. The National Urban League has served nearly 180,000 clients since 2008 under this

program. Nearly 26,000 clients received pre-purchase education, over 14,000 received financial management education and nearly 4,200 purchased a home.

In 2013 alone, due to social and economic stress the Urban League movement provided assistance to an additional 534,240 clients from the year before, serving 2 million people. In addition to our entrepreneurship and homeownership work, our work continued in education, workforce development and health:

Through Our Education Programs:

- Even with a $13 million reduction in funding for education programs, Urban League affiliates provided 331 education programs, serving 150,401 students in 2013.
- The National Urban League is urging Congress to pass the *Project Ready STEM Act of 2013 (H.R. 1343)* that exposes minority youth to science, technology, engineering and math (STEM) curricula by authorizing a comprehensive program that provides academic support, project-based learning opportunities and awareness of STEM college majors and careers. The Project Ready STEM Act replicates high quality in-school, afterschool and summer programs operated by community-based affiliates with demonstrated experience in achieving positive outcomes for urban minority youth.

Through our Workforce Development Programs:

- A combined 144,733 clients were served in various workforce development programs by Urban League Affiliates in 2013.
- Of this number, we provided Urban Youth Empowerment Program services to nearly 2,000 at-risk youth.
- Of this number, we targeted services to 240 formerly incarcerated individuals, connecting them to industry recognized credentials and employment opportunities.

Through our Health Care Programs and Initiatives:

- In 2013, our affiliates offered 131 programs, serving 496,022 clients.
- Aside from wellness services, an additional 295,000 participants benefited from health seminars and services ranging from infant mortality to HIV prevention.
- Provided Affordable Care Act (ACA) enrollment services.

We are doing our part, but we cannot do it alone. Much more must be done nationally and Congress must step up and act. We have the solutions in the palm of our hands. It is critical that we recognize that the misplaced emphasis on deficit reduction in recent years has had a devastating effect on non-defense domestic discretionary programs in a way that has caused real harm to real people. In the aftermath of sequestration, we have seen our affiliate funding levels drop dramatically, directly impacting their ability to offer needed programs and services to vulnerable individuals. We believe that our funding decisions in the Federal Budget are civil rights and human rights decisions that Congress cannot continue to ignore. Congress can take immediate action by:

- Making a significant investment in the newly enacted ***Workforce Innovation and Opportunity Act* (WIOA)** by restore funding for federal employment and training programs to at least 2010 levels. Providing at least $250 million in additional WIOA implementation funding above and beyond any regular program appropriations to assist states and local communities in their efforts to successfully implement the legislation.

- Providing needed funding for proven early childhood development and youth mentoring programs. The highly effective **Head Start** program was severely impacted by sequestration. To help restore slots lost because of sequestration, allow grantees to retain and recruit highly qualified staff, and otherwise keep pace with rising costs in order to maintain excellent

service, we recommend funding Head Start at $8.9 billion for FY2015. We oppose any proposal to use funding for the youth mentoring grants as an offset, and instead urge that it be funded at least at the FY2014 level of $88.5 million.

- Increasing Federal Funding for the **HUD Housing Counseling Assistance Program** and the National Foreclosure Mitigation Counseling (NFMC) program, by funding the HUD Housing Counseling Assistance program at the $60 million level, and the NFMC program at the FY2014 enacted amount of $67.6 million.

- Providing Maximum Funding for the **Community Development Block Grant (CDBG).** Every $1.00 of CDBG leverages $4.00 in other funds. In just eight years, between 2005 and 2013, CDBG created or retained over 330,000 jobs. Approximately 7,000 cities, towns, and counties have access to CDBG annually. Funding for the program has decreased precipitously by approximately one-quarter, from nearly $4 billion in FY 2010 to approximately $3 billion in FY 2014. Funding for this versatile program must be increased to meet the untenable demand cities face as a result of the financial crisis and the slow recovery that ensued.

- Fully Funding the **Affordable Care Act (ACA).** This means funding Medicaid Grants to States at $331.4 billion; the Health Insurance Marketplaces at $629 million where a portion of these funds are used to provide Health Navigator Grants; and Community Health Centers at $4.6 billion. In addition, we continue to support funding for Community Transformation Grants at $564 million, and the Racial and Ethnic Approach to Community Health program at $39.3 million in the Centers for Disease Control and Prevention. We urge Congress to reject any effort to eliminate these programs.

- Funding the **New Markets Tax Credit Program (NMTCs)** at $5 billion annually and making it permanent. Access to capital is the most important factor limiting the establishment, expansion and growth of minority businesses. It is undisputed that communities of color face large disparities in accessing capital. According to a March 2014 Wall Street Journal article, African American small business owners received only 1.7 percent of the loans backed by the SBA in FY 2013 and experienced a 62 percent denial rate. According to the Minority Business Development Agency (MBDA) minority-owned businesses are more likely to be denied for loans, pay higher interest rates on their loans, have significantly less capital at startup and use credit cards at a higher rate. The National Urban League's Entrepreneurship Centers are overwhelmingly funded by NMTCs, where since 2006, our Entrepreneurship Centers have received over 80 NMTCs allocations, totaling $1 billion. Our Centers would not exist without this flexible funding source.

A Call to Action

The National Urban League, Reverend Al Sharpton (National Action Network), Melanie Campbell (National Coalition on Black Civic Participation/Convener, Black Women's Roundtable), and Cornell Brooks (NAACP), along with a number of other civil and human rights leaders and organizations from across the country are calling for a year of action in 2015 – dedicated to justice and jobs. We will build a coalition of the willing that will move forward with the remedies necessary to turn this nation around on matters of economic, civil and human rights.

About the National Urban League

The National Urban League (www.nul.org) is a historic civil rights and urban advocacy organization dedicated to economic empowerment in historically underserved urban communities. Founded in 1910 and headquartered in New York City, the National Urban League has improved the lives of tens of millions of people nationwide through direct service programs that are implemented locally by its 95 Urban League affiliates in 36 states and the District of Columbia. The organization also conducts public policy research and advocacy activities from its D.C.-based, Washington Bureau. The National Urban League, a BBB-accredited organization, has a 4-star rating from Charity Navigator, placing it in the top 10 percent of all U.S. charities for adhering to good governance, fiscal responsibility and other best practices.

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[i] "Hundreds of Police Killings Are Uncounted in Federal Stats, FBI Data Differs from Local Counts on Justifiable Homicides," by Rob Barry and Coulter Jones, The Wall Street Journal, Updated December 3, 2014, 11:26a.m. ET. Accessed at: http://online.wsj.com/articles/hundreds-of-police-killings-are-uncounted-in-federal-statistics-1417577504?mod=trending_now_3; and also http://atlantablackstar.com/2014/12/03/stunning-report-reveals-fbi-idea-many-police-killings-u-s-every-year/

[ii] "Statement by Attorney General Holder on Federal Investigation Into Death of Eric Garner," Justice News, 12/3/14. Accessed at: http://www.justice.gov/opa/speech/statement-attorney-general-holder-federal-investigation-death-eric-garner

[iii] For the complete statement, see: http://iamempowered.com/sites/default/files/black_leaders_joint_statement_-_8-18.pdf

[iv] For the results of the Brennan Center for Justice's new series, "Voting 2014: Stories from the States," see: http://www.brennancenter.org/state-voting-2014-states

[v] "The Battle to Protect the Vote, Voter Suppression Efforts in Five States and Their Effect on the 2014 Midterm Elections," by Ben Jealous and Ryan P. Haygood, Center for American Progress, LDF, Southern Elections Foundation, December 2014.

[vi] Ibid. p.2.

[vii] *One Nation Underemployed, Jobs Rebuild America, 2014 State of Black America*, National Urban League, 2014.

[viii] For more information on the program see: http://www.businesswire.com/news/home/20141114005936/en/Wells-Fargo-Donates-250000-Urban-League-Save#.VIC6b9LF98E

December 8, 2014

The Honorable Dick Durban
Chairman
United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
Hart Senate Office Building
Room 216
Washington, D.C.

Re: Hearing on "The State of Civil and Human Rights in the United States"
December 9, 2014

Dear Chairman Durban:

Voting Rights Forward (VRF), founded in 2014 by a group of voter protection attorneys, is a nonpartisan civil rights organization committed to protecting the rights of all eligible voters.

VRF, as part of a civil rights coalition, has strongly supported the passage of the Voting Rights Amendment Act of 2014 (S. 1945).

Although the House of Representatives has so far failed to hold hearings regarding the need for a modified Voting Rights Act, you and the entire Judiciary Committee should be commended for your willingness to let this legislation be publicly analyzed.

Our brief recommendation to you and the Subcommittee is that intense attention will have to be paid to the area of voting rights in this country for the foreseeable future.

Racial discrimination in voting is real and ongoing. The unfortunate reality is that discrimination in voting is not a thing of the past—it still happens today and we need to respond appropriately.

Voter suppression and voter intimidation have not stopped. Neither have unfortunate attempts by local and state governments to make it more difficult for citizens, especially minorities, students, seniors and the poor to exercise their constitutional right to vote. In the name of protecting the right to vote, governments are actually making voting harder to do.

The voting protections we currently possess have been clearly insufficient since the United States Supreme Court's decision in *Shelby County v. Holder* that gutted a key enforcement provision of the Voting Rights Act of 1965.

Voting Rights should be a continued priority for this Subcommittee. The right to vote and the right to a free, open and competitive election is not part of a Democratic or Republican political philosophy. It is an American legal principle.

Sincerely,

David H. Stonehill, Esq.

Co-Communications Chair

Voting Rights Forward

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UNITED STATES COMMISSION ON CIVIL RIGHTS

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Written Testimony of Martin R. Castro, Chairman of the United States Commission on Civil Rights, Submitted for Inclusion in the Congressional Record of the hearing on *The State of Civil and Human Rights in the United States* before the U.S. Senate Subcommittee on the Constitution, Civil Rights and Human Rights December 9, 2014

As Chairman of the United States Commission on Civil Rights (the "Commission"), I am pleased and honored to provide this statement for the record on some of the work of the Commission on the state of civil rights in America, since my assuming the Chairmanship pf the Commission in 2011. I thank Senator Durbin for the opportunity to make this statement part of the Congressional Record.

As the nation's conscience on civil rights, the U.S. Commission on Civil Rights has a long history, since its inception in 1957, of shining a light on lapses in our country's civil rights obligations and making constructive recommendations for change to the President and Congress. Indeed, from our first report, a seminal study that served as the foundation for the Civil Rights Act of 1964[1] to the Commission's 2013 Statutory Enforcement Report on Sexual Assault in the Military,[2] this Commission has exhibited an unrelenting commitment to addressing the civil rights issues of the day, and holding those responsible for the fair and just implementation of our civil rights laws to account.

However, the Commission's work is far from done. The cases of Trayvon Martin, Michael Brown and Eric Garner have brought the issue of race in America once more onto into the forefront of our national attention. Just this past October, the Commission held a field briefing in Orlando, Florida as part of our investigation of whether there is possible racial bias in the administration of so-called Stand Your Ground (SYG) laws. We heard testimony from a number of experts and will be issuing a report with our findings and recommendations in the New Year.

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[1] *Report of the United States Commission on Civil Rights, 1959*, http://www.law.umaryland.edu/marshall/usccr/documents/cr11959.pdf, last accessed December 8, 2014.

[2] *Sexual Assault in the Military: The U.S. Commission on Civil Rights 2013 Statutory Enforcement Report*, http://www.usccr.gov/pubs/09242013_Statutory_Enforcement_Report_Sexual_Assault_in_the_Military.pdf, last accessed December 8, 2014.

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Our work is not done when we see cases like those of Michael Brown and Eric Garner. As the Commission has stated regarding the Michael Brown matter: "Conditions which deny individuals or groups equal protection under the law and which deny valuable opportunities for improvement are not the American way."[3] In the initial wake of the Ferguson incident, the Commission requested that the Justice Department "examine the apparent lack of representation of the City's majority African American community in the police department and local government. If media reports are correct that there are only 3 African American police officers in the Ferguson police force and only 1 African American city councilman out of 6, we believe this warrants intensive and close scrutiny by the Civil Rights Division. The disproportionate lack of representation in the police force and local government are not only a cause of concern, but may be related, directly or indirectly, to the tension between concerned citizens and local government."[4]

The Commission notes and supports the Department of Justice's ongoing investigation into this matter. Commission staff has also been on the ground in Ferguson in the wake of the incident gathering information. We also support the work of our Missouri State Advisory Commission on this issue. The Missouri SAC is closely monitoring the issues in Ferguson related to the death of Michael Brown and will investigate a number of these issues over the course of the next two years through its public hearing process to address the concerns that are not unique to Ferguson, Missouri, but are prevalent in communities throughout the State of Missouri.[5]

Our work is not done when sexual assault is a traumatizing consequence of serving in our country's military for many of our service members. The Commission's *Sexual Assault in the Military Statutory Enforcement Report* reveals that the Department of Defense may benefit from greater data collection to better understand trends in sexual assault cases and to implement improvements in future initiatives. Although the Department of Defense has already implemented policies to reduce sexual and sexist material from the military workplace in an effort to reduce sexual harassment, the effects of such recent efforts have yet to be measured. The

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[3] *U. S. Commission on Civil Rights Issues Statement on Ferguson Grand Jury and State of Missouri's Decision Not to Indict Officer Wilson for Death of Michael Brown*, press release issued on November 25, 2014, http://www.usccr.gov/press/2014/Ferguson-PR_Nov-25-2014.pdf, last accessed December 8, 2014.

[4] *Commission urges AG Holder to act on Ferguson MO*, letter sent August 15, 2014, http://www.usccr.gov/pubs/Holder_letter.pdf, last accessed December 8, 2014.

[5] *Missouri Advisory Committee to the U.S. Commission on Civil Rights Issues Public Statement on Events in Ferguson, Missouri*, press release issued on September 2, 2014, http://www.usccr.gov/press/2014/MO-SAC-Ferguson_PR_09-02-14.pdf, last accessed December 8, 2014.

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Department of Defense also has a plan to standardize sexual assault response and prevention training across the Services to promote best practices. There will be a need to track the success of such policies over time. Greater commander accountability for leadership failures to implement such policies, especially in cases where victims claim sexual assault at the hands of superiors within the chain of command, should also be considered. Without increased data collection, however, it is difficult to measure the effects of any new changes the military chooses to implement.[6]

Our work is not done when our State Advisory Committees have consistently identified the disenfranchisement of former felons. The Tennessee State Advisory Committee, for instance, found evidence of "disparate impact on African Americans as a result of the state's ex-felon voting rights ban. As African Americans make up nearly one-half of the prison population but only about 17 percent of the state's population, the operation of the Tennessee statute tends to have a disproportionate impact on African Americans vis-a-vis other races."[7]

Our work is not done when our children are facing barriers to a fair and equitable education due to bullying. The Commission, by majority vote, concluded that bullying and harassment, including bullying and harassment based on sex, race, national origin, disability, sexual orientation, or religion, are harmful to American youth, and developed findings and recommendations to address the problem, including the following recommendations:

- The U.S. Departments of Education and Justice should track their complaints/inquiries regarding sexual harassment or gender-based harassment by creating a category that explicitly encompasses LGBT youth.

- The U.S. Departments of Education and Justice should track complaints that they receive regarding harassment based solely on sexual orientation that are closed for lack of jurisdiction.

- The U.S. Department of Education should track complaints that it receives regarding harassment based solely on religion that are closed for lack of jurisdiction.

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[6] *Sexual Assault in the Military: The U.S. Commission on Civil Rights 2013 Statutory Enforcement Report*, Executive Summary, http://www.usccr.gov/pubs/09242013_Statutory_Enforcement_Report_Sexual_Assault_in_the_Military.pdf, last accessed December 8, 2014.

[7] *The Right to Vote and Ex-Felon Disenfranchisement in Tennessee*, Tennessee State Advisory Committee Report, June 2014, http://www.usccr.gov/pubs/TN_SAC_Ex-Felon-Report.pdf, last accessed December 8, 2014.

- The U.S. Department of Education should consider issuing a new Dear Colleague Letter regarding the First Amendment implications of anti-bullying policies. The new Letter should provide concrete examples to clarify the guidance that the Department of Education previously provided in its Dear Colleague Letter on the First Amendment dated July 28, 2003.[8]

Similarly, inconsistent disciplinary policies adversely affect minority students' access to an equitable education. Both our Georgia and Kentucky State Advisory Committees found that "African American students are disproportionately disciplined..." While both State Advisory Committee reports acknowledged that "other factors outside the control of the school contribute to a student's academic behavior and performance...," and that "the occurrence of a disparate impact in and of itself along racial lines—despite exhibiting statistical significance—should not be inferred to necessarily imply discrimination on the part of a school district nor a racial bias in the administration of discipline...," the Advisory Committees noted "a significant racial disparity *does exist* and its perpetuation is serving to promote a burgeoning underclass of poorly educated persons based upon race."[9]

Our work is not done when our women, youth and the LGBTQ communities are vulnerable and fall prey to sex traffickers. Among its findings in the *Sex Trafficking: A Gender-Based Violation of Civil Rights Briefing Report*, the Commission noted that the definitions of what constitutes sex trafficking differ among federal executive agencies and state and local law enforcement authorities. Testimony showed that sex trafficking is clearly a violation of gender-based civil and human rights that enslaves women and girls in commercial sex and is rooted in gender-based discrimination. The Commission also noted that testimony showed that sex trafficking also enslaves men and boys, particularly gay and transgender individuals, in commercial sex and is in discrimination on the basis of sexual orientation and is rooted also in social exclusion.[10]

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[8] *2011 Peer-to-Peer Violence and Bullying: Examining the Federal Response: U.S. Commission on Civil Rights 2011 Statutory Enforcement Report*, http://www.usccr.gov/pubs/2011statutory.pdf, last accessed December 8, 2014.

[9] *School Discipline in Georgia*, Georgia State Advisory Committee Report, April 2013, http://www.usccr.gov/pubs/GA-SchoolDisciplineReport.pdf; *School Discipline in Kentucky*, Kentucky State Advisory Committee Report, June 2011, http://www.usccr.gov/pubs/KYSchoolDisciplineReport.pdf, last accessed December 8, 2014.

[10] *Sex Trafficking: A Gender-Based Violation of Civil Rights*, U.S. Commission on Civil Rights Briefing Report, September 2014, http://www.usccr.gov/pubs/SexTrafficking_9-30-14.pdf, last accessed December 8, 2014.

The Commission recommended that a model state law on trafficking be developed. The Commission also recommended that the federal government develop standard definitions of "sex trafficking" and related terms with input from involved federal agencies, state and local law enforcement entities, and the advocacy and scholarly sectors. In addition, the Commission suggested that the FBI should list trafficking as a major crime category; and that the U.S. Department of Health and Human Services should collect statistics on the scope of trafficking, including a percentage of victims.[11]

Our work is not done when Arab and Muslim Americans continue to be victimized and stereotyped. Throughout the discussion and in gathering the testimony and information for the *Federal Civil Rights Engagement with Arab and Muslim American Communities Post 9/11 Briefing Report*, three major themes emerged: 1) A call for the federal government to further address the continued profiling, stereotyping, hate crimes, and other kinds of discrimination against Arab and Muslim-American communities in the aftermath of 9-11; 2) A need to further examine the following issues as they relate to Arab and Muslim American communities: training of law enforcement agents; outreach efforts by federal, state and local governments; and rhetoric surrounding national security issues; and 3) A need to further analyze the legality and constitutionality of protocols and procedures surrounding the seizure by federal, state and local entities of written materials about the Islamic religion. Indeed, the panel that consisted of members of the Arab and Muslim American community speakers asserted continuing profiling, stereotyping, hate crimes, and other kinds of discrimination despite the vast differences among members of the community on virtually any point of identification, including racial and ethnic differences, national origin differences, religious differences and cultural background and practices.

The Commission's findings included that while the United States government has taken important steps to work with the American Muslim community, many American Muslims still feel their civil rights are violated through stereotyping, profiling and other forms of discrimination and are reluctant to report civil rights and labor violations. Examples included ethnic, religious and racial profiling which has led to the wide-spread singling out of Arabs and American Muslims by Customs and Border Patrol, the Transportation Safety Administration and the Federal Bureau of Investigation. The last ten years has seen a rise in anti-Muslim sentiment, anti-Muslim discrimination and policies that unfairly impact American Muslims in the Muslim community. An example cited is the oftentimes secret placement of Muslim Americans on government watch lists. Finally, training materials often used by federal government agencies mislead the American public by presenting a

[11] *Id.*

homogeneous view of the Muslim community which often excludes many from the American Muslim community.[12]

Our work is not done when our migrant and immigrant communities are forced to live in the shadows because of our broken immigration policies. The Georgia State Advisory Committee's *Immigration and Civil Rights: Just and Fair Immigration Reform is an Urgent Matter for Georgia Briefing Report* found that a delay in comprehensive reform has resulted in the following:

Public safety is being undermined.

- Effective policing requires cooperation between law enforcement officials and the public. Current immigration laws and their enforcement have served to undermine the essential trust between law enforcement officials and the public. The result is less safe and secure environments. This in turn has placed both law-abiding persons in greater individual peril, and the community at large at greater risk for harm given the lack of cooperation between the community and the police.

  Immigration law should not alienate the police from the communities they serve.

Employer as well as employee rights are being subverted.

- A level playing field for all competitors is essential for markets to provide an efficient supply of goods and services for consumers. Current immigration laws and their enforcement have served to subvert market efficiency. Employers who attempt to act in accordance with the nation's immigration laws and abide by worker laws are at a competitive disadvantage with those who use the current situation as a shield to gain an un-fair competitive advantage. In turn, employees invited to come or remain in the country in an authorized manner by such employers are left defenseless to illegal workplace abuse.

  Immigration law enforcement should not provide unfair competitive advantages.

Family unity is being disrupted and equal educational opportunity is being denied.

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[12] *Federal Civil Rights Engagement with Arab & Muslim-Americans Post 9/11*, U.S. Commission on Civil Rights Briefing Report, September 2014, http://www.usccr.gov/pubs/ARAB_MUSLIM_9-30-14.pdf, last accessed December 8, 2014.

- Families are strengthened and communities enhanced when families are intact; and education is an essential element for an expanding and prosperous information-based economy. Current immigration law enforcement has unnecessarily divided parents from children and caused many families—children and adults alike—to live lives of constant fear. Parents are being deported and their children placed in foster care. Children brought into this country at an early age and knowing no other country are being denied an equal access to higher education.

  Immigration policy should not disrupt families and keep children from higher education.

Free expression of religion is being challenged.

- Religious faith for many persons obligates them to provide hospitality to strangers. Current immigration laws and the incumbent mandates to report undocumented immigrants to civil authorities places many persons—from a faith perspective—in a difficult moral position. Their essential morality compels compassion to the downtrodden. Their respect for just civil authority compels an adherence to a nation's laws.

  The immigration laws of a nation should not force persons to live outside their moral convictions.[13]

So, the work of the Commission, as the work of this Subcommittee and other civil rights agencies in the federal government, must continue our mutual work of ensuring that this nation continues to meet its promises to all Americans. In the coming year, the Commission will focus on ensuring that civil and humane treatment is standard operating procedure at immigration detention facilities and examine the civil rights of the unaccompanied minors who arrived in the U.S. seeking refuge earlier this year; reviewing work place protections for LGBTQ employees; publish a report that will include findings and recommendations on improving the civil rights of our veterans; and continue to work with our communities to make sure that our nation, one community at a time, does not have a repeat of Michael Brown and Eric Garner.

As our country evaluates the state of civil rights in our communities, in our respective work places, and in this very chamber today, we must remember that protecting our citizens and residents, regardless of race, color, religion, national

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[13] *Immigration and Civil Rights: Just and Fair Immigration Reform Is an Urgent Matter for Georgia*, Georgia State Advisory Committee Report, July 2014, http://www.usccr.gov/pubs/GA_SAC_Immigration-Report-Final.pdf, last accessed December 8, 2014.

origin, age, sex or disability is an everyday responsibility. The U.S. Commission on Civil Rights stands ready to meet its duty as the nation's civil rights watchdog, to play our part in continuing to perfect our Union.

Written Statement of
Lisa Maatz
Vice President of Government Relations
American Association of University Women

United States Senate Committee on the Judiciary
The State of Civil and Human Rights in the United States

Chairman Durbin and Ranking Member Grassley, thank you for the opportunity to submit testimony ahead of the Committee on the Judiciary's hearing to examine the State of Civil and Human Rights in the United States. The American Association of University Women (AAUW) is the nation's leading voice promoting equity and education for women and girls with approximately 170,000 members and supporters, 1,000 branches, and more than 900 college and university partner members. AAUW specifically advocates for freedom from violence and from fear of violence in homes, schools, workplaces, and communities as well as for vigorous enforcement of and full access to civil and constitutional rights, including voting rights – topics we know are at the forefront of this hearing's discussion.

Hate Crimes Prevention

Violent crimes motivated solely or primarily by bias or hatred against a group to which the victim belongs intimidate all members of that group, and give them a reason to fear for not only their own safety but that of the entire group. These crimes are also more likely to provoke retaliation and incite community unrest.[1] Hate crimes are a persistent threat, according to the FBI. In 2013, there were 5,922 reported bias-motivated incidents in the United States.[2] AAUW believes the federal government has a critical role in preventing violence against people in all groups that have historically been subjected to bias-related violence.

Hate crimes are serious and well-documented problems but have historically been inadequately recognized and addressed. For years, AAUW coordinated the efforts of women's organizations to update our federal hate crimes law, which culminated in the October 2009 passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. The Hate Crimes Prevention Act (HCPA) expanded hate crimes protection categories to also cover violent crimes motivated by gender, gender identity, sexual orientation, or disability, in addition to providing local and state law enforcement with additional training and resources. The HCPA expanded previous hate crimes law in several key ways, including additional categories of bias motivation to federal jurisdiction and collecting federal statistics on gender-biased crime.

Unacceptably, many jurisdictions still poorly report data, or do not report at all, through our federal statistics program, making it difficult to comprehend the scope of the problem nationwide. We urge Congress and the Administration to promote comprehensive

participation in the Hate Crime Statistics Act reporting program, with special attention devoted to underreporting large agencies that either have not participated in the Hate Crimes Statistics Act (HCSA) program at all or have erroneously reported zero (0) hate crimes. Moving additional law enforcement agencies to the FBI's National Incident-Based Reporting System (NIBRS) crime reporting program could help with this issue – and we encourage the continuation of programs to support such a transition.

AAUW is hopeful that the HCPA will act as a strong deterrent to prevent gender-bias related crime. Sexual harassment, particularly in schools, can often act as a precursor to additional, bias-motivated crimes against women. AAUW's report *Crossing the Line: Sexual Harassment at School* shows that nearly half of all students in seventh–12th grade said that they have encountered some form of sexual harassment.[3] Appropriate and effective enforcement of the new law must include proactive prevention efforts aimed at the root causes of sexual harassment against girls and boys. We encourage Congress to pass the Safe Schools Improvement Act and the Student Non-Discrimination Act to help with these efforts.

In addition, with increasing national attention on the epidemic of sexual violence at colleges and universities, AAUW encourages schools as well as law enforcement to consider how the new tools available to handle gender-based hate crimes under the HCPA can assist in dealing with serial offenders, a small percentage of whom commit the majority of assaults at our colleges and universities.[4]

Finally, schools are already involved in helping us understand the scope of the problem. The Higher Education Act requires colleges and universities to report bias-motivated incidents in their annual security reports and to the Department of Education as a part of the Clery Act. For several years, as federal laws were updated, the reporting required by colleges and universities did not match the reporting required of law enforcement. But, thanks to legislative updates to the Higher Education Opportunity Act[5] in 2008 and the Violence Against Women Reauthorization Act[6] in 2013, the data collection on the part of colleges and universities is now in line with that of law enforcement. Collecting this information gives parents and students a more accurate sense of campus safety, and it provides colleges with a better picture of their campus climate. We recognize, however, that additional education may be necessary for colleges and universities to improve campus hate crime reporting. Congress and the Department of Education should continue to effectively integrate and implement the new Violence Against Women Act (VAWA)-mandated campus hate crime data collection categories, including gender identity, and to harmonize with FBI HCSA data collection categories and definitions.

Protecting Voting Rights

AAUW supports vigorous enforcement of and full access to civil and constitutional rights, including voting rights[7]. The Voting Rights Amendment Act provides the correct balance and approach to protecting voters that embodies the spirit and letter of the court's decision – including new tools to prevent voting discrimination as well as ensure that any proposed election changes are transparent.

Voting discrimination is a threat to the very foundation of our democracy, and AAUW believes such a threat requires a strong, bipartisan response from Congress. The Voting Rights Amendment Act is a bipartisan and AAUW urges Congress to take swift action to pass this widely supported bill and enact these necessary voting protections.

The Voting Rights Act (VRA) was first enacted in 1965 to prohibit discriminatory voting practices based on race, color or English language proficiency. Section 5 of the VRA requires states or jurisdictions to submit any changes in voting procedures to the United States Department of Justice for approval before enacted. This process is also referred to as preclearance[8].

On June 25, 2013, the Supreme Court of the United States ruled in Shelby County v. Holder that the coverage formula in Section 4(b) of the Voting Rights Act, was unconstitutional[9]. This section was used to determine which states and political subdivisions were subject to Section 5 preclearance. As a result, several states with a history of voter discrimination stopped preclearance, which has led to predictably unfortunate outcomes.

In the 2014 midterm elections, voters in many states faced egregious restrictions preventing their ability to access the ballot box. AAUW members remain concerned about the number of states and localities pushing potentially discriminatory changes to voting, such as changing district boundaries to disadvantage some voters and moving polling locations in areas with high concentrations of minority voters in key states, or requiring additional steps to obtain identification before casting a ballot.

In January 2014, Congress introduced the Voting Rights Amendment Act (H.R.3899/S.1945), a direct response to the Supreme Court's ruling in Shelby County v. Holder. This legislation provides a modern, forward-looking, bipartisan solution freezing susceptible voting changes in locations with the worst records of discrimination. The new coverage formula permits federal courts to apply preclearance remedies if it finds any violations.

We appreciate the Committee's continued attention to these important civil rights issues. Thank you for the opportunity to submit testimony. If you need additional information, feel free to contact me at 202.785.7793 or Anne Hedgepeth, Government Relations Manager, at 202.785.7724.

Sincerely,

Lisa M. Maatz
Vice President of Government Relations

[1] *Wisconsin v. Mitchell*, 508 U.S. 476 (1993)
[2] U.S. Department of Justice, Federal Bureau of Investigation. (December 8, 2014). Hate Crimes Statistics, 2013. www.fbi.gov/about-us/cjis/ucr/hate-crime/2013
[3] AAUW. (2011). Crossing the Line: Sexual Harassment at School. www.aauw.org/research/crossing-the-line/
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[5] The Federal Register. (October 29, 2009). *Department of Education General and Non-Loan Programmatic Issues – Final Regulations.* www.gpo.gov/fdsys/pkg/FR-2009-10-29/pdf/E9-25373.pdf.
[6] AAUW. (2014). Schools Must Take New Steps to End Violence on Campus. www.aauw.org/2014/10/20/final-vawa-step/.
[7] American Association of University Women. (June 2013). *2013-15 AAUW Public Policy Program.* http://www.aauw.org/resource/principles-and-priorities/.
[8] Leadership Conference for Civil and Human Rights. (January 2014). http://vrafortoday.org/?attachment_id=212
[9] Leadership Conference for Civil and Human Rights (January 2014). http://vrafortoday.org/wp-content/uploads/2014/01/2014-01-29-vra-for-today-backgrounder-c3.pdf

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Rights for Children in Conflict with the Law

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Tuesday, December 9, 2014

We are grateful to Senator Durbin and the fellow members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, for this opportunity to present written testimony on the state of Civil and Human Rights in the United States. This testimony will focus on the state of rights for children in conflict with the law in Illinois.

This testimony is presented on behalf of the Juvenile Justice Initiative of Illinois, a non-governmental advocacy organization dedicated to the mission of ensuring compliance with international standards of human rights for children in conflict with the law. To this end, we focus on ending the trial of children under 18 in the adult court, decreasing reliance on incarceration while expanding community-based alternatives, and ensuring equity and due process for all children in conflict with the law.

We wish to point out **two critical violations of the human rights protections– the wholesale prosecution of children under 18 in the adult court, and the excessive and disproportionate use of incarceration.** In both cases, we will limit testimony to the evidence of violations within Illinois, but Illinois' experience is emblematic of overall U.S. policies.

This testimony is particularly timely. Last spring, the U.N. Human Rights Committee urged the U.S. to end adult court prosecution of juveniles – specifically, end juvenile life without parole, separate all juveniles from adults, and end the practice of transferring juveniles to adult courts. The U.N. Human Rights Committee, charged with ensuring compliance to the International Covenant on Civil and Political Rights, released the concluding observations of its 110th session last week, which included these comments on the U.S. system:

> *"The State party [the United States of America] should* ***prohibit and abolish all juvenile life without parole sentences*** *irrespective of the crime committed, as well as all mandatory and non-homicide related sentences of life without parole.* ***It should also ensure that all juveniles are separated from adults during pretrial detention and after sentencing and that juveniles are not transferred to adult courts.*** *States that automatically exclude 16 and 17 year olds from juvenile court jurisdictions should be encouraged to change their laws."*

I. End the Prosecution and Sentencing of Children in Adult Court. Illinois has already taken substantial steps to end the trial and sentencing of children in adult court. As of January 1, 2014, Illinois set the age of juvenile court jurisdiction at 18 – thereby bringing Illinois into the majority (40 states now set 18 as the age of majority).

Illinois is taking further steps to ensure individualized and proportionate treatment of children under 18 in the justice system. Illinois legislators have been debating eliminating "automatic" transfer provisions sending certain children who fall into designated categories automatically to the adult court. This debate has been triggered by new research in Illinois documenting ongoing disparities in these transfer policies.

These policies have been in place in Illinois for more than 30 years. In 1982, the Illinois legislature removed the need for juvenile court approval to try a child as an adult, resulting in the "automatic transfer" of some children to adult court for trial and sentencing. These transfer statutes eliminate any review of the circumstances of an individual case including the youth's background his or her degree of participation in the offense, mental and physical health, educational problems or learning disabilities, and availability of resources unique to juvenile court for rehabilitation. Instead, within hours or days of arrest, a child is placed on a trajectory to prosecution and sentencing in adult court. If convicted a child can receive a lengthy adult sentence or end up with a criminal record that can impact their ability to go to school, get a job and be a productive member of their community.

More than thirty years of studies of these Illinois transfer policies have consistently demonstrated that categorical treatment of children as adults prevents youth rehabilitation and positive development, fails to protect public safety and yields profound racial, ethnic and geographic disparities.

The Juvenile Justice Initiative recently examined three years of data on 257 children under the age of 17, who were held in juvenile detention in Cook County but prosecuted and sentenced in adult court from 1/1/2010 - 12/31/2012. The findings continue to demonstrate that categorical prosecution of children in adult court prevents rehabilitation, fails to protect public safety, and yields profound racial disparities. Specifically, the report documents that:

- **Automatic transfer disproportionately affects children of color.** In 3 years of "automatic" adult court prosecution of 257 children, there was only one white child.

- The majority of children automatically transferred were ultimately convicted for lesser offenses, offenses that could not have triggered transfer – the 3-year study revealed **54% of all convictions were for lesser offenses than the original charge.** Another 4% were found not guilty or thrown out (nolle prossed).

- The vast majority of automatic transfer cases result from guilty pleas – the 3-year review revealed **90% of automatic transfer cases were pled guilty.** At no point is there any opportunity to take into consideration immaturity – the young age of the child, his/her potential for rehabilitation, or any aspects of his/her background.

Based on this study, and the previous studies over the more than 30 year lifetime of these automatic transfer policies, the Illinois Supreme Court unanimously concluded these automatic transfer laws must be revised, sending the Illinois Legislature the following message:

> "We do, however, share the concern expressed in both the Supreme Court's recent case law and the dissent in this case over the absence of any judicial discretion in Illinois's automatic transfer provision. While modern research has recognized the effect that the unique qualities and characteristics of youth may have on juveniles' judgment and actions (see, e.g., Roper, 543 U.S. at 569-70; infra ¶ 156), the automatic transfer provision does not. Indeed, the mandatory nature of that statute denies this reality. Accordingly, **we strongly urge the General Assembly to review the automatic transfer provision based on the current scientific and sociological evidence indicating a need for the exercise of judicial discretion in determining the appropriate setting for the proceedings in these juvenile cases."** **http://illinoiscourts.gov/Opinions/SupremeCourt/2014/115102.pdf**

At the end of the opinion, Justice Theis issued a 14 page dissent, documenting the reasons the Supreme Court should declare the automatic transfer statutes unconstitutional, citing to both the pending legislation and the Juvenile Justice Initiative's research.

Cook County Board President Toni Preckwinkle has repeatedly and consistently criticized trial of children in adult court, and called for support for Rep. Nekritz' legislative proposal to give juvenile court judges the power to individually decide where juveniles should be tried.

POOR OUTCOMES – National research solidly establishes that children prosecuted in the adult court are more likely to repeat offend than children similarly situated who are prosecuted in juvenile court. A 2007 survey of existing studies by the U.S. Centers for Disease Control and Prevention concluded that **youth who are prosecuted as adults are 34% more likely to commit crimes** than youth who were kept in the juvenile court system.

CONTRARY TO RESEARCH – Routinely prosecuting youth as adults runs contrary to youth development research: A strong and growing body of research on adolescent development indicates that youth are especially prone to impulsive and risky behavior, and hampered in their ability to foresee and weigh the consequences of their actions. On the other hand, youth are capable of tremendous positive change and most youth mature out of delinquent conduct. Automatic transfer of youth ignores these facts and, in treating teenagers the same as adults, wastes opportunities for rehabilitation and bolstering public safety through the services, supervision and support of the juvenile system.

Recommendation: The United States must eliminate the prosecution of children under 18 in adult court.

"[I]t doesn't make sense for us to transfer, indiscriminately, young people to adult court."
Then Senator Barack Obama, Jan. 29, 1998

II. EXCESSIVE AND DISPROPORTIONATE USE OF INCARCERATION.
Illinois incarcerates approximately five times the number of children, as does the United Kingdom. The incarceration rates in the U.S. are the highest in the world. The Justice Policy Institute reported in 2011 that with 5% of the world's population, the U.S. locks up 25% of the world's prisoners.

A disproportionate percentage of youth who are confined are minority youth who are locked up for property and drug violations. This is particularly troubling in light of the racial disparities in youth incarceration - over 90% of the youth in the juvenile detention center in Chicago are minority. Once in prison, the treatment of youth is deeply troubling. Programming is minimal, with little beyond basic education. Discipline is harsh, with heavy reliance on solitary confinement for days on end. Reentry frequently leads to recommitment. These inadequate conditions and lack of due process at reentry points have been documented in two class actions filed over the past four years in Illinois – one by the ACLU against the Dept. of Juvenile Justice for inadequate education and treatment and excessive discipline, and the other by the MacArthur Justice Center against the Prisoner Review Board for failing to give youth any due process protections when they face recommitment on a parole violation.

These juvenile prisons are a failed policy. Half the youth released are back in a juvenile prison within 3 years. By contrast, youth treated in evidenced-based programming in the community are less likely to repeat offend and more likely to move on with their lives – at a fraction of the cost of incarceration.

One bright note is the movement in the U.S. to shift limited taxpayer dollars to community-based alternatives. Illinois has invested over the past five years in a **fiscal incentive program (Redeploy Illinois)**, which has successfully reduced its juvenile – and adult - prison populations by shifting limited resources to community based alternatives, enabling the state to close two adult and two juvenile prisons. Yet, Illinois still incarcerates chidlren at higher rates than any other nation.

One more positive note is the recent call by several U.S. Senators to end the use of solitary confinement for juveniles, for pregnant women, and for those inmates with mental health issues. This clarion call for reform followed two subject matter hearings chaired by IL Senator Richard Durbin on the U.S. policy of solitary confinement. It is heartening to see our Congressional leaders devote attention to this critical violation of fundamental human rights.

More must be done, as half or more of the youth currently in juvenile prison are there for low-level offenses that would be better treated in the community. Given the appallingly high disproportionate impact on minority youth – particularly African American males - this is today's civil and human rights struggle.

Recommendation: The U.S. must ensure that incarceration is used only as a last resort, in humane facilities, and for as short a time as possible.

III. The United States must ratify the Convention on the Rights of the Child.
While many of our states are modifying our laws and policies to comply with the CRC's human rights protections for children in conflict with the law, this piecemeal effort would be substantially expedited if the U.S. joined with the rest of the world's nations (except two other nations – Somalia and South Sudan) and ratified the Convention on the Rights of the Child.

In juvenile justice, ratification would mean support to

- set a minimum age of juvenile jurisdiction,
- ensure all our states set 18 as the upper age of jurisdiction,
- ensure all our children are tried in the juvenile court,
- ensure our children receive effective assistance of counsel,
- ensure that all our children receive proportionate sentencing,
- ensure incarceration is a last resort,
- ensure that those youth who are incarcerated are placed in humane facilities for as short a time as possible.

Ratification of the CRC, would end the use of trial in adult court, and would end the use of life without parole for children. Ratification is essential to bring the United States into the international dialogue on the provision of human rights for children in conflict with the law.

Despite the vigorous dialogue and implementation of CRC human rights protections in other nations, many officials in the federal and state juvenile justice systems remain woefully unaware of the CRC.

Recommendations:
The U.S. federal officials, including the Office of Juvenile Justice and Delinquency Prevention, should promote awareness of and understanding of the critical human rights protections embodied in the CRC, particularly for children in conflict with the law.

The Administration should send the Convention on the Rights of the Child to the Senate for ratification.

Thank you for this opportunity to provide testimony on these critical issues of human rights for our children.

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The American-Arab Anti-Discrimination Committee

Statement for the Record on the

The State of Civil and Human Rights in the United States

before the

U.S. Senate Judiciary Committee

Subcommittee on the Constitution, Civil Rights, and Human Rights

December 9, 2014

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To: Senator Dick Durbin, Chairman of the Senate Judiciary Subcommittee
Subcommittee on the Constitution, Civil Rights, and Human Rights
U.S. Senate Judiciary Committee

I am writing to you on behalf of the American-Arab Anti-Discrimination Committee (ADC), the country's only national Arab-American organization. ADC has a long history of supporting the human and civil rights of all Americans and opposing racism, discrimination and bigotry in any form. ADC was founded by former U.S. Senator James Abourezk in 1980. Today, ADC is the largest grassroots Arab-American civil rights and civil liberties organization in the United States. ADC is non-profit, non-sectarian, and non-partisan, with members in every State of the United States. ADC routinely works with a broad coalition of national organizations to ensure that the rights of ethnic minorities in the United States are protected. The constitutional, civil, and human rights of Arab Americans are at stake now more than ever. ADC respectfully takes this opportunity to provide a statement for the record with recommendations and comments to the United States Senate Judiciary Committee.

Surveillance Reform

ADC has steadily observed a rise in reports and complaints of targeting, monitoring, surveillance, and discriminatory profiling in Arab communities by the Federal Bureau of Investigations (FBI), the Transportation Security Administration (TSA), and the U.S. Department of Homeland Security. These complaints and suspicions are neither unfounded nor inconceivable. A recent article published in the *Intercept* revealed that 680,000 people are on a secret government watch-list, 320,000 people are monitored by the Terrorist Identities Datamart Environment (TIDE), and 1,200 Americans have been classified as "selectees" who are targeted for enhanced screening at airports and border crossings.[1] It was also revealed that over 40 percent of persons on the Terrorist Screening Database, which is shared with local law enforcement agencies, private contractors, and foreign governments, have "no recognized terrorist group affiliation." The *Intercept* article has also revealed that reasonable suspicion, and sometimes an even lower standard, is used to determine placement on the Watch-Lists, instead of probable cause.

ADC is appalled at recent reports that confirm that federal law enforcement targeted and conducted intrusive electronic surveillance and monitoring of Arab American communities, and civil rights organizations dedicated to serving the Arab population. Over the past decade, ADC has increasingly received reports by Arab Americans that federal law enforcement was monitoring their phone calls, emails, and other electronic communications after being subject to secondary screening at United States airports' or border crossings.

New York and Dearborn, Michigan, both of which have the country's two largest concentrations of Arab Americans, were identified as the top breading grounds for terrorism by government

[1] Jeremy Scahill and Ryan Devereaux, *Barack Obama's Secret Terrorist-Tracking System, By The Numbers*, THE INTERCEPT, August, 5, 2014, *available at* https://firstlook.org/theintercept/2014/08/05/watch-commander/.

agencies.[2] Both these cities have been specifically targeted by law enforcement to recruit informants and entrap Arab Americans to commit criminal acts they would not otherwise commit. Additionally, the FBI has used the threat of the no-fly list as leverage to coerce Muslims to spy on local Muslim communities in New York, New Jersey, and Nebraska.[3] Further, according to the Los Angeles Times, Mosques in California, Florida, Minnesota, Ohio, Texas, and other states have been subjected to surprise visits by FBI agents seeking Muslim leaders to act as informants on members of their communities or congregations.[4]

ADC is further appalled that the New York City Police department has specifically targeted Arab communities for surveillance in New York and New Jersey, without any probable cause. This was demonstrated in *Hassan v. City of New York*, in which the NYPD targeted and monitored Muslim Americans, including a decorated Iraq war veteran, solely on the basis of their religious affiliation.[5]

In light of the above, ADC urges Congress to work toward comprehensive surveillance reform to protect all American's right to privacy and to counter profiling in surveillance. ADC is deeply disappointed that the USA Freedom Act (S. 2685) failed to move forward this year, but calls on Congress to act.

Profiling and Law Enforcement

Federal, state, and local law enforcement continues to disproportionately target Arab Americans and other minority communities for investigation, interrogation, and arrest. This has led to the criminalization of Arab Americans, evident by the following but not limited to: 1) sentencing of Arab Americans for crimes disproportionately to their Caucasian counterparts for the same crime; 2) discriminatory anti-Arab materials used to train law enforcement; 3) arbitrary placement on watch-list's and secondary screening lists at airports based on national origin; 4) denial of the right to due process for those designated to watch-lists as demonstrated in *Latif v. Holder*; 5) denial of entry in the U.S. of Arab doctors, lawyers and other professionals with no ties to crime and/or terrorism; and 5) targeting of Arab communities for countering violent extremism programs.

On November 25, 2014, prominent Arab-American activist Bassem Masri was arrested in St. Louis, Missouri. According to witnesses, Bassem was held at gunpoint by an undercover police officer and taken into custody for no clear reason. A St. Louis judge set Bassem's bond at $15,000. Bassem has played a major role on the ground in Ferguson, MO during this trying time for our country. Bassem has been the eyes and ears for what's happening in the community. His courageous "citizen-journalism" has received widespread attention and he has conducted several

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[2] *Id.*

[3] Adam Goldman, *Lawsuit alleges FBI is using no-fly list to force Muslims to become informants*, THE WASHINGTON POST, April 22, 2014, *available at* http://www.washingtonpost.com/world/national-security/lawsuit-alleges-fbi-is-using-no-fly-list-to-force-muslims-to-become-informants/2014/04/22/1a62f566-ca27-11e3-a75e-463587891b57_story.html.

[4] John M. Glionna, *U.S. Muslim leaders say FBI pressuring people to become informants*, LOS ANGELES TIMES, November 3, 2014, *available at* http://www.latimes.com/nation/la-na-muslims-fbi-20141103-story.html.

[5] *See* Center for Constitutional Rights, *Hassan v. City of New York*, *available at* http://ccrjustice.org/hassan.

interviews in mainstream media, such as CNN, regarding the protests. ADC is highly concerned that but for Bassem being Arab and defending civil rights through his work protected under the First Amendment, law enforcement would have not treated Bassem in this way.

ADC strongly believes that these grand jury decisions and treatment of Arab Americans are reflective of the larger problem of law enforcement's abuse of authority and profiling of communities of color, particularly African American and Arab American communities. As President Obama stated, "We need to recognize that the situation in Ferguson speaks to broader challenges that we still face as a nation. The fact is, in too many parts of this country, a deep distrust exists between law enforcement and communities of color...There are issues in which the law too often feels as if it is being applied in discriminatory fashion."

In light of the above and the recent non-indictments of police officers for the killings of unarmed African Americans in Missouri (Michael Brown) and New York (Eric Garner), and the police militarization in and criminalization of communities of color, ADC calls on Congress to:

1) Pass the End Racial Profiling Act (ERPA). The ERPA will prohibit profiling based on race, ethnicity, national origin, and/or religion by law enforcement at all levels. The ERPA would also direct that law enforcement agencies that receive funding under the Byrne JAG Program and Cops of the Beat Program to eliminate existing practices that permit or encourage profiling.
2) Require racial and bias training and guidance against the use of force for state and local enforcement that receive federal grants;
3) Condition state and local law enforcement agencies' receipt of federal funds on an agreement not use the funds to purchase automatic or semi-automatic rifles, APCS, or other military weapons and equipment not suitable for law enforcement purposes; and
4) Require reporting of demographic data, specifically race, ethnicity, national origin, age, and gender for all arrests under the Byrne JAG Program.

Criminal Justice Reform

Globally, the United States incarnates by far the most people in the prison system. The United States holds 25% of the world's prison population, but only 5% of the world's people.[6] There were 2,228,424 people in prison in the United States in 2012.[7] China has the second highest number of prisoners at 1,701,344, and Russia third highest with 672,100.[8] United States prisons are so crowded that the Supreme Court has even ordered the state of California to limit the prison populations in order to remedy a violation of the prisoners' eighth amendment rights and be able to provide prisoners with "basic sustenance."[9]

[6] Vicky Palaez, *The Prison Industry in the United States*, GLOBAL RESEARCH, March 31, 2014, http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289.
[7] International Center For Prison Studies (ICPS): Highest to Lowest – Prison Population Total, http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All, (Last Accessed: Dec. 4, 2014)
[8] *Id.*
[9] Brown v. Plata, No. 09-1233, U.S. (2011).

1. Ending Racial disparity in incarceration rates

Not only does the United States incarcerate a disproportionately high amount of people in general, but it also incarcerates a disproportionately high amount of racial minorities. According to the Sentencing Project, the black to white ratio of incarnation is 5.6 to 1 and the Hispanic to white ration is 1.8 to 1.[10] In order to reform racial disparity in incarceration rates, Congress needs to reform the racial inequities at other levels of the criminal justice system, including but not limited to disparities in sentencing, and creating debtors prisons composed of mainly of minorities.

Congress must act to reform the sentencing disparities in the criminal justice system, particularly for non-violent offenses such as drug possession. The Fair Sentencing Act of 2010 (FSA) was a step in the rights direction. The FSA reduced the sentencing disparity between offenses for crack and powder cocaine, which was 100 to 1.[11] Given that African Americans were more likely to be arrested for crack cocaine offenses, this sentencing disparity resulted in a large racial disparity in sentencing for two forms of the same drug. The FSA reduced the disparity to 18:1. While a step in the right direction, this disparity is still troubling, and should be improved.

2. Ending Mandatory Minimum Sentences

Congress should direct its legislative efforts towards community and rehabilitative based programs, and away from policies designed to fill prisons, such as mandatory minimum sentences and three-strike laws. For instance, Wisconsin, the state that leads the nation in black male incarceration rates at 12.8 percent, is notorious for these types of prison filling laws.[12] In November of 2012, California's three-strike law was revised by the Proposition 36 ballot measure to no longer include prisoners who have not committed any serious violent crime; however, this reform took almost 20 years to come about.[13]

ADC calls on Congress to pass legislation to continue to address disparities with mandatory minimum sentences for nonviolent offenders, such as The Smarter Sentencing Act of 2013 (S. 1410 / H.R. 3382). The Smarter Sentencing Act lowers certain drug mandatory minimums, allowing judges to determine which penalties should apply based on individual circumstances.[14] It also allows certain inmates sentenced under the pre-Fair Sentencing Act sentencing regime to petition for sentence reductions consistent with the Fair Sentencing Act and current law.[15]

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[10] The Sentencing Project, http://www.sentencingproject.org/map/map.cfm#map. (Last Accessed: Dec. 4, 2014)
[11] See, ACLU, *Fair Sentencing Act*, https://www.aclu.org/fair-sentencing-act.
[12] The Sentencing Project, http://www.sentencingproject.org/detail/news.cfm?news_id=1523&id=167 ("The prison population in Wisconsin has more than tripled since 1990, fueled by increased government funding for drug enforcement (rather than treatment) and prison construction, three-strike rules, mandatory minimum sentence laws, truth-in sentencing replacing judicial discretion in setting punishments, concentrated policing in minority communities and state incarceration for minor probation and supervision.")
[13] Emily Bazelon, *How California's Three' Strikes Law Struck Out*, SLATE, (Nov.13, 2012), http://www.slate.com/articles/news_and_politics/jurisprudence/2012/11/california_three_strikes_law_voters_wanted_to_reform_the_state_s_harsh_law.html
[14] Congress.Gov, *Smarter Sentencing Act*, https://www.congress.gov/bill/113th-congress/senate-bill/1410/text
[15] *Id.*

3. Ending the privatization of Prisons

ADC is also concerned about the increased use of private prisons. According to a Global Research Report, there were only five private prisons in the country ten years ago, with a population of 2,000 inmates.[16] However, there are now around 100 private prisons, with approximately 62,000 inmates, and it is expected that the number of private prisons will reach 360,000 in the coming decade.[17] Further, while inmates in state run penitentiaries generally receive minimum wage for their work, persons in private run prisons receive between $0.17 and $0.50 per hour.[18]

ADC is highly concerned that some parties have an interest in filling prisons, especially privately owned prisons.[19] In an address at Pepperdine University, Supreme Court Justice Kennedy noted the fact that the correctional officers union sponsored California's former three-strike law, and described this sponsorship as "sick!"[20] Rather than easing the burden of overcrowded prisons, the privatization of prisons has created an industry that profits from sending more people to prison, and thus has a strong financial incentive to lobby against criminal justice reform.[21]

Prison Conditions at Immigration Detentions

ADC continues to see an increase in the number of cases involving religious accommodation issues and non-access to healthcare at ICE detention facilities and facilities privately contracted by ICE. One of the core problems with ICE's detention policies and procedures is the disregard of religious accommodations and dietary needs. Additionally, there are reports of prison guards and officials not providing access to health care to Muslim, Arab, and Middle-Eastern persons because of their race, ethnicity, national origin and/or religion. Complaints with the DHS – Office for Civil Rights and Liberties (CRCL) and the private facilities grievance processes are not adequately addressed.

Voting Rights

Voting is a fundamental right in America. It is not merely a Democratic or a Republican issue, but a human rights issue. Indeed, the Supreme Court of the United States has held that, "Undoubtedly, the *right of suffrage is a fundamental matter in a free and democratic society*...

[16] Vicky Palaez, *The Prison Industry in the United States: Big Business or a New Form of Slavery*, GLOBAL RESEARCH March 31, 2014, http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289

[17] *Id.*

[18] *Id.*

[19] *See* Laura Sullivan, Prison Economics Help Drive Arizona Immigration Law, NPR News, (2010) available at http://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law

[20] Emily Bazelon, *Arguing Three Strikes*, NEW YORK TIMES, May 12, 2010, http://www.nytimes.com/2010/05/23/magazine/23strikes-t.html?pagewanted=all&_r=0

[21] *See* ACLU, *Banking on Bondage: Private Prisons and Mass Incarceration*, Nov. 2, 2011, https://www.aclu.org/prisoners-rights/banking-bondage-private-prisons-and-mass-incarceration. (noting that, "For example, in a 2010 Annual Report filed with the Securities and Exchange Commission, Corrections Corporation of America (CCA), the largest private prison company, stated: "The demand for our facilities and services could be adversely affected by . . . leniency in conviction or parole standards and sentencing practices . . . .").

any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized"[22] Additionally, "Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."[23] If the right to vote is threatened, the integrity of our entire democracy is also threatened. The right to vote is now under threat and now is the time to act.

1. Restoring Federal Voting Rights to Ex-Offenders

In 1972, the Supreme Court held that laws restricting the right to vote are subject to strict scrutiny.[24] However, there are currently 5,852,180 people in the United States are prohibited from voting due to felony disenfranchisement statues.[25] Many state laws prohibit people with felony convictions from voting even after they are released from prison. In fact, the majority of the disenfranchised people in the United States (4.4 million) have already completed their prison sentences and returned to their communities.

Combined with the "war on drugs" and policies of racial profiling, disenfranchisement laws have had a disproportionate impact on minorities, particularly African Americans. In total, 2,231,022 African Americans are disenfranchised.[26] Further, many Americans lose their right to vote simply for being convicted of non-violent drug possession charges. Currently, 7.7% of the African American population in the United States is disenfranchised, whereas only 2.5% of the total population in the United States is disenfranchised.[27] According to the Sentencing Project, "Felony disenfranchisement is an obstacle to participation in democratic life which is exacerbated by racial disparities in the criminal justice system, resulting in 1 of every 13 African Americans unable to vote."[28]

To help remedy this undemocratic injustice, Representative John Conyers introduced the Democracy Restoration Act (DRA) in the House (H.R. 4459), and Senator Ben Cardin introduced the bill in the Senate (S. 2235). The DRA will restore voting rights in federal elections to the 4.4 million Americans who have completed their prison time and returned to the community. It will advance civil rights and strengthen the legitimacy of our democracy.

ADC urges Congress to restore the integrity of our democracy by passing the Democracy Restoration Act (S. 2235/H.R. 4459).

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[22] Reynolds v. Sims, 377 U.S. 533, 561-62 (1964).
[23] Wesberry v. Sanders, 376 U.S. 1, 17-18 (1964).
[24] Dunn v. Blumstein, 405 U.S. 330, 342 (1972).
[25] The Sentencing Project: http://www.sentencingproject.org/map/map.cfm (Last Accessed: Nov. 4, 2014)
[26] *Id.*
[27] *Id.*
[28] The Sentencing Project, *Felony Disenfranchisement*, http://www.sentencingproject.org/template/page.cfm?id=133 (Last Accessed: Nov. 4, 2014).

2. Restoring protections of the Voting Rights Act

On June 25, 2013, the Supreme Court of the United States ruled in *Shelby County v. Holder* that the coverage formula in Section 4(b) of the Voting Rights Act (VRA) was unconstitutional because it was based on outdated facts, and thus violated the "equal sovereignty" of states.[29] In response to Shelly, on January 16th 2014, Congress introduced the Voting Rights Amendment Act of 2014 to amend the VRA and ensure a modern, flexible, and forward-looking set of protections to ensure an effective response to voting discrimination.

The heart of the VRA is Section 5, which requires certain covered jurisdictions to submit any proposed change in voting procedures to the U.S. Department of Justice or a federal District Court in D.C. for a determination of whether the change in procedure is discriminatory. Preclearance is important in order to stop discriminatory procedures before an election occurs, because after the election the problem is difficult to remedy.

Racial discrimination in voting is a reality that merits an urgent response. Since the Supreme Court's decision in the Shelby case, states and localities have pushed forward potentially discriminatory changes to voting procedures, such as changing district boundaries and moving polling locations in areas with high concentrations of minority voters. Many poor voters don't have the resources to travel long distances to polling locations to cast a vote.

ADC asks Congress to pass a bipartisan Voting Rights Amendment Act (H.R. 3899/S. 1945) to restore the protections of the Voting Rights Act struck down by the Supreme Court's ruling in *Shelby County*. In order to protect the right to vote for all Americans, Congress must ensure that we have a modern Voting Rights act for the 21st Century. The risks are too great for voters and for the most fundamental right in our democracy.

3. Modernizing the Voter Registration System

The voter registration system needs to be modernized so that more Americans can easily access registration. Antiquated voter registration is currently the largest election administration problem.[30] According to the Brennan Center for Justice, more than 50 million eligible Americans are not registered to vote, and 24 million registration records have serious errors.[31]

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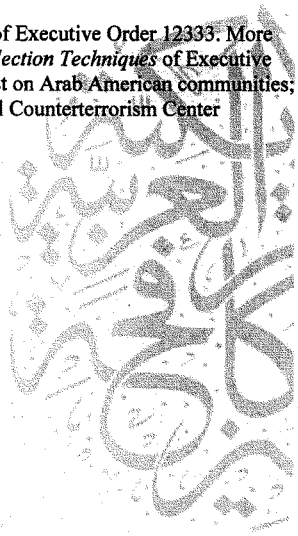
[29] *Shelby Cnty.* v. Holder, 133 S. Ct. 2612, 2616 (2013).
[30] Voter Registration Modernization Bill Would Improve Outdated Election System, http://www.brennancenter.org/press-release/voter-registration-modernization-bill-would-improve-outdated-election-system.
[31] *Id.*

ADC asks Congress to pass legislation that would modernize the voter registration system, including the Voter Registration Modernization Act. The Voter Modernization Act would amend the National Voter Registration Act (NVRA) to require each state to make available official public websites for online voter registration. It also authorizes other initiatives to promote voter registration, such as same day voter registration and voter registration of individuals under 18 years of age. Secure and easily accessible online registration is a key element of this reform. ADC also urges the Department Justice to vigorously enforce the voter registration provision of the National Voter Registration Act (NVRA) and the Help America Vote Act (HAVA).

ADC also has serious concerns regarding the implementation of Executive Order 12333. More substantive procedures, specifically to address *Section 2.4 Collection Techniques* of Executive Order 12333, are necessary to: 1) alleviate any disparate impact on Arab American communities; 2) bulk data collection by the FBI, NSA, CIA, and the National Counterterrorism Center (NCTC); and 3) enforce NSA's minimization practices.



COMMON CAUSE
Holding Power Accountable

Common Cause Testimony
United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Tuesday, December 9, 2014

Submitted by
Allegra Chapman
Director of Voting and Elections, Common Cause

Thank you for the opportunity to submit testimony, Mr. Chairman, on the current state of civil and human rights in this country. Common Cause is a national nonpartisan advocacy organization founded in 1970 to enable citizens to make their voices heard in the political process. Ensuring that every eligible citizen has an opportunity to cast a vote, free from discrimination and obstacles, is fundamental to a democracy that aims for and professes representation of all.

Although this country has certainly made important strides over the past few decades in the area of civil and human rights, the most recent events in Ferguson, Missouri, and again in Staten Island, New York, make it abundantly clear that we have much work to do yet. The discrepancies in justice between whites and people of color is mirrored in the statistics on voter turnout. In 2000, for example, 62% of whites voted in the general election, whereas 57% of Blacks, 45% of Hispanics, and 43% of Asian Americans did in that same year.[1] While the rates of turnout for Black voters in 2008 and 2012 were significantly higher, due to the candidacy of President Barack Obama, the rates for other communities of color remained low: 50% and 48%, respectively, for Hispanics, and 48% and 47%, respectively, for Asian Americans.[2] Our most recent 2014 midterm elections, moreover, saw the lowest overall turnout since World War II with only 36.6% of eligible voters casting ballots at the polls.[3] Of those who voted, only 25% were non-white.[4]

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[1] "America Goes to the Polls," Nonprofit Vote, available at http://www.nonprofitvote.org/documents/2013/09/america-goes-to-the-polls-2012-voter-participation-gaps-in-the-2012-presidential-election.pdf
[2] Id.
[3] See http://www.usnews.com/news/blogs/data-mine/2014/11/05/midterm-turnout-decreased-in-all-but-12-states
[4] See http://abcnewsradioonline.com/politics-news/midterm-elections-2014-national-exit-poll-reveals-major-

A number of new laws, and recent eliminations of effective electoral reforms, are doing real damage to our democracy and stifling participation, particularly from groups that have traditionally been underrepresented and/or marginalized from the process, people of color primary among them. With Ohio's cutback on early voting, Texas' new restrictive photo ID law, and North Carolina's elimination of same day registration, rejection of out-of-precinct ballots, cut back on early voting, and (beginning in 2016) imposition of photo ID, voters across the country are facing obstacles to our most cherished constitutional right.

There's something this Congress can do, though, to eliminate these needless restrictions and cutbacks and thus reenergize the electorate. Americans currently do not believe in the power of their government to address their problems: according to Pew Research, in a survey conducted in 2014, only 24% of Americans interviewed said they "trust the government in Washington always or most of the time."[5] That figure represents an historic low for the past five decades. We can and must do better for the American people. Ensuring that the franchise remains free, fair, and accessible, by way of federal legislation protecting each individual's right to vote free from discrimination and encumbrance, is within Congress' Article I power and remains its responsibility.

We urge swift action on the following bills:

Voting Rights Amendment Act

Over a year ago, the Supreme Court issued its shameful decision in *Shelby County, Alabama v. Holder*. By striking down the formula in Section 4 of the Voting Rights Act, the Court gutted a core protection against discrimination, leaving a hollow shell of Section 5's preclearance provision that had existed for decades as a bulwark against insidious efforts to block citizens of color from voting.

Racial discrimination against voters continues to subvert the integrity of our democracy.[6] That was true when Congress overwhelmingly reauthorized the Voting Rights Act in 2006 with strong bipartisan support, it was true a year-and-a-half ago when the Court handed down its 5-4 decision in *Shelby County*, and it remains true today, as evidenced by the most recent slew of state legislation across the country limiting access to voting.[7] Even Justice

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vote.html

[5] See http://www.people-press.org/2014/11/13/public-trust-in-government/

[6] Kara Brandeisky and Mike Tigas, Everything That's Happened Since the Supreme Court Rules on Voting Rights Act, PROPUBLICA, Nov. 1, 2013, http://www.propublica.org/article/voting-rights-by-state-map

[7] For a comprehensive review of voting rights violations since 2000 and new laws after the decision last June, see THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, THE PERSISTENT CHALLENGE OF VOTING DISCRIMINATION: A STUDY OF RECENT VOTING RIGHTS VIOLATIONS BY STATE, June 2014, http://www.civilrights.org/press/2014Racial-Discrimination-in-Voting-Whitepaper.pdf

Roberts, ruling that the previous preclearance formula was unconstitutional, wrote that "voting discrimination still exists; no one doubts that."[8]

We urge this Subcommittee and the Senate to approve the Voting Rights Amendment Act, S. 1945, swiftly. This bill is a measured legislative response to the *Shelby County* decision and conforms closely to the Court's reasoning. In addition to providing new protections for voters in all 50 states, rather than just the jurisdictions initially captured in 1965, the bill establishes a modern formula to determine which jurisdictions will be subject to Section 5's preclearance mechanisms (which remain undisturbed, but rely on a formula no longer in place). This will stop the implementation of racially discriminatory voting changes before they occur in jurisdictions with a recent history of voting rights violations.

In her dissent to *Shelby County*, Justice Ginsburg wrote that "[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."[9] We know discrimination continues to this day, leading up to the most recent 2014 midterm election and on it.

Soon after *Shelby County*, some jurisdictions previously subject to preclearance began implementing laws that will make it harder for certain minority populations to vote, even though the Department of Justice and federal courts previously denied preclearance to those very laws.[10]

For example, the Attorney General of Texas announced hours after the Supreme Court's decision that the state would move forward immediately with two restrictive voting measures that federal courts previously rejected.[11] This included Texas' stringent voter photo identification law that had previously failed to obtain preclearance because it would disproportionately affect black and Hispanic voters, as well as gerrymandered redistricting maps charged with being discriminatory in both purpose and effect.[12] Indeed, even though the district court in the Texas photo ID case found the law to have been so tainted, the Supreme Court nevertheless allowed its implementation during the midterms, resulting in mass confusion for voter and poll worker alike.[13]

Similarly, Alabama passed a voter photo identification law in 2011 but did not submit it for preclearance because it was then unlikely to obtain approval due to its discriminatory

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[8] *Shelby Co, Al, v. Holder*, 133 S. Ct. 2612, 2619 (2013).
[9] *Id.* at 2650 (Ginsburg, J., dissenting).
[10] Michael Cooper, *After Ruling, States Rush to Enact Voting Laws*, N.Y. TIMES, July 5, 2013, http://www.nytimes.com/2013/07/06/us/politics/after-Supreme-Court-ruling-states-rush-to-enact-voting-laws.html?pagewanted=all.
[11] *Id.*
[12] Id.; Sarah Kellogg, *Voting Rights Act Post*-Shelby County, WASHINGTON LAWYER, Dec. 2013, http://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/december-2013-voting-rights.cfm
[13] See Election Protection, 1-866-OUR-VOTE, Real Stories, at http://www.866ourvote.org/stories

effects.[14] Post-*Shelby County*, Alabama implemented the law. It was in place for the June 2014 primary election where poll workers turned 93-year old Willie Mims away from voting (even with a provisional ballot) despite having voted in every past election for as long as the records exist.[15] Ms. Mims, who is Black, no longer drives and no longer has a license to use as identification. She is not unlike many voters of color who are more likely than whites to lack the specific form of voter identification required to cast a ballot.[16] Mississippi and South Carolina also passed voter photo identification laws before the decision that they moved forward with implementing after *Shelby County*. These laws, like that in Texas, will disproportionately affect voters of color. Preclearance would have served as a backstop for further review.[17]

Other jurisdictions passed more restrictive laws after the Supreme Court struck down the preclearance formula. North Carolina, next to Texas, is one of the most egregious examples, where just weeks after the Court's ruling, the state legislature eliminated same day registration, eliminated a week of early voting, ended pre-registration for 16- and 17- year olds, introduced stringent voter photo identification requirements, and eliminated out-of-precinct voting, among other changes.[18] The pending lawsuit brought by the Department of Justice and advocacy groups (a full trial is still forthcoming) details numerous ways in which North Carolina's entire package of voting limitations disproportionately affects voters of color, including the 71% of black voters who voted during the early voting period in 2012 and the disproportionate number that utilized same day registration and lack the requisite photo ID.[19] According to one analysis, "African Americans were 22 percent of registered voters in 2012 [in North Carolina], but they cast 34 percent of the Same-Day Registration ballots for new voters, 33 percent of the ballots cast in the first week of the Early Voting, 30 percent of the out-of-precinct ballots cast on Election Day and 43 percent of the ballots cast on the now eliminated first Sunday of Early Voting. They are 34 percent of the registered voters who do not appear to have a DMV license of NC photo ID."[20] Common Cause's North Carolina chapter is a party to ongoing litigation challenging the constitutionality of North Carolina's new law.

There is too much at stake for us to continue on without the protections of the Voting Rights Act. Without it, states will continue to enact legislation that we know has a discriminatory

[14] THE NEW YORKER, "Interactive Map: The War on Voting Rights," Feb. 12, 2014, http://www.newyorker.com/online/blogs/newsdesk/2014/02/interactive-map-the-war-on-voting-rights.html
[15] Steve Benen, *ID Law Blocks 93-year-old Voter in Alabama*, MSNBC, Jun. 3, 2014, http://www.msnbc.com/rachel-maddow-show/id-law-blocks-93-year-old-voter-alabama
[16] Wendy R. Weiser, Erik Opsal, THE STATE OF VOTING IN 2014, BRENNAN CENTER FOR JUSTICE, Jun. 17, 2014, http://www.brennancenter.org/sites/default/files/analysis/Restrictive _Appendix_Post-2010.pdf
[17] Id.
[18] Democracy North Carolina, Summary of North Carolina's New Voting Law, August 2013, http://democracy-nc.org/downloads/NewVotingLawSummaryAug2013.pdf
[19] Complaint, *United States v. North Carolina*, No. 13-cv-861 (M.D.N.C. filed Sept. 30, 2013).
[20] Bob Hall, *Why NC's Voter ID Law is Unfair, op-ed*, Oct. 15, 2013, NEWS & OBSERVER, http://www.newsobserver.com/2013/10/15/3284031/why-ncs-voter-id-law-is-unfair.html

effect, if not purpose. What remains of the Act is inadequate to fully address the problem of racial discrimination in voting. The new, modern approach both comports with the mandate in *Shelby County* and provides protections across the country until a time comes when it is no longer needed. That time, though, has not yet come. Congress' urgent action is required.

Democracy Restoration Act

Individuals with felony histories are treated differently across that States with respect to the franchise. The result of this is staggering: around 5.3 million citizens cannot vote due to a felony conviction, with almost 4 million of those citizens having been released from prison and now living and working in their communities.[21] Despite the fact that we expect these men and women - and they are often men of color - to obtain work, pay taxes, and contribute to their community with a newfound sense of responsibility, in several states across the country, we do not return to them the franchise until after they have completed parole or probation. In some states, Virginia and Kentucky, we *never* return to them the right to vote, unless the state approves individual pardons.[22]

Because of a patchwork of different laws across the country, an astounding 13% of Black men have lost their right to vote.[23] Such deprivation of the most basic of constitutional rights to a large swath of the Black community is a civil rights epidemic that must, and can, be addressed by this Congress.

The Democracy Restoration Act, S. 2235, would make the system uniform, thereby eliminating confusion for the formerly incarcerated as they move, and would restore to men and women the right to vote upon completion of their sentences, thereby restoring for them their rights as citizens. With this change, we can expect to see individuals reintegrated into the political process, a potential result of which is a lowered rate of recidivism.[24]

Voter Registration Modernization Act

As mentioned above, there is a troublesome disparity in voter turnout between whites and people of color. Due to outdated and cumbersome registration requirements – requiring individuals to register by a date before campaigns heat up, and then again whenever an

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[21] ERIKA WOOD & RACHEL BLOOM, DE FACTO DISENFRANCHISEMENT 1 (2008), available at http://www.aclu.org/votingrights/exoffenders/36992pub20081001.html

[22] See Voting Rights for People with Criminal Records: 2008 State Legislative and Policy Changes, http://www.aclu.org/votingrights/exoffenders/statelegispolicy2008.html

[23] Brennan Center, "Voting After Criminal Conviction" website, http://www.brennancenter.org/content/section/category/voting_after_criminal_conviction

[24] See Florida Parole Commission, Status Update: Restoration of Civil Rights (RCR) Cases Granted, 2009 and 2010, Jul. 1, 2011, available at https://fpc.state.fl.us/docs/reports/2009-2010ClemencyReport.pdf

individual has moved – a voter registration gap continues to exist between whites and non-whites. For example, as of 2013, only 51% and of Hispanics and 60% of Asian Americans were registered to vote, as compared to 85% of whites.[25]

To ameliorate these differences, and facilitate voter registration for all eligible Americans, the process of voter registration must be simplified and made more accessible. In our recent report, "Did We Fix That?," we evaluated ten states' implementation of the Presidential Commission on Election Administration's 19 recommendations to ease long lines on Election Day and, in general, improve upon the voting experience.[26] Online voter registration, among others, was touted by the Commission as an "invaluable tool for managing the accuracy of voter rolls and reducing the costs of list maintenance."[27] Additionally, it helps to expand turnout among youth,[28] which necessarily captures individuals from the Rising American Electorate.

The Voter Registration Modernization Act, the core of which includes online voter registration, would "help boost participation, enhance accuracy, and increase efficiency."[29] We strongly urge this Congress to adopt this legislation in order to ease a process that the governments of many modern democracies already automate on behalf of their citizens. A national, streamlined system is necessary in order to protect the right to vote for all eligible Americans, including groups that have not traditionally made up the electorate.

We very much appreciate the opportunity to submit testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights. We appreciate your leadership in raising important issues on civil and human rights in this country with the aim of remedying these long-standing problems and helping to create a democracy that is truly representative of all this nation's citizens. Urgent times require urgent action. The marches and protests following the two most recent grand jury failures to indict in the cases of Michael Brown and Eric Garner evince a country in distress and an electorate that demands this country address longstanding problems of racial and economic inequalities.

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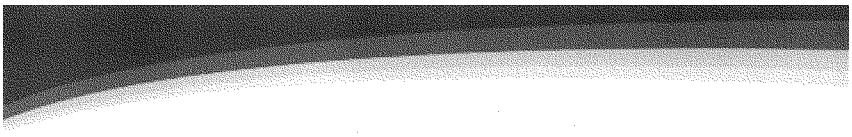
[25] Jeffrey M. Jones, "In U.S., Voter Registration Lags Among Hispanics and Asians," Nov. 6, 2013, Gallup, available at http://www.gallup.com/poll/165752/voter-registration-lags-among-hispanics-asians.aspx

[26] Stephen Spaulding & Allegra Chapman, DID WE FIX THAT?, November 2014, available at www.commoncause.org/DidWeFixThat

[27] Presidential Commission on Election Administration, THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATION OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION, January 2014, at p. 23, available at *https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf*

[28] Id. at p. 26.

[29] Brennan Center, "Voter Registration Modernization Bill Would Improve Outdated Election System," available at http://www.brennancenter.org/press-release/voter-registration-modernization-bill-would-improve-outdated-election-system



Passage of the Voting Rights Amendment Act, Democracy Restoration Act, and Voter Registration Modernization Act would be a step in the right direction.

Hindu American Foundation (HAF)
Written Statement for the Record

Harsh Voruganti, Esq.
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Submitted to the United States Senate Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights, and Human Rights
December 9, 2014

"The State of Civil and Human Rights in the United States"
226 Dirksen Senate Office Building
December 9, 2014

HINDU AMERICAN FOUNDATION HAF

The Hindu American Foundation (HAF) is an advocacy organization providing a voice for over two million Hindu Americans. The Foundation interacts with and educates leaders in public policy, academia, media and the public at large about Hinduism and global issues concerning Hindus, such as religious liberty, the misportrayal of Hinduism, hate crimes, and human rights.

HAF thanks the Chairman for calling this hearing, and for extending the opportunity to submit testimony regarding the state of civil and human rights in the United States. Today, nearly three million Americans identify with the Hindu faith. However, at the same time, most Americans maintain ignorance or hostility to practitioners of Hinduism[1]. Additionally, the increased prevalence of government sponsored sectarian, often Christian, prayer, in the aftermath of the Supreme Court's decision in *Town of Greece v. Galloway* has left many Hindu citizens feeling increasingly alienated. These factors leave Hindu Americans particularly vulnerable to bias-motivated violence and hate speech.

I. The Hindu American Community

Hindu Americans represent diverse ethnic backgrounds, including individuals of Indian, Pakistani, Bangladeshi, Malaysian, Indonesian, Afghani, Nepali, Bhutanese, Sri Lankan, Fijian, Caribbean, and European descent. The majority of Hindus, however, are of Indian ethnic origin and are primarily an immigrant community.

Similar to other minority and immigrant communities, Hindu Americans have experienced episodes of religiously motivated discrimination, intolerance, and violence. In particular, Hindus have been subjected to verbal abuse, slurs, and physical attacks on an individual level, while Hindu places of worship have been targeted for acts of vandalism, arson, and graffiti. Furthermore, the public sphere is replete with hate speech and pejorative and disparaging language denigrating Hinduism.

Unfortunately, incidents of bias and hate crimes against Hindu Americans have traditionally been difficult to track for a multitude of reasons. These include the conflation of religious and ethnic identity, underreporting by victims due to fear, and limitations in the FBI's data collection (no separate category for anti-Hindu crimes currently exists). As a result, accurate statistics on the number of hate crimes against Hindu Americans are unavailable. Nevertheless, HAF is encouraged by the FBI's efforts to ensure that the planned 2015 tracking of anti-Hindu hate crimes remains on track.

II. Status of Hate Crime Tracking

In 2013, thanks to the efforts of Chairman Durbin and community groups, the FBI began to implement the data collection and tracking regarding hate crimes covering a broader number of categories, including anti-Hindu, anti-Arab, and anti-Sikh hate crimes[2].

HAF, along with other concerned community groups, have maintained regular contact with the FBI, regarding the implementation of federal tracking of anti-Hindu hate crimes. It is our

[1] http://hafsite.org/whats-new/pew-poll-surprise-many-americans-have-negative-impressions-hindu-americans

[2] http://www.hafsite.org/whats-new/hindu-americans-welcome-fbi's-'yes'-anti-hindu-hate-crime-data-category

understanding that the new categories can be tracked beginning January 1st, 2015. We intend to continue to work with the FBI to ensure that tracking continues to remain on track for this date.

Additionally, HAF has worked with the Department of Justice's Community Relations Service (CRS) to develop training materials to train first responders on the Hindu American community. We urge the Committee to maintain its oversight over such efforts and to ensure that CRS has the resources to continue to engage with communities in this manner.

III. Bias or Hate Crimes in 2014

The Hindu community has faced particular challenges involving anti-Hindu speech and violence in 2014. We urge the Committee to maintain its oversight over the Department of Justice, and the Federal Bureau of Investigation, as they work to investigate and prosecute anti-Hindu hate violence.

Anti-Temple Violence in Georgia

On August 2nd, 2014, the Vishwa Bhavan Mandir, a Hindu temple in Monroe, Georgia, was attacked and vandalized. The intruders cut phone lines, destroyed the temple's *murthis*, and spray painted anti-Hindu messages. While Georgia law enforcement eventually arrested two individuals, they were not charged with any bias-motivated crime for their offence.

Loudoun County Anti-Hindu Vandalism

In July, August, and September 2014, police documented 17 separate incidents of anti-Hindu vandalism, occurring primarily in Loudoun county, Virginia. Such vandalism included graffiti on street signs, public property, and a private garage. The graffiti depicted Hinduphobic messages demanding that Hindu Americans leave the neighborhood.

Hindu Homes Targeted for Theft

Through the month of October, Hindu homes from across the country have been targeted for thefts and home invasions[3]. In most of the incidents, the perpetrators have chosen to steal large quantities of gold jewelry. As Hindus use gold in their prayer during the Hindu festival of Diwali, Hindu homes remain particularly attractive targets for thieves. Law enforcement response to the rash of attacks has been mixed, with some jurisdictions facing intense community criticism for a slow response[4].

The above examples do not constitute an exhaustive list of anti-Hindu incidents that have occurred in 2014, and they do not reflect the full extent of issues faced by the community. From religious bias to discrimination to hate speech and hate crimes, Hindu Americans continue to confront a multitude of challenges. Therefore, HAF urges this committee to work

[3]http://www.nytimes.com/2014/12/03/nyregion/home-invasion-stokes-indian-americans-fear-that-spree-may-not-be-over.html

[4]http://www.nj.com/middlesex/index.ssf/2014/11/roiled_by_home_invasions_edison_residents_grill_police.html

to counter the underlying causes of intolerance and violence that not only impact Hindus, but all Americans.

American Friends Service Committee

Statement for the Congressional Record
Senate Committee on the Judiciary; Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on the State of Civil and Human Rights in the United States
Tuesday, December 9, 2014

Thank you, Chairman Durbin, Ranking Member Cruz, and all members of the Subcommittee for the opportunity to submit testimony from the American Friends Service Committee regarding militarization of police departments for the hearing on the State of Civil and Human Rights in the United States.

The American Friends Service Committee (AFSC), a Quaker organization promoting lasting peace with justice as a practical expression of faith, has worked for nearly 100 years to advance civil and human rights among our core priorities. In the course of this work we have become deeply concerned by the increasing militarization of policing, a trend which is ineffective, dangerous, costly, and exacerbates the gulf between law enforcement entities and the communities they serve. Instead of relying on military style approaches and equipment, we call for policing that restores trust and builds the peace by bringing together community members and law enforcement officials for shared solutions.

Initiatives such as the Department of Defense 1033 Program, the Edward Byrne Memorial Justice Assistance Grant Program under the Department of Justice, and the Homeland Security Grant Program provide tools that are terribly inappropriate for community policing. As the old adage goes, if your tool is a hammer every problem looks like a nail; providing local police departments with military-style supplies positions them for warfare, plain and simple. This is not good for police and it is certainly not good for communities.

AFSC is deeply concerned about the intersection of this increased police militarization with the ongoing challenges of police accountability and systemic racism. Those who pay the cost of these policies are disproportionally young people of color – and with alarming frequency that cost is death at the hands of police. Existing tensions, divisions, and biases are exacerbated when policing is militarized, moving police further and further from the humanity of the communities they serve.

With an abundance of military tools, local police increasingly rely on militarized tactics and weapons not only to arrest but to contain people exercising their right to assemble and peacefully protest. Easy access to supplies such as tear gas, grenades, and pepper balls has served to increase – not reduce - tensions between protesters exercising their right to free speech and police forces, as seen in Ferguson. Throughout our century of work in conflict areas around the world, we have witnessed time and again how violence begets violence, while dialogue and restorative approaches work wonders to reduce tensions, right wrongs, and end cycles of violence.

We are proud of the young people with whom we work in local communities across the country, who are using peaceful means to work for fundamental change in systems that perpetuate racism and inequality. They deserve both applause and help for their leadership in healing and organizing their communities. Most of all we heed and support their vision of what democracy looks like: It looks like police accountability. It looks like equal access. It looks like an end to mass incarceration. It looks like the demilitarization of police.

As a Quaker organization that believes in the worth of every person, we call on you to address the systemic and structural racism at the roots of the highly publicized recent killings that are so deeply disturbing in their familiarity to so many communities nationwide. Our nation will only prosper when we invest in all our children. Join us as we work to end militarized policing and the systemic racism that endangers youth of color and thus threatens our common future.

Thank you. The American Friends Service Committee looks forward to continuing this dialogue with Subcommittee members into the 114th Congress.

Dear Senator Durbin:

Thank you for helping shine a spotlight on continuing challenges to civil rights, voting rights, and human rights in the United States. As a middle-class, middle-aged white couple - a novelist (he) and a social worker and human rights activist (she) - we frequently find ourselves grateful for the lives of privilege and security we live ... but increasingly alarmed by what seem to be systematic assaults on the rights of people of color and people of limited means in contemporary American. Our own state, Florida, has waged virtual war on the voting rights of poor minority and Hispanic people; Florida also has one of the highest incarceration rates in the nation - in a nation that has the highest incarceration rate in the world. And the privacy rights of us all - even the privileged among us - are under grievous assault by the NSA, under the dubious guise of "protecting" us from terrorism.

A half century after the tragedies and triumphs of the civil rights movement, we as a nation seem to be retreating from those lessons and landmarks. Please stand strong for the rights of ALL, not just the privileged few, in the face of intolerance, imprisonment run amok, the militarization of local police, and unwarranted domestic spying.

Thank you,

Jon Jefferson & Jane McPherson
[redacted]

Submitted December 8, 2014 for Durbin's Hearing December 9, 2014

Applicable areas include Civil Rights, Human Rights, Criminal Justice Reform, Hate Crimes, and Police Militarization

Personal Message of Margaret Zawodniak

I request the assistance of the members of Congress and Senate with any and all of the 16 federal agencies and their private contractors which perform electromagnetic torture and electronic surveillance using electronic weapons and radiation (ionizing and non-ionizing), including but not limited to the FBI, CIA, NSA, DOD/DOJ, HSA, National Counterterrorism Center, Fusion Centers, Infraguard (including the utility companies), Citizens Corp (developed by the DIA).

I believe false information has been passed to the various federal agencies which has resulted in me becoming a "Targeted Individual". I was illegally arrested by the FBI in May 1989, and because I could prove I was innocent, the charges were dropped. I subsequently had the arrests (all stemming from one charge) expunged. If I have been "targeted" for any reason, I must be released from this "program", in any event. There is no cause for it, and furthermore, it is a violation of my rights.

I have been followed by persons unknown to me since the time of the false arrest. I have had my reputation ruined repeatedly, especially in the last 6 years, by persons unknown to me, even after I had cleared background checks necessary for working with children. I am under 24/7 surveillance by way of electronics, both within my own home and anytime I leave my home.

I have electromagnetic weapons directed at me continuously, inside my home and whenever I am away from my home. I am attacked whenever I drive my car. These are ELF and microwave (measured using RF detectors), laser (visible), and may include other weaponry at other frequencies, probably maser and VLF weaponry. I believe these are military grade weapons. Some of the effects of the radiation I have experienced are headaches, severe tooth pain, jaw pain, fever, dehydration, burns, earaches, vision disturbances, subconjunctival hemorrhages, epistaxis, pain and numbness in fingers, hands, arms, and feet; pain and bleeding in the digestive tract, kidney and urinary tract, back pain, scapular pain; sinusitis, bronchitis, pneumonia, and flu-like symptoms; fibromyalgia, tinnitus, premature accelerated aging, extreme fatigue, severe vertigo, nausea and vomiting, chronic sleep deprivation, resting tachycardia, angina, chest pain, choking sensations, black hematomas, cherry hemangiomas, hair loss, overheating of isolated body tissues, and severe prostration. I feel ill every day.

Damage to my home has included untimely and unnatural damage to electrical devices and electronics. My stove, refrigerator, washer, dryer, hair dryers, 5 stereo systems, CD players, 6 cameras, computers, televisions, vacuum cleaners, light fixtures, light bulbs, electrical outlets and switches have all either had to be replaced or professionally repaired. It is an expensive nuisance to be continuously replacing and repairing these items.

I have had repeated problems with break-ins, damaged and missing items, electronics, food, clothing, small pieces of electrical wiring left on the floor and damage to my floor. Outside, my husband and I have told "intelligence agents", dressed as hoodlums, to leave our fenced property (a regular sized city lot), and they laughed at us. They sit in cars outside my house. My tires have had nails inserted into them repeatedly, while my car is parked in my driveway.

I am an innocent, law-abiding, American, and the descendent of early colonialists. I am currently a homemaker and I have a husband and two school aged children. Additionally, I am a bachelor's prepared registered nurse, and have a long history of community service with the local school, scouting, museum and hospital. I have never been a trouble maker or an insurrectionist, but I was a domestic violence victim in a bad divorce situation, long ago, in 1989.

I have been victimized by not only a violent ex-husband, but also victimized by the Federal Intelligence Agencies. I need for the targeting against me to stop, because it is interfering with me living my life, and it is destroying my health. I fail to see how destroying my health and my property is keeping America safe from "Terrorism". I say, the

people doing this to me and my family are "Terrorists." The "National Security" clause does not apply to my case. The complete records of intelligence, defense, military agencies and their contractors need to be released, and I need to be compensated as a victim of their crimes.

Margaret Zawodniak

Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on the State of Civil and Human Rights in the United States
Tuesday, December 9, 2014
Testimony by: Organization for Black Struggle, HandsUpUnited, Members of the Ferguson to Geneva Delegation

The failure to acknowledge and reform racial profiling and police impunity has damaged the United States' international reputation. The U.S. has traditionally sought to position itself as a beacon of human rights and democracy for the rest of the world to emulate. However, the failure to hold Officer Darren Wilson responsible for killing Mike Brown served as a lodestar of a different tenor.

On this the occasion of the State of Civil and Human Rights in the United States hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, the undersigned organizations and individual members of the Ferguson to Geneva delegation submit this testimony in the hopes of addressing this crisis before it further damages America's standing in the global community. In the wake of the police killing of Michael Brown, Jr. in Ferguson, Missouri on August 9, 2014, we have deemed it necessary to employ all possible forums to expose the serious human rights concerns surrounding that killing, the militarized police response to ensuing demonstrations, as well as the deep structural racism and discrimination inherent in a justice system that systematically refuses to hold the police departments accountable for their racial profiling and targeted police violence against black communities across the country.

Why human rights? This is a question of asserting our human dignity. The decisions not to indict the police officers involved in the Mike Brown and Eric Garner cases have demonstrated that there is impunity for the taking of black lives and profit to be made off the misery of state-sanctioned killings of black people. We have taken this fight to the local, state and federal levels, with no result. Therefore our appeal to the United Nations and the international community is meant to be an indictment of the U.S. legal system. Only a full redress of our concerns can begin to repair the damage done on a local, national, and international level.

In the hopes that the moral outrage of the global community would further move our government towards justice, we submitted a shadow report on the circumstances surrounding Mike Brown's killing and the excessive use of force against those participating in demonstrations in Ferguson to the United Nations Committee Against Torture this past October. We traveled to Geneva, Switzerland with the parents of Mike Brown in mid-November to present the facts and the recommendations in that report. Among the information we presented, we noted how Mike Brown's body was left laying in the street for over four hours after his killing, with his parents forced to stand and helplessly watch medical aid refused to him; the mishandling of the grand jury process by Prosecutor McCulloch, the long-standing problem of racial profiling and targeted

violence against the black community in Ferguson and surrounding areas of St. Louis County, and the pattern of impunity around police brutality. We also raised serious human rights concerns around the militarized police response to the demonstrations that erupted in the weeks following the killing, which involved indiscriminate use of tear gas and other painful implements while denying demonstrators egress, intimidation by pointing loaded weapons at demonstrators, and excessive force used without distinction against crowds including children, the elderly, and handicapped people as collective punishment for participating in the demonstrations.

The Committee heard our recommendations and posed difficult questions to the U.S. government delegation on the discriminatory treatment of black people by the justice system, its abysmal record as regards police accountability and enforcing restrictions on police use of force, and the disturbing use of militarized force against its own people, reminiscent of a "civil war," as one Committee member put it. The Committee's recently released Concluding Observations expresses "deep concern at the frequent and recurrent police shootings or fatal pursuits of unarmed black individuals"[1] and regrets the government's failure to detail the result of prosecutions against police officers or investigations of police departments for rights abuses.

In the days leading up to the Ferguson grand jury announcement, we again reached out to a group of UN Special Rapporteurs, alerting them to be vigilant to the recurrence of the same human rights violations we had seen in the weeks following Mike Brown's murder. Some of them responded with concern, and even released a public statement following the announcements of the grand jury decisions not to indict the police officers involved in the killings of both Mike Brown and more recently, Eric Garner. One UN expert stated, "Michael Brown and Eric Garner's cases have added to our existing concerns over the longstanding prevalence of racial discrimination faced by African-Americans, particularly in relation to access to justice and discriminatory police practices."[2] The Special Rapporteur on contemporary forms of racism noted the targeting of African Americans by racial profiling and disproportionate police force, which is often lethal. The recent tragic killings of Akai Gurley and Tamir Rice, a 12-year old shot to death for carrying a toy gun, are further evidence of these concerns.

And yet, we continue to see egregious violations of rights happening on the ground in St. Louis now, and indeed in protests across the country denouncing police violence, racial profiling and the devaluing of black life in the U.S. In a letter we are submitting to the Special Rapporteurs to update them on the situation on the ground, we note the continued harassment of vocal leaders of movement for their involvement in actions calling for justice and an overhaul of a justice system that denies their basic humanity.

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[1] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=930&Lang=en

[2] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15384&LangID=E#sthash.jZzsbc3J.dpuf

We detail arbitrary arrests, excessive force, and racial slurs like the N-word used by the police against people engaged in their right to peaceably assemble and speak their mind. We note the use of implements like tear gas and pepper spray to chill free speech and intimidate community members from participating in demonstrations. Fifty years after the great gains in the U.S. Civil Rights Movement, this is not where we should be.

We strongly endorse the 12-point platform put forth by the national Ferguson Action Network. We hope that we can collectively aspire to the visionary platform that not only seeks to end state-sponsored assaults on black and brown communities' rights to liberty and security of person, but also realizes the importance of assuring economic and social rights to education, health, gainful employment and decent housing. We further recommend certain local changes that must happen to (1) hold accountable authorities responsible for their recklessness and indifference in handling the Mike Brown murder and endorsing the repressive response to the protests that ensued, and (2) address the root causes of inequality, racism and marginalization of the black community in St. Louis.

Local authorities had the power to respond differently to the Mike Brown killing, and could have avoided the fallout that ensued. The fact that they chose not to take these alternative steps can only register as a callous indifference to the grievances of the black community in St. Louis. They further demonstrate a lack of political will to remedy the structural issues that reproduce and perpetuate inequality in St. Louis. If the U.S. plans to start a new tradition of accountability for racial profiling and state sponsored violence, it should begin with the actors who oversaw, sanctioned and facilitated the human rights abuses against Mike Brown, the Ferguson community and surrounding areas by issuing a letter condemning those abuses and calling for those in power to be held accountable.

St. Louis County Police Chief Jon Belmar - Chief Belmar's record in addressing the community in the aftermath of the shooting of Mike Brown illustrates a lack of control and irresponsible leadership. Officers from multiple municipalities 'self deployed' with no accountability during periods of heightened unrest (such as the St. Ann police officer who threatened to kill demonstrators).[3] Chief Belmar made the call to fire tear gas in August protests with no regard for crowds of peaceful protestors that included children, pregnant women, and elderly or residents safety. He publicly defended military equipment and officers behavior stating they police very 'urban communities'. He has not expressed regrets for using certain implements against demonstrators, and inaccurately stated there are no long lasting effects from tear gas, despite reports that it has contribute to reduced lung functioning or miscarriage.[4] *"I felt like after 20 years of law enforcement experience -- I've been tear-gassed perhaps two dozen times. It's a chemical agent,*

[3] http://www.stlamerican.com/news/local_news/article_747fce3a-6d05-11e4-a5e0-9b8aa0946089.html

[4] Physicians for Social Responsibility—Los Angeles, *Tear Gas Clouds and Chronic Health Problems* (June 11, 2001) at http://www.bvsde.paho.org/bvsacd/cd57/teargas.pdf

it's not pleasant, but at the end of the day there aren't any long-lasting effects".[5]

Prosecutor Robert McCulloch – Prosecutor McCulloch grossly mishandled the grand jury process, from start to finish. The ways in which he favored the defendant are many, not least of which is the fact that his prosecution team provided the grand jury with an outdated and unconstitutional law on the use of force by police and only half-heartedly attempted to correct the error at the very end of the process.[6] This is not surprising given his connections to the police and his history of failing to prosecute police for their misconduct (with the exception of one black police officer[7]). It is now being reported that certain pieces of evidence, including the interview with key witness Dorian Johnson, was not among documents provided to the press after the announcement was made.

City of Ferguson Police Chief Thomas Jackson – His response to the Mike Brown murder was appallingly deficient. Before releasing Officer Wilson's name, Chief Jackson chose to taint the image of the victim by releasing edited video footage which was illegally obtained by the Ferguson PD, before they had gotten a warrant for it. Mike Brown's deceased body was left on display in the street that runs through the densely populated Canfield Green apartments for 4.5 hours. Medical examiners were not allowed to approach Mike Brown's body during this time period. In the demonstrations that follow, overly aggressive policing was employed by the Ferguson police, as showcased in a specific incident in which Chief Jackson attempted to march with protesters while one of his officers punched a pregnant woman, hogtied her, and flung her body into a police caravan.

Governor Jay Nixon – Governor Jay Nixon made several missteps that contributed to the inflamed tensions in the aftermath of Mike Brown's killing. These include his attempt to place curfews on protests in Ferguson in August (which the police themselves failed to respect, for example, on the evening of August 17, 2014 when they launched tear gas into crowd before the curfew was set to begin); his refusal to support a fair and transparent grand jury process by advocating for a special prosecutor to the Mike Brown case in light of substantial evidence of Prosecutor McCulloch's ties to police and reticence to hold police accountable; as well as his preemptive declaration of a state of emergency one week before the announcement of the grand jury decision, not only creating a state of fear and anxiety among St. Louis residents but also reinforcing a "false presumption of criminality that so often attaches to African Americans and feeds the excessive force and brutality by police," as Sherillyn Ifill of the NAACP Legal Defense Fund put it.[8]

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[5] http://www.huffingtonpost.com/2014/08/27/jon-belmar-ferguson-protests_n_5726122.html
[6] http://www.dailykos.com/story/2014/12/04/1349421/-Missouri-AG-Confirms-Michael-Brown-Grand-Jury-Misled-by-St-Louis-DA
[7] http://www.dailydot.com/politics/ferguson-prosecutor-indicted-cop-for-using-baton/
[8] http://www.naacpldf.org/press-release/statement-sherrilyn-ifill-president-and-director-counsel-naacp-legal-defense-fund-resp

Moving forward, apart from the necessary replacement of these negligent officials from their positions of power, it is important to put into place some structural changes that can help prevent future crises.

1. **Ensure that Use of Force Laws are in accordance with International Human Rights Norms and the United States Constitution.** Missouri's law on the use of force by law enforcement, like many states around the country, satisfies neither Constitutional requirements as articulated by the U.S. Supreme Court in *Tennessee v. Garner,* 471 U.S. 1 (1985), nor international standards on the use of force according to article 9 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. We recommend that the United States, at a minimum, mandate that Missouri bring its laws in compliance with established Supreme Court precedent, and that states may not seek to enforce laws that unconstitutionally create a more permissive use of force standard for police than the Supreme Court has deemed allowable under the Constitution. As a nation seeking to set an example of high human rights standards, the United States should be able to follow the Basic Principles recommended by the United Nations, which advise that law enforcement officers only use deadly force after less extreme measures have been exhausted, and only when strictly unavoidable in order to protect life.

2. **End Militarization of the Policing Culture.** The Ferguson Action 12 point plan properly calls for the end of the 1033 program and the associated provision of military equipment to local police departments by the pentagon. Additionally, local police departments should end the militarization of policing culture by (i) Ending the use of wartime language such as the "war on drugs," (ii) Ending the strategic recruitment of military veterans without addressing PTSD concerns and re-training them to see the communities they police as citizens and not enemies in a warzone (iii) Adoption of community policing tactics instead of militarized "hot spot" policing methods that use military tactics against American citizens as if they were enemy combatants.

3. **Urge accountability for racial profiling, state sponsored violence, and the excessive use of force on protesters by**: (i) issuing a formal letter condemning Ferguson Police Chief Thomas Jackson; (ii) Calling for the placement of the Ferguson Police Department under federal receivership to hold it accountable for systematically targeting and harassing residents of color in a predatory and degrading manner; (iii) Calling upon Missouri Governor Jay Nixon to accept responsibility on behalf of the State of Missouri for the intimidation and excessive force used against protesters following Michael Brown's murder, and calling for the provision of remuneration for damages suffered; and (iv) Calling for amnesty for those protesters arrested while protesting the killing of Michael Brown; and (v) implementing systematic accountability mechanisms, such as civilian oversight boards with the power to fire and fine individual officers, or mandatory personal liability insurance with the power to raise premiums on officers based on a

pattern of police complaints.

4. **End racial profiling and racially-biased police harassment across the jurisdictions surrounding Ferguson, Missouri (referred to as North County), as documented by statistics compiled by the State of Missouri.** To that end we recommend: (i) ensuring that Missouri police forces are racially integrated and reflective of the communities they police and create a cause of action under Missouri's existing racial profiling law; (ii) establishing a minimum population for a police department; (iii) developing a strategy for creating a community policing culture in Ferguson and the surrounding St. Louis County espousing principles as laid out in the Quality Policing Initiative;[9] (iv) condition state funding to municipal police departments based on minimum standards regarding use of force and the targeting of racial minorities.

Sincerely,

Ferguson to Geneva Delegation

[9] http://obs-onthemove.org/featured/quality-policing-initiative/

Written Statement of PEN American Center
Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Hearing on

The State of Civil and Human Rights in the United States
Tuesday, December 9, 2014 at 2:30 pm

Submitted by PEN American Center

For further information contact Katherine Glenn Bass, Deputy Director for Free Expression Programs, at kglennbass@pen.org

PEN American Center welcomes the opportunity to submit testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for its hearing on The State of Civil and Human Rights in the United States, and urges the Subcommittee to take steps to better protect press freedoms during U.S. public demonstrations.

PEN American Center, Inc. (PEN) is a non-profit association of writers that includes poets, playwrights, essayists, novelists, editors, screenwriters, journalists, literary agents, and translators. PEN has approximately 3,600 members and is affiliated with PEN International, the global writers' organization with 145 centers in more than 100 countries in Europe, Asia, Africa, Australia, and the Americas. Today, PEN works along with the other chapters of PEN International to celebrate literature and defend freedom of expression around the world. This work includes defending journalists and speaking out against violations of freedom of the press in the United States and abroad. PEN's testimony today focuses on a wide range of press freedom violations reported by journalists covering the Ferguson, Missouri protests related to the killing of Michael Brown, and the need for guidelines and training for police regarding respect for the rights of members of the press and citizen journalists documenting public demonstrations.

I. Press Freedom Violations During the Ferguson, Missouri Protests

On August 9, 2014, Ferguson Police Department Officer Darren Wilson shot Michael Brown six times, killing him. Brown's killing touched off protests in Ferguson that have grown into ongoing demonstrations. Particularly during the month of August, the aggressive law enforcement response to the protests drew national attention. As the protests continued, reports of police interference with the media, including arrests, physical assault, threats, and obstructing the media's access to the scene, became increasingly frequent. PEN has compiled information on 52 alleged violations of freedom of the press during the Ferguson protests, which we published in a report titled *Press Freedom Under Fire in Ferguson*.[1] This information was gathered from reviews of news reports filed by journalists present during the protests, pictures and video recordings of the protests, the Twitter feeds of journalists, and telephone interviews and email conversations with journalists and media law experts. The infringements on press freedom observed in Ferguson contravene rights that are protected under both the U.S. Constitution and international human rights law.

a. Role of the Press in the Ferguson Protests

The issue of press freedom in Ferguson deserves attention not at the expense of, but in addition to, much-needed investigations into civil rights violations by local police in the St. Louis area. The media play a valuable role in documenting abuses and disseminating information about them to the public, thereby supporting citizens' efforts to demand accountability for violations of constitutional and human rights. Photographs, video footage, and journalists' reports from the scene in Ferguson played a crucial part in sparking a nationwide debate over the police response to the protests. In addition, the media's presence at a public protest may act to deter law enforcement officers from violating protestors' rights. Put another way, as shocking as the police response to the Ferguson protests was, it might have been even worse if the media had not been present.

Journalists on the ground in Ferguson also helped expose the deeper human rights issues driving the protests. Media interviews with protestors and investigations into the local political context quickly made clear that protestors were concerned not only with the killing of Michael Brown, but also with years of tense relations between the community and law enforcement, underrepresentation of minorities in local government and on police forces, the aggressive and arbitrary enforcement of traffic laws and fines, and ongoing economic malaise affecting local communities.[2]

b. The Police and the Press in Ferguson

PEN's testimony is not intended as a blanket condemnation of the law enforcement officers who policed the Ferguson protests. Many of the officers no doubt acted in good faith and were trying to protect the safety of their fellow officers and those present at the protests under difficult circumstances. At some points during the protests, individuals present in the crowds were armed and fired weapons.

However, the number of reported abuses collected by PEN strongly suggests that some police officers were deliberately trying to prevent the media from documenting the protests and the police response. The many and varied ways in which police interfered with the media's ability to do their job makes it difficult to dismiss these as isolated mistakes. At best, they reflect a failure to adequately train the law enforcement officers present in Ferguson on the rights of the press protected by the First Amendment and international human rights law.

c. Upholding Press Freedom in an Evolving Media Landscape

The need for better training for police is heightened by the changing nature of journalism in the digital age. New technologies allow everyone to engage in acts of journalism: Citizen journalists can begin recording incidents of police abuse on a cameraphone instantly, well before professional media arrive on the scene.[3] Those with a Twitter account can live-tweet their observations of a protest or any police conduct undertaken in public. Citizen journalists play an increasingly important role in the flow of news to the public: A Pew Research Center study found that the story of Michael Brown's killing and the resulting protests "emerged on Twitter before cable", and social media played a crucial role in documenting the continuing protests.[4] The National Press Photographers' Association called citizen journalists "an integral part of the information network" on Ferguson.[5]

The emergence of citizen journalists presents new challenges for police departments seeking to uphold press freedoms. Many journalists interviewed by PEN noted that it was sometimes difficult to distinguish members of the press from protestors in Ferguson, and that this may have made it more difficult for police officers to act in a way that respected press freedoms.[6] At the same time, many of the incidents of police aggression against journalists documented by PEN are constitutional and human rights violations regardless of whether the police recognized the individual concerned as a member of the press. Both the public and the press have the right to photograph and/or film police officers in the course of their duties.[7] It is as impermissable to

threaten to shoot a member of the public for attempting to film the police as it is to threaten a journalist.

d. Covering Protests: The Wider Context

The treatment of journalists in Ferguson did not occur in isolation. Journalists' ability to report on public protests in the U.S. has been jeopardized on many occasions in recent years, an indication that a nationwide reform effort is required to ensure that police departments fully respect the media's right to access and document protests. There were numerous reports from the last several Democratic and Republican National Conventions of journalists being arrested or assaulted by police, or police obstructing press access to public protest locations.[8] During the 2008 Republican National Convention in St. Paul, Minnesota, police arrested or detained at least 42 journalists, including *Democracy Now!* host Amy Goodman and two of the show's producers. Other journalists were pepper-sprayed or held at gunpoint by police.[9] Goodman said of her arrest, "It's so much bigger than us. When the press is shut down, it's closing the eyes and ears of a critical watchdog in a democratic society."[10]

During the Occupy Wall Street movement, police arrested at least 90 journalists covering the protests in 12 U.S. cities between September 2011 and September 2012, including journalists with major news outlets, photojournalists, freelancers, livestreamers (journalists holding cameras that feed directly to an online site, providing continuous, live coverage of an event), and citizen journalists.[11] On numerous occasions, police in New York City acted to obstruct journalists' access to the Occupy protests and physically assaulted journalists. These attacks on press freedoms continued even after New York City Police Commissioner Ray Kelly issued a directive to officers instructing them to "respect the public's right to know about these events and the media's right of access to report."[12]

The frequency of arrests of journalists covering major U.S. public demonstrations, and of incidents of police obstructing journalists' access to protests or assaulting journalists who are covering a protest, point to a need for greater emphasis in police departments on the rights of the press to access and document public protests. Furthermore, as new technologies redefine how we understand journalism and major news publications and citizen journalists make increasing use of digital media, conventional approaches to upholding press freedom must adapt, and new training is required to assist police in understanding the rights of all individuals who engage in acts of journalism. [13]

II. Legal Protections for Freedom of the Press

a. Freedom of the Press Generally

Freedom of the press is protected both by the U.S. Constitution and under international law. Freedom of the press is enshrined in the First Amendment, which provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of

> the people peaceably to assemble, and to petition the government for a redress of grievances."[14]

The Supreme Court has defined "press" in the context of this amendment as "every sort of publication which affords a vehicle of information and opinion."[15]

Under international law, the right to freedom of expression, including the right to freedom of the press, is protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which the United States is a state party.[16] Freedom of expression as defined by Article 19 includes the "freedom to seek, receive and impart information and ideas of all kinds."[17] The United Nations Human Rights Committee, the body that provides authoritative interpretations of the ICCPR's provisions, has recognized that journalism may be engaged in not only by professional full-time reporters, but also "bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere."[18]

b. Newsgathering and the Media's Right of Access

The media's right to engage in the process of newsgathering is also protected under the U.S. Constitution and international law. The Supreme Court first protected newsgathering in *Branzburg v. Hayes*, a 1972 Supreme Court decision in which Justice Byron White wrote for the majority:

> "We do not question the significance of free speech, press, or assembly to the country's welfare. Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated."[19]

Justice Potter Stewart underscored this principle in his dissent:

> "News must not be unnecessarily cut off at its source, for without freedom to acquire information the right to publish would be impermissibly compromised. Accordingly, a right to gather news, of some dimension, must exist."[20]

The United Nations Human Rights Committee has affirmed that the right to freedom of expression protects both the dissemination of news and the process of newsgathering.[21]

Although generally applicable laws cannot be considered unconstitutional simply because they affect newsgathering activities,[22] restrictions on the times, places and ways in which reporters may gather news must not discriminate based on the content or the opinions expressed by the journalist or news outlet, must be defined as narrowly as possible and must serve a significant government interest, and must leave open alternative channels for expression and communication.[23] In general, the public and the press have the right to access public spaces, including parks, streets and sidewalks, as well as other spaces that have been made available for public use by the government.[24] Several states, including Alaska, California, Ohio, and Virginia, have enacted laws that specifically protect journalists' access to disaster and emergency scenes.[25]

Under international law

Under most circumstances, deliberate interference with newsgathering violates international law. The UN Human Rights Committee has stated that restrictions on the movement of journalists are rarely justified, specifically noting that journalists' access to "conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses" should not be restricted.[26] Attacks against journalists or others involved in monitoring potential abuses of human rights, including arbitrary arrests, threats and intimidation, should be "vigorously investigated" and the perpetrators should be prosecuted.[27]

Freedom of expression, including freedom of the press, may be subject to certain restrictions under international law, but these are strictly limited.[28] Limitations on press freedom implemented in the name of protecting public order must satisfy certain conditions, as the Human Rights Committee has explained:

> "It is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression…When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat."[29]

c. The Right to Film the Police

Filming the police in the course of their duties allows citizens to hold police officers accountable for abuses of power, and may also act as a deterrent to such abuses.[30] A plurality of U.S. appellate courts have explicitly recognized citizens' First Amendment right to film the police subject to varying reasonable limitations,[31] stated most clearly by the 1st Circuit:

> "[A] citizen's right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment."[32]

Notably, the U.S. Department of Justice has strongly supported this position, stating:

> "It is now settled law that the First Amendment protects individuals who photograph or otherwise record officers engaging in police activity in a public place…The reach of the First Amendment's protection extends beyond the right to gather information critical of public officials – it also prohibits government officials from 'punish[ing] the dissemination of information relating to alleged governmental misconduct.'"[33]

III. Violations of Press Freedoms in Ferguson

Journalists have alleged a wide range of violations of their right to report on the Ferguson protests, including arrests of media workers, threatening conduct and physical aggression from police officers, and obstruction of media access to the protest areas. The journalists involved include accredited journalists from leading news outlets, freelancers, photographers, livestreamers, and citizen journalists.

Many of the violations of press freedoms catalogued by PEN likely could have been avoided if the police had responded to the protests in a manner that allowed for dialogue and interaction between those present at the protests and law enforcement officers. A more measured response may also have prevented many of the violations of protestors' First Amendment rights that occurred. The Ferguson and Missouri state authorities' decision to respond to the protests with a large, heavily militarized police contingent set the stage for massive, widespread violations of assembly and press rights. Almost every journalist interviewed by PEN for its report commented on the militarized police response and the negative impact it had on the situation in Ferguson. The decision to respond to largely peaceful protests with an overwhelming show of force immediately created an atmosphere of tension and fear, provoking anger from protestors who felt the response was unjustified.

PEN researchers documented numerous alleged press freedom violations falling into four major categories:[34]

- 21 arrests of journalists;
- 13 incidents of journalists threatened with guns, other weapons, or bodily harm;
- 11 incidents of obstruction of the media by law enforcement officers;
- 7 incidents of journalists who were teargassed, hit with rubber bullets or other less-lethal ammunition, or physically pushed by police.

A few illustrative incidents from each of these categories are submitted for the Subcommittee's consideration below.

a. Arrests of Journalists

Since August 12th, at least 21 journalists have been arrested in the course of reporting from Ferguson.[35] Many of the arrested journalists were released after police verified that they were press, or after a short period of detention. This could be interpreted as an effort by police to respect press freedoms. However, Mickey Osterreicher, lawyer for the National Press Photographers' Association, characterized this pattern differently: "The police don't care about making charges that stick. They just want to stop the journalists from doing the job, which creates a chilling effect." Osterreicher described the practice of briefly detaining journalists as "catch and release."[36]

Bilgin Şaşmaz

Bilgin Şaşmaz, a Turkish reporter and photographer, was documenting a clash between police and protestors in Ferguson on August 19th.[37] Şaşmaz told his news outlet, the *Anadolu Agency*, that his life was threatened while he was photographing a St. Louis County police officer who was about to fire rubber bullets. "The policeman told me: 'If you direct your flash toward me once again, I will kill you,'" Şaşmaz recounted. He was forced to the ground for his refusal to stop filming, while shouting that he was press, before he was handcuffed and taken to jail. He was released after five hours, and the officer implicated in the incident was later suspended.[38]

Ryan Devereaux & Lukas Hermsmeier

In the early morning hours of August 19th, reporters Ryan Devereaux of *The Intercept* and Lukas Hermsmeier of the German newspaper *Bild* were driving near the area of the protests, making their way towards a "command center" that had been set up for journalists. Crossing W. Florissant Ave., they heard police megaphones tell protestors that it was their "final warning."[39] The pair stopped the car and got out to see what was happening. While talking to a group of peaceful protestors, police fired tear gas in their direction. The interviewees left, and the two reporters returned to W. Florissant to document what munitions the police were using.

At this point, the police were patrolling W. Florissant in armored vehicles and intermittently firing tear gas canisters. The two reporters needed to cross W. Florissant to return to their car, and intended to walk along a street running parallel to W. Florissant until they could cross the avenue in an area not filled with tear gas. Devereaux described the ensuing situation:

> "At one point the police vehicle takes a left into the neighborhood we're in. If they take another left they'll be on the street we're on. We decided we should identify ourselves as press as they're coming into neighborhood, to make sure they know we're journalists. We come out from the shadows with our hands up. I have a press ID card in my hand, yelling, 'Press! Press! Press! We're journalists! Media! Media! Media!'"[40]

Police in one vehicle shone a light on the pair and directed them forward. They advanced, still shouting "Press!" and were directed towards another armored vehicle. As they were approaching that vehicle, the group of officers in the vehicle that had initially directed them to move forward began to fire rubber bullets at them. Devereaux was struck once in the back and Hermsmeier was shot twice.[41] According to Devereaux, the police had "made no verbal commands that we had heard" before beginning to shoot.[42]

The reporters dove behind a car to get out of the line of fire, at which point police swarmed around them. They repeatedly told police that they were press just trying to get to their car. Police arrested them using plastic flex cuffs and put them in the back of an armored car. Devereaux stated, "They didn't tell us we were under arrest, and didn't tell us why. They asked us why we were out, and I said the same reason you are- we're working, we're journalists. They said they were getting a bad reputation for their handling of the protests."[43] The two were taken to jail in nearby Clayton and held until the morning. Only then did they find out the grounds on which they were detained—failure to disperse.[44] Devereaux added that later "I was able to speak to Missouri Highway Patrol Captain Ron Johnson about being detained. He was respectful and apologetic for what happened, and willing to have a fairly reasonable conversation about it, and I appreciated that."[45]

b. Threatening Conduct by Police Officers

Many journalists in Ferguson reported that police officers engaged in intimidating or threatening conduct towards them. An alarming number of these reports involved police officers allegedly pointing their weapons at journalists after the journalists had asked them a question or engaged in newsgathering activities like photographing or filming.

- Alice Speri of *VICE* reported in an August 13th tweet, "Officer literally just asked me if I want to get shot (for taking a photo of all things...)."[46]

- As police advanced towards a group of protestors on August 17th, some members of the media trailed behind the moving line of police. Unable to see over the police equipment, MSNBC's Chris Hayes inched forward among the group of officers and media. On video, an officer begins shouting, "Hey! Media! Do not pass us. Next time you pass us you're getting maced."[47]
- As Argus Radio live-streamed the events of August 17th, officers were disturbed by a light coming from their video camera. In an incident captured on video, an officer approaches streamer Mustafa Hussein, shouting, "Get the f-ck out of here and get that light off or you're getting shelled with this."[48]
- On August 19th, in an incident of considerable notoriety that was captured on video, a heavily equipped police officer is seen pointing an assault rifle at a man who is holding a video camera to live-stream the events. The livestreamer notes that the officer, at a distance of about ten feet, has the gun pointed directly at him.[49] He tells the officer that his hands are up, and that there is no need to point the gun. The officer responds, saying "I will f-cking kill you." The livestreamer then asks for the officer's name, which prompts the uniformed man to respond, "Go f-ck yourself."[50] More media arrive to film the officer, when a St. Louis County officer approaches the first and pushes his gun downward, so that it is no longer pointing at the livestreamer and the group of people standing with him.[51]

c. Tear Gas: Al Jazeera America and KSDK-TV

In a widely publicized incident, police in Ferguson allegedly fired tear gas directly at an Al Jazeera news crew. On the night of August 13th, Al Jazeera America's crew was filming a developing protest. Police had been firing tear gas and rubber bullets at protestors. As caught on video by a crew for KSDK, a St. Louis-based news station, the Al Jazeera crew did not appear to be near any protestors, or anyone else, when police launched a tear gas canister that landed among the camera equipment. The crew was forced to flee, leaving their equipment set up.[52] The crew also reported that the police fired rubber bullets in their direction, even after the crew repeatedly shouted, "Press."[53] Shortly after this incident, the KSDK crew that caught the tear gassing on video reported that a SWAT team approached their SUV with guns drawn. KSDK reporter Elizabeth Matthews said that she and a photojournalist were in the SUV with their hands up. The third member of their crew got down on his knees in front of the SUV and raised his hands, telling police he was with the press.[54] One of the crew's photojournalists also reported that a beanbag round (a form of less-lethal ammunition used by police) was fired at his camera equipment shortly before the tear gas incident, and the precise moment was caught on camera by another photographer.[55]

d. Obstruction of Press Activity

Journalists reported numerous instances in which the police obstructed their ability to work, either by attempting to bar them from entering an area, ordering them to leave an area, or restricting them to a designated area.

- Alexia Fernandez-Campbell and Reena Flores of the *National Journal* reported that on August 13th they were delayed for 4½ hours attempting to access the protests by officers

who threatened them with arrest and obstruction. Police told the pair that protests were over, when in fact they were ongoing. Police alternated between asking that they consider their own safety before entering and informing them that they would face arrest if they insisted on entering the protest area. Fernandez-Campbell and Flores described police efforts as trying to create a "media blackout," and quote St. Louis County police officers as saying: "I want you to get out of here..."You're not going to walk down the street. If you insist on going down here, and you want to disobey the orders of the police that have been given to you, thoroughly and fairly, you'll most likely be placed under arrest." After Fernandez-Campbell and Flores made it to the scene of the protests, a different group of officers who saw them filming approached and said, "We're gonna put you under arrest if you don't leave the area. This is your final warning...We don't want to have to take you to jail but we definitely will, OK?"[56]

- On August 18th, Ryan Devereaux of *The Intercept* reported that police were pointing their guns at people with cameras, in an apparent attempt to shine the flashlights attached to the guns into the cameras and cameraphones of people trying to film or photograph them.[57]

Police orders directed at the media were sometimes confusing and contradictory. On the night of August 19, police had a "five-second rule" in place—protestors could not stand in one place, and had to be continuously moving. At one point, the police ordered the media to go to the press area and ordered protestors to leave. One journalist present at the scene reported, "We walked out and were told we need to go to the press area, the police blocked me and said go the other way, and then another cop tried to turn us back to go the other way. I just tried to clarify which direction they wanted us to go, and a cop drew his gun, pointed it at me, and said, 'you need to go that way or everyone's going to be arrested,' motioning at me with his gun. I had credentials and three cameras hanging around my neck. The whole thing was absurd."[58] The journalist commented, "That group of cops on that night [August 19]—that was the worst batch. Those guys, I thought I was going to get shot."[59] The "five-second rule" has since been declared unconstitutional by a federal judge.[60]

Respect for freedom of the press is inextricably linked to respect for all other constitutional and human rights. The press plays an essential role in documenting human rights abuses, disseminating information about those abuses to the public, and generating evidence that can be used to press for accountability and reform measures. Interference with press freedoms in Ferguson is troubling both because it suggests a lack of respect on the part of the police for the role of the media, and because it restricts the flow of information about police conduct in Ferguson to the general public, hindering democratic debate about the range of policy and social issues at stake in the Ferguson demonstrations. In addition, journalists' right to report on public protests has been infringed on numerous occasions in recent years, indicating that press freedoms at public protests is a recurring issue in need of broader investigation and steps toward reform.

Furthermore, the number of alleged incidents recorded by PEN indicates that St. Louis-area police were not adequately trained on how to respect media freedoms during public protests.

IV. Recommendations

1. PEN urges Congress to hold a hearing on the treatment of the press by law enforcement during U.S. public demonstrations, with a primary focus on violations of freedom of the press in Ferguson, Missouri, and the need for better training and oversight of police departments regarding respect for media freedoms during protests. Such a hearing would shed essential light on the factors that drove law enforcement officers in Ferguson to infringe on media freedoms, and on the necessary steps to ensure that in an era of instantaneous transmission, cellphone cameras and citizen journalists, the rights of members of the press and of the public at large are upheld in the context of protests and public assemblies.

2. PEN urges Congress to provide federal funding through the Department of Justice to open an investigation into reported incidents of infringements on press freedoms during public protests in Ferguson and in the many other U.S. cities where such reports have emerged, with a view to developing guidelines for the policing of public protests that emphasizes respect for the rights to assembly and freedom of the press, including the rights of citizen journalists. These guidelines should serve as the basis for police departments to develop new policies on respect for First Amendment freedoms during public demonstrations, trainings on those policies for all officers, and the implementation of disciplinary proceedings for officers who violate the policies.

Endnotes

[1] PEN American Center, *Press Freedom Under Fire in Ferguson*, October 26, 2014, http://pen.org/ferguson.
[2] *See, e.g.*, Wesley Lowery, Carol Leonnig & Mark Berman, *Even Before Michael Brown's Slaying in Ferguson, Racial Questions Hung over Police*, WASH. POST, Aug. 13, 2014, http://www.washingtonpost.com/politics/even-before-teen-michael-browns-slaying-in-mo-racial-questions-have-hung-over-police/2014/08/13/78b3c5c6-2307-11e4-86ca-6f03cbd15c1a_story.html?hpid=z2; Sarah Kendzior and Umar Lee, *After Ferguson*, POLITICO MAGAZINE, Aug. 26, 2014, http://www.politico.com/magazine/story/2014/08/ferguson-st-louis-suburbs-poverty-110363.html#.VElSf_nF_Vu; Radley Balko, *How Municipalities in St. Louis County, Mo., Profit from Poverty*, WASH. POST, Sept. 3, 2014, http://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/.
[3] *See* Josh Stearns, *Acts of Journalism: Defining Press Freedom in the Digital Age*, October 2013, http://www.freepress.net/sites/default/files/resources/Acts_of_Journalism_October_2013.pdf; Josh Stearns, *Why I'm Tracking Journalist Arrests at Occupy Protests*, GROUNDSWORK, Nov. 14, 2011, http://stearns.wordpress.com/2011/11/14/why-im-tracking-journalists-arrests-at-occupy-protests/#more-883.
[4] Paul Hitlin and Nancy Vogt, *Cable, Twitter picked up Ferguson story at a similar clip*, PEW RESEARCH CENTER, Aug. 20, 2014, http://www.pewresearch.org/fact-tank/2014/08/20/cable-twitter-picked-up-ferguson-story-at-a-similar-clip/.
[5] Sherry Ricchiardi, *Ferguson Police Bullied the Media,* NEW PHOTOGRAPHER MAGAZINE, National Press Photographers Association 58, 59 (September 2014).
[6] Journalist Interview 3, Telephone Interview with Katy Glenn Bass, Deputy Director of Free Expression Programs, PEN American Center (Aug. 28, 2014); Elise Hu, Telephone Interview with Katy Glenn Bass, Deputy Director of Free Expression Programs, PEN American Center (Aug. 29, 2014); Journalist Interview 8, Telephone Interview with Katy Glenn Bass, Deputy Director of Free Expression Programs, PEN American Center (Sept. 3, 2014).
[7] *See infra* Section II.
[8] *Reporters Beware at Upcoming Conventions*, THE NEWS MEDIA & THE LAW, Summer 2008, at 12, *available at* http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-summer-2008/reporters-beware-upcoming-c.
[9] Anna Pratt, *Cataloguing the RNC's Journalist Detainees*, MINNESOTA INDEPENDENT, Sept. 12, 2008, http://www.tcdailyplanet.net/article/2008/09/10/cataloguing-rnc-s-journalist-detainees.html; Megan Tady, *Tactic of Arresting RNC Journalists Still Questioned After Charges Dropped*, FREE PRESS, Sept. 23, 2008, http://www.freepress.net/blog/08/09/23/tactic-arresting-rnc-journalists-still-questioned-after-charges-dropped.
[10] Kate Linthicum, *Amy Goodman, One of Four Journalists Arrested at an Anti-RNC Protest, Tells Her Story*, L.A. TIMES, Sept. 3, 2008, http://latimesblogs.latimes.com/washington/2008/09/amy-goodman-arr.html.
[11] Josh Stearns, *Tracking Journalist Arrests at Occupy Protests Around the Country*, STORIFY, September 2012, https://storify.com/jcstearns/tracking-journalist-arrests-during-the-occupy-prot.
[12] Michael Powell, *The Rules on News Coverage Are Clear, But the Police Keep Pushing*, N.Y. TIMES, Jan. 2, 2012, http://www.nytimes.com/2012/01/03/nyregion/at-wall-street-protests-clash-of-reporting-and-policing.html?_r=0;, SUPPRESSING PROTEST: HUMAN RIGHTS VIOLATIONS IN THE U.S. RESPONSE TO OCCUPY WALL STREET [hereinafter SUPPRESSING PROTEST], THE GLOBAL JUSTICE CLINIC (NYU SCHOOL OF LAW) & THE WALTER LEITNER INTERNATIONAL HUMAN RIGHTS CLINIC AT THE LEITNER CENTER FOR INTERNATIONAL LAW AND JUSTICE (FORDHAM LAW SCHOOL) (2012), p. 84-90.
[13] Josh Stearns, *Why I'm Tracking Journalist Arrests at Occupy Protests*, GROUNDSWORK, Nov. 14, 2011, http://stearns.wordpress.com/2011/11/14/why-im-tracking-journalists-arrests-at-occupy-protests/#more-883.
[14] The Fourteenth Amendment's due process clause extends constitutional protection of press freedom to actions taken by state and local governments. Near v. Minn., 283 U.S. 697, 51 S.Ct. 625 (1931).
[15] Lovell v. City of Griffin, 303 U.S. 444, 452 (1938).
[16] International Covenant on Civil and Political Rights art. 19, Dec. 19, 1966 [hereinafter Art. 19]; *see also* Construction and Application of International Covenant on Civil and Political Rights, 11 A.L.R. Fed. 2d 751 (detailing ICCPR's limited implementation in the United States).
[17] ICCPR Art. 19 (2).
[18] U.N. Human Rights Comm., *General Comment No. 34, Article 19: Freedoms of Opinion and Expression* ¶ 44, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *General Comment No. 34*], *available at*

http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf (noting, in addition, that any accreditation schemes to enable privileged access must be applied in a non-discriminatory manner, based on objective criteria, and "taking into account that journalism is a function shared by a wide range of actors."); *see also* SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, FOURTH REP. ON THE SITUATION OF HUMAN RIGHTS DEFENDERS ¶ 122, U.N. Doc. A/HRC/19/55 (December 21, 2011), *available at* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55_en.pdf (stating that the "protection of journalists and media workers active on human rights issues should not be limited to those formally recognized as such, but should include other relevant actors, such as community media workers, bloggers and those monitoring demonstrations.").

[19] Branzburg v. Hayes, 408 U.S. 665 (1972), 681.

[20] *Id.* at 707. The Supreme Court reaffirmed this right in Richmond Newspapers v. Virginia, 448 U.S. 555 (1980), 576-78 ("It is not crucial whether we describe this right to attend criminal trials to hear, see, and communicate observations concerning them as a 'right of access,' or a 'right to gather information,'...The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily.").

[21] *See General Comment No. 34* at ¶¶ 11-14.

[22] *Id.* at 728.

[23] Ward v. Rock Against Racism, 491 U.S. 781 (1989).

[24] Lee Levine, Robert C. Lind, Seth D. Berlin & C. Thomas Dienes, *Newsgathering and the Law*, §9.03 (4th Ed. Matthew Bender & Company 2011).

[25] Alaska Stat. § 26.23.200(1)(2004); Cal. Penal Code § 409.5(a),(d)(2004); Ohio Rev. Code Ann. § 2917.13(B)(2004); Va. Code Ann. § 15.2-1714 (2014).

[26] *General Comment No. 34* at ¶ 45.

[27] *Id.* at ¶ 23.

[28] ICCPR art. 19 at ¶ 3 (restrictions on freedom of expression are limited to situations which implicate the rights of others or for the protection of national security, public order, public health, or morals).

[29] *General Comment No. 34* at ¶¶ 27-35. *See also* SUPPRESSING PROTEST at p. 56, note 361.

[30] STEVEN A. LAUTT, SUNLIGHT IS STILL THE BEST DISINFECTANT: THE CASE FOR A FIRST AMENDMENT RIGHT TO RECORD THE POLICE, 51 Washburn L.J. 349, 372 (2012) ("[T]hose who record police activity perform much the same service as the pamphleteers who brought to light abuses of power during the years preceding the founding of the United States").

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Special Project by Kimberly Castaneda
Created for Women's All Points Bulletin and victims of Police Sexual Assault
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December 2, 2014
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Presented to the State of Civil and Human Rights in the United States' Hearing before the

Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

December 09, 2014

Under the Threat of the Gun

Invisible Betrayal 3: Police Sexual Misconduct

This complaint is being submitted on behalf of women victims of sexual abuse, assault, harassment and rape by United States law enforcement personnel. The WAPB, Women's All Points Bulletin, is concerned that sexual crimes committed by law enforcement officers are not properly and independently investigated; data is not being collected to establish a baseline of the damage and allow for proactive management and monitoring, there is no zero-tolerance policy and law enforcement is not being held criminally responsible and accountable for these acts. Our concern has resulted in the submission of two "shadow reports" to the United Nations, discussing the endemic rapes by police, particularly against women of color. There is now this complaint that will be submitted to several UN Special Rapporteurs for investigation; please considered this an advanced courtesy copy.

To begin, per the CATO Institute, law enforcement defines sexual misconduct as, "any behavior by an officer that takes advantage of the officer's position in law enforcement to misuse authority and power (including force) in order to commit a sexual act, initiate sexual contact with

another person, or respond to a perceived sexually motivated cue (from a subtle suggestion to an overt action) from another person." Sexual contact by force is one of the forms of sexual misconduct that is perpetuated by law enforcement; an example of this would be rape.

In our first shadow report, *American Police Crimes against African American Women and Women of Color*, we stated that between the years of 2008-2010, 71.6% of complaints against the Chicago Police Department were African American women, and 87% of all the complaints are women of color. In that same report, we cited research by the CATO Institute's 2010 National Police Misconduct Reporting Project that calculated law enforcement sexual assault crimes at more than double those of the general public, at 67.8 per 100K, although more conservative calculations report it is 1.5 times higher than the general public, which is still an unacceptably high level, especially because the perpetuators are sworn law enforcement officers.

We can only extrapolate conclusions because data collection on police involved sexual misconduct is practically non-existence and sorely underreported or inaccurate. Although the U.S. Government is aware of the problem (the U.S. Office of Violence Against Women funded research on sexual offenses and misconduct by law enforcement completed by the International Association of Chiefs of Police in June 2011), there have been no attempt to provide the public, or police departments, with data or viable working solutions.

How are we to protect women and address questions posed by Paula Carter in her February 2011 article, Rapists with Badges, "How is a woman supposed to protect herself from a 'predator with a badge'? The weapon of choice for many of the above officers was their purported authority. When the perpetrator can threaten you with time in a cage, how likely are you to stand up for yourself? When the perpetrator is armed with a sidearm, pepper spray, a taser and handcuffs, how is even the toughest person supposed to fight off unwanted advances?" With

built-in or inherent intimidation, coupled with a male dominated department, and a criminal justice system that favors law enforcement, the likelihood that police will become sexual predators is proven by the cases against some of the most egregious perpetuators.

An example of the above mentioned malady is alleged predator Daniel Holtzclaw, a Norman, Oklahoma, police officer, who is presently charged with raping 13 women and being placed on administrative leave in June of 2014. Victims accused him of sexual assault, and asking for sexual favors in lieu of a violation, arrest, or ticket. Holtzclaw was charged with 13 counts of sexual assault which included rape and of those allegations 7 of the women are African American. One of his victims is a 17 year-old that claimed Holtzclaw drove her to her mother's home and then raped her on her mother's porch. The teenager stated she did not know what to do, testifying, "What am I going to do? Call the cops? He was a cop" (Dinger 2014). Additionally, Holtzclaw's bail was set at $5 million dollars, but was later reduced to $500,000 which he paid and was confined to his home. Meanwhile his victims are left with emotional, physical and mental scars that will last a lifetime.

Women of color live on a double edged sword, they are driving while brown and driving while female, so their chances of getting pulled over and abused by police are much higher than those of a Anglo females, although we know that no one is safe. Research into racial profiling provides startling evidence that police will target African Americans and women of color. Rogue officers will abuse their power and take advantage of women in these situations (Walker and Irlbeck).

A study has found that when it came to excessive force lawsuits, the ratio of officers involved was much higher for male officers compared to female officers, we can extrapolate that female officers would be less likely than male officers to commit acts of sexual violence, and

increased levels of recruitment of female officers would be a first step in preventing sexual assault among the forces.

More examples of officers abusing their power include cases with police Explorer programs. A Pensacola, Florida, police officer resigned in May 2003 after he made a sixteen year old girl perform jumping jacks topless. In West Virginia, a 20 year veteran of the Wheeling Police Department was indicted on 2 counts of sexual misconduct with 2 girls under the age of 13. A Sacramento, California police officer was arraigned on charges of rape, sexual assault, and other crimes he was accused of committing while on duty. The officer is charged with 17 felony and misdemeanor counts stemming from reported attacks on a 16 year old girl and 5 women. A Ferguson, Missouri, police officer was sentenced to 9 months in jail and five years of probation after admitting he had sexual relations several times with an underage girl (Walker and Irlbeck).

Rape culture is defined by Marshall University as an environment in which rape is prevalent and in which sexual violence against women is normalized and excused in the media and popular culture. The United Nation's Convention Against Torture states that, "Torture includes any acts committed by a public official, law enforcement or other government entity that causes severe pain or suffering in order to punish the person for an act s/he has committed or is suspected to have committed, or for any reason based on discrimination of any kind." Rape is torture, especially against women, and most certainly against women of color. We live in a society where rape is seen as normal and excusable, and we must resist the idea of accepting "rape culture" and hold everyone accountable for their crimes, even if they are wearing a badge. We must also recognize rape of women as a hate crime.

Additionally, the fact that we live in a increasing and highly militarized society where military culture, tactics, training and weapons are used in local and national law enforcement agencies is not to be discounted in this complaint. Many local law enforcement departments specifically use the military as recruiting grounds and resources, not only offering jobs and benefits for those who have previously served in the military, but prioritizing their applications. The LAPD offers testing onsite at Camp Pendleton, and they even offer military credits to their personal profile once hired. The Philadelphia Police Department openly announces their direct recruitment of veterans, and states this on their website: "The Police Department is structured as a para-military organization. This means that we employ a culture and protocols that closely approximate those of the armed forces." We are not complaining about our good men and women soldier recruits, but we must address the United States military's definition of rape as an "occupational hazard" and its dismal record on disciplining its rapist. Imagine having military veterans who are trained to kill and use force, join the local police forces suffering from post traumatic stress, and living in a culture that considers rape an "occupational hazard"? The WAPB reiterates, while not addressing those who have served and their loyal service, a lack of punitive discipline and criminal convictions in the military coupled with previous impunity does pose issues when military predators and their protectors enter into the civilian world of policing. As a young Hispanic woman, I would not feel comfortable knowing that the military and other police agencies promote this type of culture. Whatever happened to *"Protect and Serve"?*

In closing, we are supporting the recommendations of the 2014 CAT Conventions Concluding Observations, including that independent agencies should investigate police crimes, and that a UN Special Rapporteur visit the United States to make a thorough investigative report on police sexual misconduct and crime in the United States

2014 CAT Concluding Observations

The state party should:

(a) Ensure that all instances of police brutality and excessive use of force by law enforcement officers are investigated promptly, effectively and *impartially* by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators;

(b) Prosecute persons suspected of torture or ill-treatment and, if found guilty, ensure that they are punished in accordance with the gravity of their acts.

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December 8, 2014

Statement of Utah Attorney General Sean D. Reyes, for the hearing on
"The State of Civil and Human Rights in the United States,"
Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights,
Tuesday, December 9, 2014
Dirksen Senate Office Building, Room 226
2:30 p.m.

Thank you, Senator Durbin, for convening this hearing on the state of individual civil and human rights in the United States. Thank you also for asking for my particular commentary on the use of military equipment and military-style tactics in domestic policing. The issue is of obvious importance given recent headlines, and the state of Utah in particular has been in the forefront of ensuring that law enforcement retains its traditional policing role of serving and protecting individual and public safety and welfare, while also protecting civil liberties and individual freedoms.

For the benefit of focus for the committee, I confine my remarks to that issue alone, and to Utah's response to it, both in my office and in recent legislation enacted by Utah lawmakers.

Last June, I participated in a Fourth Amendment Symposium, hosted by Utah's Libertas Institute and the American Civil Liberties Union of Utah, which specifically addressed the issues and potential problems inherent in the use of military equipment and military-style tactics in domestic policing. I was among a multi-partisan panel that included prosecutors—specifically myself, my Chief of Staff who also serves as Utah's Federal Solicitor, and Salt Lake County's District Attorney—as well Utah County's Sherriff, a former S.W.A.T. member and trainer, and a representative from ACLU's national office, who is one of that organization's foremost experts on the issue.

While the topic seemed broad, the focus of the symposium narrowed quickly around two specific questions: 1) were the use of military style equipment and tactics in themselves at necessary odds with the traditional goals of domestic policing?; and 2) were the presence of such

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equipment and tactics and equipment a sign of a shift in police culture that put law enforcement at odds with the public they are charged to protect and serve? The responses of the panel gave concrete answers to these questions.

First, it became evident that the use of stripped down military equipment for defensive purposes is often proper when it is used to further police officer and public safety in blatantly dangerous situations. For instance, in cases where police are going into obvious situations of heightened danger, where there is a bomb threat or heavy firearm resistance for instance, the use of armored transport (without active grenade launchers, heavy guns or other offensive military weapons), and use of military style body armor protection seems legitimate and proper, as they both protect law enforcement and allow them to secure an area which is eminently a threat to public safety and individual citizens. Under such conditions, the use of military-style equipment furthers the traditional police function of keeping the peace and protecting the public. As a law enforcement official, I find it proper that law enforcement personnel have the use of such equipment, and law enforcement deserves our full support to ensure that such equipment is properly used, trained on and deployed.

Some have criticized the use of such equipment, arguing that even its appearance is improper, and may cause the public danger as it heightens fear of our domestic police force. Such criticism misses the mark by taking appearance of militarization as a necessary consequence that the police are really acting in a military-type capacity. So long as the officers using the equipment are properly trained and employ such equipment only in situations only when necessary such as those referenced above, the mere presence of military equipment and tactics are not improper in themselves. The panel was in agreement that given a clear threat to public and officer safety, properly trained and properly managed law enforcement should have the tools to meet their duty to the public; specifically, keeping themselves and citizens they are protecting safe.

The panel also was nearly unanimous that the perceived evils associated with domestic police use of military equipment and tactics were actually issues having to do with proper training and with public perception. On the issue of public perception, it is evident that if there are any problems associated with domestic police use of military equipment and tactics it is driven by the fact that some police forces allow use of military style equipment by more officers than necessary. Rather than limiting use to SWAT units, which are typically highly trained in tactics and relevant law, law enforcement has seen a trend in other units utilizing SWAT equipment and tactics unnecessarily and often without adequate training. This can exacerbate both the reality and perception of abuse by law enforcement. Utah has taken important steps to address those issues.

In Utah last year, our state legislators tackled such issues even before they become actual problems. S.B. 185, which amended Utah Code Ann. § 77-7-8.5, requires disclosure and reporting of the use of military style equipment and tactic by state police entities, and requires maintaining the data on the use of such equipment to ensure that they are properly deployed to meet the traditional goals of law enforcement. Utah's legislative and executive branches take the ongoing supervision of police powers and police forces seriously, as S.B. 185 reflects.

Utah's protection of individual liberties was further evidenced by the passage of H.B. 70, which heightened requirement of notice for forcible warrantless entries by law enforcement and heightened warrant requirements for forcible entry and execution of warrants themselves. In addition, my administration similarly acted to protect individual liberties, by declining to use administrative subpoenas to gather information on individual's Internet or cell phone use, instead requiring the traditional warrant process to gather such data in all but dire emergency situations.

The perceived possible problems of domestic police use of military equipment and tactics are understandable. Historically, the proper function of the military is to defend against foreign enemies. The proper function of domestic police is to serve and protect the public. When domestic police use military equipment and tactics, it can raise the specter, whether warranted or not, that the public itself is being treated as an enemy of the state. Yet such is an appearance that doesn't necessarily follow as a logical consequence.

It is clear to me as Utah's Attorney General, that we want to empower law enforcement so that they can continue, in times of seeming escalating public dangers, to perform their traditional role to serve and protect the public. After all, we are a nation founded on the bedrock principles of *ordered* liberty. At the same time, however, and particularly as the leader of Utah's lawyers tasked with protecting the liberties of our own citizens, it is clear to me that we want to make sure that law enforcement is trained properly in the use of military style resources and tactics, so that they continue in their traditional roles without depriving those essential rights and liberties in the process.

It would be short sighted and illogical to treat the issue as a zero sum game. We can have effective and proper law enforcement, and still be vigilant about protecting the rights and liberties of our citizens.

As the Senate Judiciary Committee knows well, and this subcommittee knows in particular, the states have historically acted as the sites for experimentation in our federal system. Based on my experience in Utah governance and lawmaking, I recommend that the committee consider a federal-state partnership approach to the issue of the use of military equipment and military-style tactics in domestic policing.

As I have described, states such as Utah are taking an active role in exercising their proper and historical police powers. On this issue, the federal government has the power and responsibility under the Eighth and Fourteenth Amendments of the United States Constitution to enforce and enact provisions to ensure excessive force is never used against our citizenry. State officials have the same interests in exercising their traditional police powers, and this is an area where there could be a particularly fruitful approach to the issue that recognizes the proper roles of state and federal governments in our constitutional system.

I applaud the committee for calling this hearing, and thank you as well. I look forward to hearing and tracking your action, if any, on the issue of the use of military equipment and military style tactics by domestic police forces, and hope that if this committee decides legislation is necessary and proper, that it take advantage of the rich federal and state partnership possibilities I have briefly covered here.

December 8, 2014

Honorable United States Senator Dick Durbin,
Chairman of the Senate Judiciary Subcommittee on the Constitution,
Civil Rights and Human Rights
Washington, D.C.

"Underneath your feet lies enormous wealth Guard it. Do not fall asleep, for if you do, it will be pulled out. Do not use it until the right time to do it, in the right ways, and only use it for the right purposes."

Black Mesa: A National Sacrifice Area

Honorable Senator Durbin, in 1970, a chain of dynamites exploded, ripping Black Mesa apart. Deep water wells were sunk into the earth. Traditional Hopi elders stood by helplessly as their worst fears became a reality. The world's largest strip-mining operation had begun; Hopi water was being sold like an ordinary commodity.

Shackled with a contract negotiated by a duplicitous lawyer, the non-traditional Hopi Tribal Council (established at the behest of the federal government to promote coal and water sales) agreed to allow a rapacious foreign mining corporation both to extract what would become 670 million tons of coal from 68,000 acres of Indigenous lands and to pump over one billion gallons, each year, of potable fossil water to transport that coal as slurry to a generating plant 275 miles away. Moreover, adding insult to injury, it was established that power generated at that plant would serve not the interests and need of Hopi and Dine peoples of Black Mesa but rather the sprawling populations of Los Angeles, Southern California, Nevada and Central Arizona Project.

Brushing Aside Trust Duty

The Council was betrayed by its attorney and its trustee, the U.S. Government, and pressured to accept a contract of abuse in order to meet the insatiable energy appetite of corporate American and to bring water from the Colorado River to Southern Arizona cities.

To accomplish this, the U.S. Secretary of Interior brushed aside his "moral obligation of the highest responsibility of trust and most exacting fiduciary standards" to protect the natural resources belonging to Hopi and Dine people, and to make sure they are treated fairly. (The quote is taken from a lawsuit filed by the Pyramid Lake Paiute Tribe against Department of Interior, Secretary Morton.)

The agreements set in motion by the government corporate cabal once again subverted the rights and well-being of the Indigenous people of Black Mesa to support the opulence of the well-heeled, what Charles Wilkinson (Distinguished Professor of Law at the University of Colorado) describes in his book "Fire on the Plateau" as "The Great Build-Up" of the American

West. Ancient, pristinely-potable fossil water was sold at a price beginning at $1.67 per acre-foot (325,000 gallons, enough to fill a football field one foot deep). In addition, coal royalties paid to the tribes were set at a rate that was only 3.3% of its market value.

Killing the Hidden Waters

Clearly, the price of the "Great Build-Up" was born by peoples of Black Mesa. Peabody's over-drafting of waters has threatened the geological architecture of the Navajo Aquifer, the sole natural source of drinking water on Black Mesa. And the damage has continued unabated for over 40 years. In outwardly radiating circles of environmental degradation, springs dried; washes emptied; and sinkholes and cracks scarred the face of Black Mesa.

In short, our ability to sustain our way of life upon our ancestral homeland was compromised to support the wealth and lifestyle of those who live at a great distance from our high desert lands while those who live next door to the largest strip mining operation in the world continue to live in abject poverty and who have to drive over 10 miles to the nearest post office to get their mail.

Far from the "no significant damage" assessment offered by minions of DOI (Bureau of Reclamation and Office of Surface Mining), there has been significant damage, damage that has been witnessed and reported by those who walk the land and by independent researchers review of impacts to our land, water, and cultural resources.

Tearing Pages from Hopi History

Strip-mining damage to cultural resources, also subject to protection by federal laws and U.N. Declaration has erased the footprints of Hopi ancestors who settled in Black Mesa over 1000 A.D. Of the 1,026 historic and 1,596 pre-historic were identified in surveys conducted by an archeological field school hired by Peabody between 1968 and 1988, only 168 were excavated. What happened to the rest of the remains of Hopi ancestors and their ancestral villages, what our elders call "our living museums, a cathedral and academy of our oral traditions, " is unknown and presumably lost forever --- a decimation of our trust-protected cultural resource. We have no record of how many burial sites were destroyed.

Peabody has recently filed a revised mine plan to continue mining to 2044 when the current coal lease with the Hopi Tribe expires in 2024. The environmental impacts of future mining have started and are scheduled to be completed before 2019.

Interestingly, the U.S. Bureau of reclamation (BOR) is the lead federal agency conducting the Environmental Impact Study. BOR is the biggest owners (23.4%) of Navajo Generating Station, a 2500 megawatt thermal electric station, which purchases coal from our land. NGS is located on the Navajo Reservation and Black Mesa Mine is located on Navajo and Hopi Reservations.

The U.S. Office of Surface Mining Reclamation (OSM) is the sole regulatory authority over mining operation and has been the Lead Federal Agency that conducted all previous EIS on Peabody applications for the Life-f-Mine Permits.

Why BOR is preparing an Environmental Impact Statement on Peabody mine plan has yet to be explained.

Justice demands a full congressional hearing on the relationship between Peabody Western Coal Company (PWCC) and the U.S. Office of Surface Mining Control and Reclamation and the conflicted role the U.S. Bureau of reclamation is playing in over-seeing the on-going Navajo Generating Station – Kayenta Mine Complex EIS.

Numerous federal laws and regulations, including the U. N. Declarations on Human Rights are being flagrantly violated.

We are submitting a detailed report on violations if requested.

Thank you,

Vernon Masayesva
Director
Black Mesa Trust
Kykotsmovi, Arizona

LDF
DEFEND EDUCATE EMPOWER

Testimony by the
NAACP Legal Defense and Educational Fund, Inc.

Before the United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing on
"The State of Civil and Human Rights
in the United States"

Hart Senate Office Building
Room 216

December 9, 2014

I. Introduction

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is pleased to submit this testimony in connection with today's important hearing. Founded by Thurgood Marshall in 1940, LDF is the nation's oldest civil rights legal organization. Throughout our history, we have relied on the Constitution, as well as federal and state civil rights laws, to pursue equality and justice for African Americans and other people of color. LDF has been at the forefront of efforts to eliminate the pernicious influence of racial bias in America's criminal justice system. Since our inception, we have engaged in litigation and policy advocacy designed to eliminate racial bias at every stage of the criminal justice process, from racial profiling in police stops to discrimination in jury selection to racial disparities in sentencing.

We applaud Senator Durbin's leadership in holding a hearing to address the state of civil and human rights today. This hearing could not have come at a more critical time. In July, we watched in horror as a videotape captured New York Police Department officers using illegal and deadly force against Eric Garner, an unarmed African-American man in Staten Island, New York. In August, we witnessed the police killing of Michael Brown, an unarmed African-American teenager in Ferguson, Missouri. Nearly two weeks ago we learned that the grand jury investigating Michael Brown's death refused to indict the police officer who killed him. And just last week, we were stunned by the failure of the Staten Island grand jury to indict the officers involved in Mr. Garner's killing.

These horrific acts of lethal violence by police against African Americans and other communities of color are not isolated incidents, but instead part of a widespread and historical pattern of excessive force, abuse and mistreatment of communities of color at the hands of law enforcement. Moreover, the complete lack of accountability of the police officers who committed these acts of violence has thrown our criminal justice system into a crisis of confidence. The events of recent months have highlighted, for all Americans, the longstanding and persistent problem of police abuse and excessive force levied against African Americans and other communities of color. As a nation, we must chart a path forward to determine the most constructive ways for ending this terrible pattern of violence that continues to plague the most vulnerable of our communities and undermines the trust between law enforcement and those they are charged to serve. While criminal justice is foremost a function of local government, it is imperative that the federal government exert its legal authority and rely on its purse strings to ensure that local law enforcement is held accountable for these acts of violence. In the wake of these tragic deaths, which our legal system has failed to redress, the federal government should undertake a series of structural and systematic reforms to do whatever it can, wherever it can, to help end this conduct that undermines the confidence and integrity of our justice system.

Our testimony today addresses the federal reforms suggested by LDF to increase oversight, accountability and transparency of local law enforcement. We believe that Congress can play an important role in guaranteeing their adoption and their success, particularly as its relates to ensuring that those state and local law enforcement agencies receiving federal funding are in strict compliance with federal civil rights laws. Much of our testimony focuses on the extremely problematic practice of the Department of Defense to allow military equipment to be used by law enforcement in public schools; we call for an end to that practice.

II. Federal Reforms to Ensure Police Accountability and Transparency

In light of continued police violence against communities of color, LDF has called for transparency, accountability and leadership by local, state, and federal officials tasked with investigating police misconduct and responding to the public's justifiable outrage about the violence. Police accountability and transparency are essential elements of any reform efforts aimed at eliminating the unwarranted, and often deadly, use of force by law enforcement. The systemic use of deadly force and violence against communities of color is deeply rooted in the structural deficiencies in police practices, training, supervision, and the failure of law enforcement officials to address directly the fundamental issue of racial bias, both explicit and implicit, in policing.[1] These attitudes and opinions are embedded in the culture; the sooner we confront them honestly and openly, the closer we are to eliminating them.

A key issue ripe for Congressional inquiry is the nature and extent of federal support for local law enforcement. Three federal programs provide the bulk of federal funding and equipment for local police agencies: the Department of Justice's Edward Byrne Memorial Justice Assistance Grant Program;[2] the Department of Defense's 1033 Program,[3] and the Department of Homeland Security's grant programs.[4] Congress must ensure that these programs are subject to proper oversight and review. It is imperative that local law enforcement agencies be required to adopt measures to promote accountability through the use of nondiscriminatory policies and practices; enhanced monitoring and supervision; and comprehensive training on explicit and implicit racial bias, use of force, and de-escalation of officer-involved encounters. It is also critical that local police activities be documented and publicly reported.

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[1] Cheryl Staats et al., STATE OF THE SCIENCE: IMPLICIT BIAS REVIEW, Kirwan Institute, 2013 at 36-45, *available at* http://kirwaninstitute.osu.edu/my-product/state-of-the-science-implicit-bias-review/; Phillip Goff et al., THE ESSENCE OF INNOCENCE: CONSEQUENCES OF DEHUMANIZING BLACK CHILDREN, Feb. 24, 2014 at 540, *available at* https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf.

[2] 42 U.S.C. § 3750 *et seq.*

[3] 10 U.S.C. § 2576a ("Excess personal property: sale or donation for law enforcement activities").

[4] 6 U.S.C. §§ 603 ("Homeland security grant programs") and 604 ("Urban Area Security Initiative").

In the immediate aftermath of Michael Brown's death, LDF called upon the Department of Justice (DOJ) to use its authority to "address the unjustified use of lethal and excessive force by police officers in jurisdictions throughout this country against unarmed black people." We asked DOJ to: (1) undertake a comprehensive review of police-involved assaults and killings; (2) provide strong incentives for racial bias training and avoiding the use of force in the DOJ grant process; (3) hold police officers accountable to the full extent of the law; and (4) encourage the use of police officer body-worn cameras.[5] These types of reforms, while not a panacea for police violence, provide a critical starting point for substantive and structural changes that ensure accountability, transparency, training, and appropriate leadership in state and local law enforcement agencies. Importantly, we have also called upon DOJ to more rigorously enforce the civil rights obligations of state and local police agencies. Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968 prohibit state and local police agencies which receive federal funding from discriminating in their operations on the basis of race, color or national origin. DOJ can and does investigate complaints arising under these statutes, but these laws also grant DOJ substantial authority to adopt a host of affirmative measures to ensure rigorous compliance with civil rights laws by agencies receiving federal funding.

Furthermore, LDF has joined other national civil and human rights organizations in calling for a number of additional structural reforms, including comprehensive review and reporting of racial profiling practices; review and reporting of stop and frisk, search, and arrest practices; updating the 2003 DOJ Guidance Regarding the Use of Race by Federal Law Enforcement Agencies; elimination of "broken windows" policing, which encourages aggressive responses to minor offenses; and the promotion of community-based policing.[6]

III. Demilitarizing Our Nation's Schools

Like countless others, LDF was deeply troubled by the rapid escalation and militarized-nature of the law enforcement response to the protests which ensued in Ferguson, Missouri after the killing of Michael Brown. Communities of color have historically borne—and continue to bear—the brunt of heavy-handed and increasingly militarized law enforcement tactics.[7] LDF warned of the dangers of the 1033 Program's

[5] Letter from Sherrilyn Ifill to Attorney General Eric Holder Regarding Use of Excessive Force by Police, Aug. 14, 2014, *available at* http://www.naacpldf.org/document/letter-attorney-general-holder-regarding-use-excessive-force-police.

[6] "A Unified Statement of Action to Promote Reform and Stop Police Abuse," Aug. 18, 2014, *available at* http://www.naacpldf.org/files/case_issue/Black%20Leaders%20Joint%20Statement%20-%208-18_0.pdf

[7] Christian Parenti, LOCKDOWN AMERICA: POLICE AND PRISONS IN THE AGE OF CRISIS 69-89 (1999) (recounting the increasing use of paramilitary-style tactics by the New York Police Department, primarily in communities of color); Kenneth B. Nunn, RACE, CRIME AND THE POOL OF SURPLUS CRIMINALITY: OR WHY THE "WAR ON DRUGS" WAS A "WAR ON BLACKS," 6 J. Gender Race & Just. 381, 404 (2002).

increased militarization of law local enforcement in testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs hearing on "Oversight of Federal Programs for Equipping State and Local Law Enforcement.[8] Additionally, we welcomed President Obama's announcement of a comprehensive review of the federal government's role in arming state and local law enforcement with military-style equipment. We are encouraged by President Obama's recent proposal of an executive order which will require the tracking and monitoring of the use of military equipment by local law enforcement.

In addition to ensuring more rigorous oversight of the 1033 Program generally, LDF believes it is absolutely imperative that Congress and the federal government end the 1033 Program's transfer and lending of military equipment to law enforcement agencies serving K-12 schools. We urge the Members of this Subcommittee and other Members of Congress to act immediately to end that component of the 1033 Program. Additionally, we have asked the Administration to ensure that the executive order addressing military equipment usage by local law enforcement contain such a ban. An increased presence of police in public schools has already proven problematic, particularly for students of color. The insertion of high-powered military weapons into school settings only exacerbates school climates that may already be fraught with tension between students of color and school police.

Critically, national conversations about discriminatory policing practices must examine how our nation's youth of color are disproportionately subjected to discriminatory policing practices, both within our nation's K-12 schools and in their own neighborhoods. A survey by the American Psychological Association showed that participants perceived young African-American males as older, "less innocent," and more culpable than their white counterparts of the same age.[9] This implicit bias often results in the criminalization of youth of color and plays out in the overly punitive discipline of youth of color in our nation's schools and in the over-policing of youth of color in neighborhoods across the country, where, in split-second discretionary discipline or policing decisions, youth of color are rarely given the benefit of the doubt. Indeed, as columnist Charles Blow has noted, there is seldom a "margin for error"[10]

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[8] Statement by the NAACP Legal Defense & Educational Fund, Inc. Before the United States Senate Committee on Homeland Security and Governmental Affairs, Sept. 9, 2014, *available at* http://www.naacpldf.org/files/case_issue/LDF%20Statement%20Oversight%20of%20Federal%20Programs%20for%20Equipping%20State%20and%20Local%20Law%20Enforcement%20Hearing.pdf

[9] Phillip Goff, *et. al.*, THE ESSENCE OF INNOCENCE: CONSEQUENCES OF DEHUMANIZING BLACK CHILDREN, Interpersonal Relations and Group Processes, American Psychological Association, *available at* http://www.apa.org/pubs/journals/releases/psp-a0035663.pdf.

[10] Charles Blow, *The Perfect Victim Pitfall: Michael Brown, and Now Eric Garner*, Dec. 3, 2014, NY TIMES, *available at* http://www.nytimes.com/2014/12/04/opinion/charles-blow-first-michael-brown-now-eric-garner.html?_r=0 "I would love my children to inherit a world where that wasn't the case, where the margin for error for them was the same as the margin for error for everyone else's children, where I could rest assured that police treatment would be unbiased."

allowed by law enforcement for many individuals of color, and in split-second discretionary decisions, preconceived notions of criminality prove harmful, and sometimes fatal, for youth of color who are being pushed out of school and into the criminal justice system by overly punitive discipline practices and discriminatory policing.

For a stark example of how racial bias and the presumption of criminality that attaches to race can infect police action against youth of color, one need look no further than last month's tragic events surrounding the death of Tamir Rice, a twelve-year-old African-American child shot dead by police in Cleveland, Ohio. On November 22, Cleveland police officers approached Tamir in response to a 911 call about an individual with a gun described by the caller as "probably fake." In fact, the gun was fake. But within approximately two seconds of approaching the youth, Officer Timothy Loehmann, who described the child as a "20-something male," shot him. Tamir died in the hospital the next day.[11]

The bias that led to Tamir Rice's tragic death is similar to that responsible for glaring racial disparities in school discipline. Earlier this year, DOJ and the Department of Education issued historic joint guidance for school districts on discipline, noting the prevalence of significant disciplinary disparities based upon race and underscoring that discriminatory administration of school discipline based on race violates Title VI of the Civil Rights Act of 1964.[12] National data show the prevalence of discipline disparities based on race: African-American youth are more than three times as likely as their white peers to be suspended or expelled from school,[13] often due to minor misbehavior.[14] Research shows that these discipline disparities cannot be attributed to more frequent or severe misbehavior by youth of color.[15] Youth of color do not

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[11] Shortly after Tamir's killing, DOJ concluded a two-year federal civil rights investigation of the Cleveland's police department; the findings did not address Tamir's killing but found a pattern of "unreasonable and in some cases unnecessary [use of] force" by officers in the department. Emily Badger, *Appalling Stories from the DOJ's Investigation of the Cleveland Police Department*, WASH. POST, Dec. 5, 2014.

[12] The Civil Rights Data Collection, conducted by the U.S. Department of Education's Office for Civil Rights, has demonstrated that students of certain racial or ethnic groups tend to be disciplined more than their peers. DOJ's Civil Rights Division and the Department of Education's Office for Civil Rights, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, at 3, *available at* http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf.

[13] U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, Data Snapshot: School Discipline, Issue Brief No. 1, Mar. 2014, *available at* http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf. (hereafter, "DOE Data Snapshot").

[14] *Id.*

[15] "Nor is there evidence that students of color engage in rates of disruptive behavior sufficiently different from others to justify higher rates of punishment." Russell J. Skiba, Mariella I. Arredondo, and M. Karega Rausch, Research–to-Practice Collaborative, NEW AND DEVELOPING RESEARCH ON DISPARITIES

misbehave more than their white peers, but are punished more severely and more frequently for the same offenses.[16] In fact, while "excessive discipline affects all students in negative ways, over 40 years of research confirms that unjustifiable approaches to discipline harm historically disadvantaged and discriminated against groups more than others. In particular, African- American males; students who receive special education services; and students who identify as lesbian, gay, bisexual, and transgender, have disproportionately received exclusionary discipline, placing them at increased risk of experiencing those negative outcomes."[17]

Research shows that implicit bias contributes substantially to discipline disparities impacting students of color. Implicit bias, which is rooted in racial stereotypes, influences many school administrators' and law enforcement officers' perceptions of youth of color, particularly African-American youth.[18] Implicit bias is rarely spoken about or acknowledged, but refers to the "attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner."[19] These biases are activated based on characteristics such as race/ethnicity, gender, age, and religion, among others and play out unconsciously, especially in "subjective" and "discretionary" disciplinary decisions.[20] For students of color, the consequences of implicit bias manifest in the form of overly punitive discipline practices, such as suspensions and expulsions for minor offenses, such as "disrespect." Consequently, youth of color are missing valuable instruction time and being pushed out of school and into the criminal justice system at disproportionately high rates.

IN DISCIPLINE, Mar. 2014, at 2, *available at* http://www.indiana.edu/~atlantic/wp-content/uploads/2014/04/Disparity_Overview_040414.pdf.

[16] *See generally* Russell J. Skiba & Natasha T. Williams, The Equity Project at Ind. Univ., Supplementary Paper No. 1, ARE BLACK KIDS WORSE? MYTHS AND FACTS ABOUT RACIAL DIFFERENCES IN BEHAVIOR: A SUMMARY OF THE LITERATURE (2014), *available at* http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/AfricanAmerican-Differential-Behavior_031214.pdf.

[17] Prudence Carter, Michelle Fine, and Stephen Russell, DISCIPLINE DISPARITIES SERIES: OVERVIEW, RESEARCH–TO-PRACTICE COLLABORATIVE, Mar. 2014, *available at* http://www.indiana.edu/~atlantic/wp-content/uploads/2014/04/Disparity_Overview_040414.pdf.

[18] "Thus, in circumstances in which discipline may be merited, teachers' 'background experiences and automatic associations shape his or her interpretation of the scene' . . . Research suggests that this subjectivity can contribute to discipline disparities. Indeed, studies that explore racialized discipline disparities often note that office referrals and other disciplinary measures for students of color tend to rely heavily on subjective interpretations of infractions such as "disrespect" or "excessive noise" whereas White students' office referrals are more frequently the result of an objective event, such as smoking or vandalism." Cheryl Staats, IMPLICIT RACIAL BIAS AND DISCIPLINE DISPARITIES, Kirwan Institute Special Report, May 2014, *available at* www.kirwaninstitute.osu.edu/wp-content/uploads/2014/05/ki-ibargument-piece03.pdf.

[19] *Id.* at 9.

[20] *Id.*

Research also shows that increased presence of law enforcement officers in schools is a significant contributor to the "School-to-Prison Pipeline." School police are often involved in routine disciplinary matters; they can arrest, ticket or cite students or refer them to the juvenile justice system for routine infractions. Increased presence of police is associated with enhanced youth involvement in the juvenile justice system. Data show that African-American students comprise 16 percent of national student enrollment, but 27 percent of students referred to law enforcement and 31 percent of students subjected to a school-related arrest.[21] Instead of making youth feel safer, increased police presence has left students of color in particular, feeling "less safe" and targeted by school police.[22]

In addition to increasing arrests of youth of color, an enhanced police presence in schools results in the use of more excessive force against youth of color. Armed with weapons like tasers and pepper spray, school police have used force against students of color for innocuous offenses. For instance, a Texas student was tasered by school police for breaking up a fight, resulting in traumatic brain injury to the student.[23] A Texas grand jury found "no bill" or lack of evidence to indict the school police officers who tasered the Latino student; his family has now filed a civil suit.[24] LDF has joined other civil rights organizations in seeking legal redress for excessive use of force by school police against African-American students in Wake County, North Carolina.[25]

After protests surrounding Michael Brown's killing focused national attention on the use of federally-funded military equipment by state and local law enforcement, LDF led several organizations in writing to the U.S. Department of Defense to urge an end to its 1003 Program's transfer of military weapons to law enforcement agencies serving K-12 public schools.[26] LDF reiterated this request in a letter submitted to the

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[21] DOE Data Snapshot, *supra* n.13.

[22] *See Police in Schools Are Not the Answer to the Newton Shooting*, Jan. 2013, at 11, Joint Brief of the NAACP Legal Defense and Educational Fund, Inc., Advancement Project, Dignity in Schools Campaign, and the Alliance for Educational Justice, *available at* http://www.naacpldf.org/files/publications/Police in Schools are Not the Answer to the Newtown Shooting - Jan. 2013.pdf. "Far from making students feel safe, this trend has led to increased student anxiety, and led to increasing numbers of students ending up in prison instead of on a college or career path." *Id.* at 7.

[23] Villarreal, Alex, *RRISD Student Tased by Officer During Fight,* Apr. 15, 2014, *available at* http://www.myfoxaustin.com/story/25257340/officer-tases-rrisd-student.

[24] Patrick Tolbert, *Grand Jury Clears Officers in School Tasing Incident*, *available at* http://kxan.com/2014/05/13/grand-jury-clears-officer-in-school-tasing-incident/.

[25] T. Keung Hui, *Groups File Federal Complaint Over Wake County School Policing*, NEWS OBSERVER, Jan. 22 2014, *available at* http://www.newsobserver.com/2014/01/22/3555022_groups-file-federal-complaint.html?rh=1

[26] LDF/Texas Appleseed Letter to Vice Admiral Mark Harnitchek, Sept. 14, 2014, *available at* http://www.naacpldf.org/files/case_issue/LDF-Texas%20Appleseed-1033%20Letter.pdf

U.S. House of Representatives Committee on Armed Services' Subcommittee on Oversight and Investigations.[27] LDF highlighted how the addition of high-powered military weapons to already tense school climates has the potential for exacerbating strained relationships between students of color and school police.

Just as such militarized equipment should not be used by local enforcement against civil rights protestors in Ferguson, Missouri and elsewhere, military weapons have no place in our nation's schools. This is especially true in light of the widely documented reports, discussed herein, of excessive use of force and discriminatory disciplinary practices by school police against students of color.

The transfer of military-style equipment to schools is especially alarming given that school law enforcement personnel who would employ such equipment are routinely used to handle minor disciplinary matters. Those personnel are often not trained to handle other types of incidents. Moreover, the use of military weapons in schools far exceeds the Congressional intent behind the 1033 Surplus Program's creation, to address the so-called "War on Drugs" and "War on Terror," each of which are by themselves extremely problematic and unfairly target communities of color.[28] The use of *any* form of military equipment on school campuses is certainly well beyond the scope of federal programs designed to equip local law enforcement with sophisticated military weaponry.

Complete information about how and why military equipment is deployed to public schools is unavailable, due to lack of transparency generally in the operation of the 1033 Program. The Washington Post has reported that more than 120 agencies affiliated with schools, college and universities have received nearly 900 M-14s, M-16s and other rifles, 190 pistols and 41 shotguns.[29] The 1033 Program is responsible for sending military equipment to the following K-12 school districts around the country:

- 61 M-16 rifles, three grenade launchers and one Mine Resistant Ambush Protected (MRAP) vehicle received by the Los Angeles Unified School District;[30]

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[27] LDF letter to the U.S. House of Representatives Subcommittee on Oversight & Investigations, Dec. 3, 2014.

[28] ACLU, "War Comes Home: The Excessive Militarization of American Policing," at 35-37, *available at* https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf.

[29] Niraj Chokshi, *School Police Across the Country Receive Excess Military Weapons and Gear*, WASH. POST, Sept. 16, 2014, *available at* http://www.washingtonpost.com/blogs/govbeat/wp/2014/09/16/school-police-across-the-country-receive-excess-military-weapons-and-gear/

[30] Stephen Ceasar, *L.A. School Police Will Return Grenade Launchers, but Keep Rifles, Armored Vehicle*, LA TIMES, Sept. 16, 2014, *available at* http://www.latimes.com/local/lanow/la-me-schools-weapons-20140917-story.html.

- One MRAP vehicle received by the San Diego Unified Schools;[31]
- 64 M-16 rifles, 18 M-14 rifles, 25 automatic pistols, extended magazines and 4,500 rounds of ammunition received by ten school districts in Texas;[32]
- 22 M-16 rifles received by the Pinellas County Schools Police Department in Florida;[33]
- 12 AR-15 rifles and two MR-16 rifles received by the Granite School District in Utah;[34] and
- 5 M-15 rifles to the Bibb County School District in Macon, Georgia;[35]

Several school districts receiving military surplus, such as those located in Los Angeles, San Diego, Detroit and Palm Beach County, are among the 50 largest districts in the country.[36] Even more disturbing is that many of the school districts participating in the 1033 program, including those in California, Florida, Georgia, Kansas, Michigan, Nevada, and Texas, have documented histories of discipline disparities involving students of color.[37]

Ultimately, we cannot afford to conflate school safety with school discipline or to ignore the harmful educational and other consequences of militarizing school police. Despite the grave concerns about this issue raised by LDF in letters, testimony and meetings with federal officials, no action has been taken by this Administration to end the lending of military weapons to law enforcement agencies serving K-12 schools

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[31] Chokshi, *supra* n.29.

[32] Scott Noll, *Military Rifles, Armor Sent to Texas School Police,* KHOU, Sept. 5, 2014, *available at* http://www.khou.com/story/news/investigations/2014/09/05/military-rifles-armor-ammo-sent-to-texas-school-police/15112731/

[33] Chokshi, *supra* n.29.

[34] Nate Carlisle, *Granite District Using Military M-16s to Defend Schools*, SALT LAKE TRIB., Feb. 23, 1014, *available at* http://www.sltrib.com/news/1363928-156/police-johnson-rifles-granite-officers-district

[35] Mike Stucka, *Ex-Military Guns, Vehicles in Hands of Midstate Police*, THE TELEGRAPH, Aug. 24, 1014, *available at* http://www.macon.com/2014/08/24/3266388/ex-military-guns-vehicles-in-hands.html

[36] Arezou Rezvani et al., *MRAPs and Bayonets: What We Know About the Pentagon's 1003 Program, List of Agencies Receiving National Equipment*, NPR, Sept. 2, 2014, *available at* http://www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program

[37] DOE Snapshot Data, *supra* n.13.

through the 1033 Program. The only means for ensuring these weapons do not reach school grounds is to terminate that component of the 1033 Program currently permitting such transfers.

IV. Conclusion

LDF is grateful to Senator Durbin and other members of the Subcommittee for holding this important hearing on civil and human rights at this critical juncture in our nation's history. The bias, hostility and tendency toward violence which now pervade far too many interactions between police and communities of color require our collective attention and action if our justice system is ever again to inspire trust and confidence of everyone it is designed to serve. We ask Congress to exercise its substantial federal oversight responsibilities to undertake a host of structural reforms designed to promote transparency, training, reporting, review, and ultimately accountability at the local law enforcement level.

Additionally, we urge Congress to end the 1033 Program's transfer of military weapons to law enforcement agencies serving K-12 schools. To help accomplish this, we urge that action to end this aspect of the 1033 Program include a mechanism to allow such agencies to return these weapons without entailing additional cost. In addition, we request that Congress consider future support for alternatives to overly punitive discipline practices and the presence of police in schools, both which have been proven to undermine school safety. Taxpayer dollars should be steered toward restorative justice practices, cultural competency training for educators, and social and emotional learning curricula. These alternatives have been shown to foster trust between students and school staff and increase feelings of safety. We look forward to working with Congress to promote such policies and to continue to address discipline disparities which undermine outcomes for youth of color in our nation's education system.

Written Testimony for The State of Civil and Human Rights in U.S.

WILLIE J.R. FLEMING EXECUTIVE DIRECTOR CHICAGO ANTI EVICTION CAMPAIGN

U.S. SENATE COMMITTEE ON JUDICIARY DECEMBER 9,2014

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Written Testimony for The State of Civil and Human Rights in U.S.

Introduction

Thank you for allowing me to provide testimony before the Committee. My name is Willie J.R. Fleming. I am the Executive Director of the Chicago Anti Eviction Campaign,and the Chicago Independent Human Rights Counil, We are a grassroots Human Rights organization that organizes homeless persons,homeowners,as well as public,subsidized and market rate tenants in the United States. We also provide Human Rights education and monitoring the allegations of civil and human rights violations around education,housing,labor,healthcare,police brutality and discrimination. We work as a member organization of the U.S. Human Rights Network to provide shadow reports to the United Nations as well as educate the public on our government in the U.S. obligations to treaties like ICCPR,ICERD,and CAT.

In the last few years we have documented testimonies written,oral and video of Americans who civil and human rights were violated at the hands of militarized police.

I would like to testify about these allegations of civil and human rights violations to others as well as myself.

Living in America as African American parent,ex-offender,activist, organizer and citizen I have personally had my civil rights violated by police although I received a settlement the practices and policies of the CPD continue to haunt my teenage and young adult children. It is dehumanizing to live in fear that you can become a victim of an extrjudicial killing based on where you live and your race. Our police departments aggresive behavior is being justified by the militarization of the department purchasing equipment and tactics that is meant for

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foreign wars. As a citizen of the United States and father I am forced to worry and wonder what type of society are we allowing to transform before us. In what way does these expenditures on military grade weaponry deter crime and what are the consequences that we are forcing on our young who will inherit this great nation. Is this the message we want to send to our communities of color that our police is at war with us.

Forms of Oppressive Police behaviors

1. Police Conduct at protests and utilization of military grade equipment for non violent demonstators
2. Terry Stops and contact cards specifically targeting Afrian American and Latino youth in poor and middle class communities
3. Racial based escalation(who they determine to draw their weapons on when making any initial engagement
4. African Americans and Latino youth being arrested for standing on public way for trespassing,mob action etc.
5. The public presence of Military M-16 Asssault Rifles on officers policing our communities and schools.

We at Chicago Independent Human Rights Council believes in the enforcement of human rights not just conversations. We believe recommendations must have an implementation mechanism in place to be effective. We The People of Illinois are forced to aspire for human rights because we witness our Civil Rights being trampled on by the Chicago Police Department and the agencies like the Independent Police Review Authority who were created to protect our Civil and Constitutional Rights and address issues of police misconduct.

Written Testimony for The State of Civil and Human Rights in U.S.

Steps this committee should take to Respect,Protect and Fulfill Human Rights of its inhabitants in America and recognize the recommendations of United Nations.

We the People recommend that this conversation should be open up in local formats to poll the people on community based solutions.

We the people recommend that our government create and implement a Domestic Human Rights agency with enforcement powers that is comprised of civil society goups, community organizations and NGO's working in the fields aof civil and human rights.

We the people recommend that our government finds alternative community based programs to invest the funds in instead spending monies for militarized equipment.

United Nations Concluding Observations 2014 International Convention Against Torture:
Excessive use of force and police brutality

26. The Committee is concerned about numerous reports of police brutality and

excessive use of force by law enforcement officials, in particular against persons belonging

to certain racial and ethnic groups, immigrants and LGBTI individuals, racial profiling by

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police and immigration offices and growing militarization of policing activities. The

Committee is particularly concerned at the reported current police violence in Chicago,

especially against African-American and Latino young people who are allegedly being

consistently profiled, harassed and subjected to excessive force by Chicago Police 13

Department (CPD) officers. It also expresses its deep concern at the frequent and recurrent

police shootings or fatal pursuits of unarmed black individuals. In this regard, the

Committee notes the alleged difficulties to hold police officers and their employers

accountable for abuses. While noting the information provided by the delegation that over

the past five years 20 investigations were opened into allegations of systematic police

department violations, and over 330 police officers were criminally prosecuted, the

Committee regrets the lack of statistical data available on allegations of police brutality and

the lack of information on the result of the investigations undertaken in respect of those

allegations. With regard to the acts of torture committed by CPD Commander Jon Burge

and others under his command between 1972 and 1991, the Committee notes the

information provided by the State party that a federal rights investigation did not develop

sufficient evidence to prove beyond a reasonable doubt that prosecutable constitutional

violations occurred, However, it remains concerned that, despite the fact that Jon Burge

was convicted for perjury and obstruction of justice, no Chicago police officer has been

convicted for these acts of torture for reasons including the statute of limitations expiring.

While noting that several victims were ultimately exonerated of the underlying crimes, the

vast majority of those tortured -most of them African Americans-, have received no

compensation for the extensive injuries suffered (arts. 11, 12, 13, 14 and 16).

The State party should:

(a) Ensure that all instances of police brutality and excessive use of force by

law enforcement officers are investigated promptly, effectively and impartially by an

independent mechanism with no institutional or hierarchical connection between the

investigators and the alleged perpetrators;

(b) Prosecute persons suspected of torture or ill-treatment and, if found

guilty, ensure that they are punished in accordance with the gravity of their acts;

(c) Provide effective remedies and rehabilitation to the victims;

(d) Provide redress for CPD torture survivors by supporting the passage of

the Ordinance entitled Reparations for the Chicago Police Torture Survivors.

Electrical discharge weapons (Tasers)

27. The Committee is concerned about numerous, consistent reports that police have

used electrical discharge weapons against unarmed individuals who resist arrest or fail to

comply immediately with commands, suspects fleeing minor crime scenes or even minors.

Moreover, the Committee is appalled at the number of reported deaths after the use of

electrical discharge weapons, including the recent cases of Israel "Reefa" Hernández Llach

in Miami Beach, Florida, and Dominique Franklin Jr. in Sauk Village, Illinois. While

taking note of the information provided by the State party on the relevant guidelines and

available training for law-enforcement officers, the Committee observes the need to

introduce more stringent regulations governing their use (arts. 11, 12, 13, 14 and 16).

The State party should ensure that electrical discharge weapons are used exclusively

in extreme and limited situations –where there is a real and immediate threat to life or

risk of serious injury– as a substitute for lethal weapons and by trained law

enforcement personnel only.

The State party should revise the regulations governing the use of such weapons with

a view to establishing a high threshold for their use and expressly prohibiting their use

on children and pregnant women. The Committee is of the view that the use of

electrical discharge weapons should be subject to the principles of necessity and

proportionality and should be inadmissible in the equipment of custodial staff in

prisons or any other place of deprivation of liberty. The Committee urges the State

party to provide more stringent instructions to law enforcement personnel entitled to 14

use electric discharge weapons, and to strictly monitor and supervise their use

through mandatory reporting and review of each use.

Training

28. The Committee takes note of the information that it has received regarding training

in lawful interrogation methods and internal reporting mechanisms. It is concerned,

however, by the lack of information on the impact of the training conducted for law

enforcement officials, intelligence and security officials, military personnel and prison staff,

and how effective the training programmes have been in reducing incidents of torture and

ill-treatment (art. 10).

The State party should:

(a) Further develop mandatory training programmes to ensure that all

public servants –law enforcement officers, military officers, intelligence officials,

prison staff and medical personnel employed in prisons and psychiatric hospitals – are

well acquainted in the provisions of the Convention and are fully aware that violations

will not be tolerated and will be investigated, and that those responsible will be

prosecuted;

(b) Ensure that all relevant staff, including medical personnel, are

specifically trained to identify cases of torture and ill-treatment in accordance with

the Manual on Effective Investigation and Documentation of Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);

(c) Develop and apply a methodology for assessing how effective its training

programmes are in reducing the number of cases of torture and ill-treatment.

Redress, including compensation and rehabilitation

29. While noting the State party's assertion that its legislation provides a wide range of

civil remedies for seeking redress in cases of torture at the federal and state level, the

Committee regrets the limited information provided by the delegation on rehabilitation

programmes for both domestic and third country victims, or the allocation of resources to

support such programmes. The Committee is further concerned about the situation of

certain individuals and groups made vulnerable by discrimination or marginalization who

face specific obstacles that impede the enjoyment of their right to redress (art. 14).

The State party should ensure that appropriate rehabilitation programmes are

provided to all victims of torture and ill-treatment, including medical and

psychological assistance. The State party should also enhance its support and funding

for torture rehabilitation programmes in the State party.

The Committee urges the State party to take immediate legal and other measures to

ensure that all victims of torture and ill-treatment obtain redress and have an

enforceable right to fair and adequate compensation, including the means for as full

rehabilitation as possible, in particular victims of police brutality, terror suspects

claiming abuse, victims of gender violence, asylum-seekers, refugees and others under

international protection

The Committee draws the State party's attention to its General Comment No. 3 (2012)

on the implementation of article 14 by State parties (CAT/C/GC/3), in which it

elaborates upon the nature and scope of State parties' obligations to provide full

redress to victims of torture, in particular to paragraphs 3-4, 11-15, 19, 32 and 39. 15

In closing I would only add these quotes from Two notable Presidents from Illinois.

...I do not mean to say that this government is charged with the duty of redressing or preventing all the wrongs in the world; but I do think that it is charged with the duty of preventing and redressing all wrongs which are wrongs to itself.
--September 17, 1859 Speech at Cincinnati, Ohio

Our predecessors understood that government could not, and should not, solve every problem. They understood that there are instances when the gains in security from government action are not worth the added constraints on our freedom. But they also understood that the danger of too much government is matched by the perils of too little; that without the leavening hand of wise policy, markets can crash, monopolies can stifle competition, the vulnerable can be exploited.

Written Testimony for The State of Civil and Human Rights in U.S.

And they knew that when any government measure, no matter how carefully crafted or beneficial, is subject to scorn; when any efforts to help people in need are attacked as un-American; when facts and reason are thrown overboard and only timidity passes for wisdom, and we can no longer even engage in a civil conversation with each other over the things that truly matter -- that at that point we don't merely lose our capacity to solve big challenges. We lose something essential about ourselves.

BARACK OBAMA, speech to joint session of Congress, sep. 9, 2009

We lose ourselves when we compromise the very ideals that we fight to defend. And we honor those ideals by upholding them not when it's easy, but when it is hard.

BARACK OBAMA, Nobel Lecture, Dec. 10, 2009

Thank You,

Willie J.R. fleming
Executive Director
Chicago Anti Eviction Campaign
Human Rights Monitor
Chicago Independent Human Rights Council
Coordinator
Land,Housing and Action Group
US Human Rights Network

STATEMENT OF
Mee Moua, President and Executive Director of
Asian Americans Advancing Justice | AAJC

Hearing on "The State of Civil and Human Rights in the United States"

U.S. SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

December 9, 2014

Chairman Durbin, Ranking Member Cruz and members of the Subcommittee:

Thank you for the opportunity to submit this testimony for the record regarding today's hearing on the state of civil and human rights in the United States. We commend your attention to these critical and timely issues, particularly with respect to the work that still needs to be done on key civil and human rights issues.

Asian Americans Advancing Justice | AAJC ("Advancing Justice | AAJC") is a national non-profit, non-partisan organization working to advance the civil and human rights of Asian Americans, and build and promote a fair and equitable society for all. Founded in 1991 and based in Washington, D.C., Advancing Justice | AAJC is one of the nation's leading experts on issues of importance to the Asian American and Pacific Islander ("AAPI") communities including: anti-Asian violence prevention/race relations, affirmative action, census, immigrant rights, immigration, language access, television diversity and voting rights. Since our founding, along with our affiliates – Asian Americans Advancing Justice | Los Angeles, Asian Americans Advancing Justice | Asian Law Caucus in San Francisco, Asian Americans Advancing Justice | Chicago, and Asian Americans Advancing Justice | Atlanta – we have worked to extend the reach of our programming and enhance the impact of our collective work. Together, we strive to build a more powerful and unified social justice voice for AAPIs.

In this testimony, we will focus on two main topics of vital importance to our AAPI communities: (1) racial profiling and hate crimes, and (2) voting rights.

On November 24th, with our Asian Americans Advancing Justice affiliates, Advancing Justice | AAJC expressed sadness and anger that the grand jury in Ferguson, Missouri, decided not to indict Officer Darren Wilson in the shooting death of Michael Brown. We fight for racial justice for all communities of color even as we work to bring attention to the discrimination experienced by members of our AAPI communities. Following the grand jury's failure to indict Officer Daniel Pantaleo in the death of Eric Garner in Staten Island and the shooting of 12 year-old Tamir Rice in Cleveland, it is abundantly clear that these are not isolated incidents. The killing of African Americans by police officers around the nation demonstrates that the racial profiling and violence that African Americans experience runs deep and happens because of systematic failures.

We join the many voices calling for further investigation of racial profiling, excessive force, and officer-involved shooting policies and practices in the Ferguson Police Department, the New York Police Department, and law enforcement agencies across the country. We need answers and justice for the deaths of Michael Brown, Eric Garner, and others. The unjust, ineffective, and counterproductive practice of racial profiling cannot stand, and the many policies and programs through the nation that encourage or incentivize such discriminatory law enforcement practices must be reviewed and reformed. Regardless of whether it is framed or manifested as the war on drugs, immigration enforcement, or counterterrorism efforts, racial profiling is wrong. Accordingly, Advancing Justice | AAJC respectfully urges you to support the "End Racial Profiling Act" (S. 1038) and institute a federal ban on profiling based on race, religion, ethnicity, and national origin at the federal, state, and local levels.

Racial profiling occurs whenever law enforcement agents use race, religion, ethnicity, or national origin as a factor in deciding whom they should investigate, arrest, or detain, *except* where these characteristics are part of a specific suspect description. The practice relies on the flawed assumption that a particular crime is most likely to be committed by members of a particular racial, ethnic, religious, or national group. Such practices are counterproductive, waste public resources, and violate the civil and human rights of persons living in the United States. Moreover, the practice diverts law enforcement resources away from smart, targeted, behavior-based investigations. Singling people out on the basis of their race, ethnicity, religion, national origin or perceived citizenship or immigration status is in direct breach of this country's founding principles. As long as racial profiling remains a widespread practice amongst law enforcement, the rule of law, national security, and the dignity of all Americans will be compromised.

Racial Profiling and AAPI Communities

In addition to adding our voice in solidarity with other communities of color, Advancing Justice | AAJC seeks to draw attention to the long and tragic history of racial and religious profiling that has negatively impacted AAPI communities and continues today. AAPIs have long been targeted for heightened scrutiny by the government based on race, religion, ethnicity, national origin, or nationality. Examples include the internment of Japanese Americans during World War II; profiling of AAPI youth as gang members; racial and religious discrimination following September 11, such as surveillance and discrimination of Arab, Middle Eastern, Muslim, Sikh, and South Asian Americans, additional and invasive searches of travelers, and targeted detention and deportation of AAPI immigrants, many of whom have U.S. citizen children and are productive members of American society; and immigration enforcement initiatives, including state laws such as Arizona's SB 1070, Georgia's HB 87, and Alabama's HB 56.

Not only does racial profiling waste limited government resources by misdirecting scrutiny to innocent individuals, it also seriously erodes trust between law enforcement agencies and AAPI communities. The practice of racial profiling by federal, state and local agencies has resulted in a heightened fear of law enforcement in our community. Law enforcement agencies that resort to faulty investigative tools such as profiling are less likely to use and develop reliable and proven

skills, such as intelligence or behavior-spotting. Criminal investigations are flawed and hindered because people and communities impacted by these stereotypes are less likely to cooperate with agencies they have grown to mistrust. As a result, fear and distrust of law enforcement develops within a community, undermining its ability to work effectively. In effect, racial profiling makes our communities, and ultimately all communities, less safe.

Racial profiling is currently front-and-center in the national consciousness. Now is the time to act to counter racial prejudice and discrimination, and to address the widely-held belief that justice does not exist for those who are considered "suspicious" or "other." We must ensure that history does not continue to repeat itself. While we were pleased to see some progress in the updated guidance issued by the Department of Justice on December 8th, such that racial profiling by law enforcement is now prohibited on the basis of national origin, religion, gender, sexual orientation and gender identity in addition to race and ethnicity, we still have serious concerns about the exemptions that will allow law enforcement to continue profiling at airports and on the border and under the auspices of national security. We respectfully urge the Committee to move swiftly and take concrete actions to prohibit racial profiling at the federal, state, and local levels.

Hate Crimes and AAPI Communities

Advancing Justice | AAJC has a longstanding history of work on race relations and hate crimes, including anti-Asian violence. This work has included providing technical assistance to law enforcement and communities to ensure justice for victims of racially-motivated attacks, monitoring and advocating for stronger federal hate crimes legislation, publishing a resource handbook on responding to hate crimes, and in the past, publishing an annual compilation and analysis of anti-Asian violence in the United States. Advancing Justice | AAJC has also provided on-the-ground assistance to local communities dealing with hate crimes, and we remain vigilant against anti-Asian violence and other hate crimes that impact individuals and communities across America.

There is a long history of violence, both documented and undocumented, against AAPIs due to their race, dating back to when the first Chinese immigrants settled in the United States in the mid-1800s. That violence continues today. The FBI's 2012 hate crimes statistics show that of the 3,297 single-bias hate crimes that were racially motivated, 4.1 percent resulted from anti-Asian/Pacific Islander bias.[1]

Violence motivated by race, ethnicity, national origin, or religion is especially harmful because it is not only a physical attack, but also an attack on one's identity. It has a severe psychological impact, not only on the victim, but on the entire community. When such violence targets AAPIs, it perpetuates the harmful perception that they are unassimilable and unwelcome as Americans. In 1982, Vincent Chin, a Chinese American from Detroit, was beaten to death while celebrating his upcoming wedding by two white autoworkers at the height of anti-Japanese car manufacturing sentiment. More than 30 years after Chin's death, AAPIs continue to hear the

[1] *Hate Crime Statistics*, FBI.GOV, http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/topic-pages/incidents-and-offenses/incidentsandoffenses_final.

message that they do not belong. In the aftermath of September 11, we have seen intense violence and bias against many members of the AAPI community who are of South Asian descent. The first victim of a post-September 11 hate crime was Balbir Singh Sodhi, a Sikh American husband and father of two, who was gunned down at his workplace.[2]

The massacre at the gurdwara in Oak Creek, Wisconsin, in 2012 was a continuation of the violence targeting Sikh, Muslim, Arab and South Asian communities since September 11. Within days of the Oak Creek shooting, there were eight attacks on other houses of worship throughout the country. These and many other incidents of hate violence are documented in a report published this fall by South Asian Americans Leading Together, "Under Suspicion, Under Attack: Xenophobic Political Rhetoric and Hate Violence against South Asian, Muslim, Sikh, Hindu, Middle Eastern, and Arab Communities in the United States."[3] Hate groups and violent extremists threaten the safety of not only South Asians and other communities of color, who are integral to the American fabric, but all Americans.

Impact of the Government's Actions

At the same time that some groups, particularly South Asians, Sikhs, Muslims, and Arabs, have experienced a proliferation of hate crimes against them, the U.S. government has implemented deliberate and misguided programs and policies that profile these same communities based on their perceived race, ethnicity, religion or national origin. This has been the case in many governmental arenas, including immigration enforcement, FBI investigations, and in measures advanced to address national security and counterterrorism.

Advancing Justice | AAJC's affiliate in San Francisco, Asian Americans Advancing Justice | Asian Law Caucus, has received numerous complaints from individuals—mostly U.S. citizens and legal permanent residents who are Muslim or of South Asian or Middle Eastern descent—who have been subjected to lengthy detentions and invasive questioning and searches at U.S. land borders and international airports. A groundbreaking report released in 2009[4] reveals the disturbing extent to which U.S. Customs and Border Protection has interrogated these individuals about their political and religious beliefs, volunteer activities and associations without first establishing any basis for suspecting these individuals of violating the law. Professors, religious and community leaders, attorneys and entrepreneurs have been among those whose laptop computers, digital cameras, cell phones, books and personal papers have been turned inside out for evidence of wrongdoing.

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[2] Tamar Levin, *Sikh Owner of Gas Station Is Fatally Shot in Rampage*, N.Y. TIMES (Sept. 17, 2011), http://www.nytimes.com/2001/09/17/us/sikh-owner-of-gas-station-is-fatally-shot-in-rampage.html.

[3] SOUTH ASIAN AMERICANS LEADING TOGETHER, UNDER SUSPICION, UNDER ATTACK: XENOPHOBIC POLITICAL RHETORIC AND HATE VIOLENCE AGAINST SOUTH ASIAN, MUSLIM, SIKH, HINDU, MIDDLE EASTERN, AND ARAB COMMUNITIES IN THE UNITED STATES (2014), *available at* http://saalt.org/wp-content/uploads/2013/06/SAALT_report_full_links1.pdf.

[4] ASIAN LAW CAUCUS & STANFORD LAW SCHOOL IMMIGRANT RIGHTS CLINIC, RETURNING HOME: HOW U.S. GOVERNMENT PRACTICES UNDERMINE CIVIL RIGHTS AT OUR NATION'S DOORSTEP (2009), *available at* http://www.asianlawcaucus.org/publications/us-border-report-returning-home.

The sad and unjust irony is that while these communities face a "double targeting" of being subjected to both violent hate crimes and baseless government policies, organized hate groups—responsible for the bulk of domestic terrorism—have grown and have gone largely unchecked. According to the Southern Poverty Law Center ("SPLC"), an organization internationally known for tracking hate groups, the number of active hate groups in our country, which currently numbers over one thousand, has grown by almost 70 percent since 2000.[5] Indeed, news reports indicate that the Oak Creek shooter, Wade Michael Page, was a neo-Nazi and a member of two hate groups, and accordingly, had been tracked by SPLC since 2000.[6] Discriminatory targeting and overbroad questioning of individuals from certain minority communities diverts law enforcement from their charge to investigate and eliminate actual security threats. The practice of racial, ethnic, religious, or national origin profiling truly fails to make America safer.

Responding to Racial Profiling and Hate Crimes

Racial profiling and bias-motivated violence have no place in a country that is built on the principles of inclusion, equality and diversity. Advancing Justice | AAJC urges Congress, the White House and government agencies to work together to take increased and more aggressive measures to prevent, address and combat racial profiling, hate crimes and violent extremism in the United States:

- Pass robust anti-racial profiling policies, such as the End Racial Profiling Act (S. 1038), which prohibits profiling based on race, religion, ethnicity or national origin by federal, state and local law enforcement, establishes requirements for law enforcement to collect data, provide anti-profiling trainings and develop a complaint mechanism for affected individuals, allows the Department of Justice to withhold grants to entities that fail to comply with the law and provide funding to these seeking to eliminate the practice, and allows affected individuals to seek redress in court;
- Amend the 2014 Department of Justice Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity to apply to all federal agencies. Further, we reiterate the points we have previously advocated: to remove national and border security loopholes, cover law enforcement surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable;
- Rigorously enforce the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act by filing appropriate cases under the Act, defending its constitutionality and ensuring continued education, outreach and training to law enforcement officials on the law and its requirements;

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[5] *Hate and Extremism*, SPLCENTER.ORG, http://www.splcenter.org/what-we-do/hate-and-extremism (last visited Sept. 19, 2012).

[6] Heidi Beirich & Mark Potok, *Alleged Sikh Temple Shooter Former Member of Skinhead Band*, SPLCENTER.ORG (Aug. 6, 2012), http://www.splcenter.org/get-informed/news/alleged-sikh-temple-shooter-former-member-of-skinhead-band.

- Ensure sufficient funding for the Department of Homeland Security and other federal law enforcement agencies to monitor and prevent attacks from violent, domestic non-Islamic extremist organizations, such as white supremacist and neo-Nazi groups;[7]
- Improve federal hate crime reporting and data collection mechanisms, including by reducing barriers for immigrants and limited-English speaking victims to report hate crimes and potential threats;
- Encourage federal agencies to work with non-governmental organizations that monitor violent, extremist organizations to increase the government's awareness about possible domestic terror threats;
- Strengthen community-based networks that prevent hate violence and respond to hate incidents by funding community programs that help educate and train individuals about their rights, provide services for victims of hate incidents and improve collaboration with local law enforcement agencies;
- Address the growing number of hate incidents in public schools by providing funding for diversity, anti-bias and tolerance training programs in schools and by urging schools to adopt and enforce anti-hate policies; and
- Fund and support successful models of intergroup relations programs for youth and adults that focus on skills-building to develop community leaders who can bridge differences and effectively communicate about race and culture.

In addition to these policy recommendations, we urge that you, our elected leaders, do more to proactively denounce biased or hateful views and threats against our communities and other communities of color. This is a critical time for all to reinforce our nation's commitment to justice, inclusion and equality.

Another way that Congress must act to reaffirm our commitment to civil rights is to counter the encroachment on one of the most fundamental rights in our democracy: the right to vote. The rights of minority voters are threatened by ongoing discrimination, the fallout from the U.S. Supreme Court's decision in *Shelby County v. Holder*, restrictive state voter laws, and the continued disenfranchisement of people with criminal records.

Ongoing Voting Discrimination and the Problematic *Shelby* Decision

AAPIs are all too familiar with racial discrimination that has excluded them from full participation in the political process. The perception of these communities as "outsiders," "aliens," and "foreigners" has driven much of the discrimination against them.[8] At various points in history,

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[7] Spencer Ackerman, *DHS Crushed This Analyst for Warning About Far-Right Terror*, WIRED.COM (Aug. 7, 2012), www.wiredcom/dangerroom/2012/08/dhs/2/ (describing dearth of DHS resources toward "domestic non-Islamic extremism").

[8] *See, e.g.*, Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 Pol. & Soc'y 105, 108-16 (1999) (describing history of whites perceiving Asian Americans as foreign and therefore politically ostracizing them). Racial representations and stereotyping of Asian Americans, particularly in well-publicized instances where public figures or the mass media express such attitudes, reflect and reinforce an image of Asian Americans as "different," "foreign," and the "enemy," thus stigmatizing Asian Americans, heightening racial tension, and instigating

such perceptions have led to AAPIs being denied rights held by their fellow U.S. citizens. Today, discriminatory attitudes continue to jeopardize their ability to freely exercise their right to vote. Verbal attacks levied against AAPI candidates and voters and an increase in political ads using racially discriminatory imagery or perceptions to malign AAPI candidates can have a chilling effect on the community's engagement in the political process.[9] Moreover, the racist perception that AAPI citizens do not belong has led to direct discrimination against AAPI voters. For example, in the 2004 primary elections in Bayou La Batre, Alabama, supporters of a white incumbent running against a Vietnamese American candidate challenged only Asian Americans at the polls and falsely accused them of not being U.S. citizens.[10] The Department of Justice has determined that these challenges were racially motivated and prohibited the challengers from interfering in the general election.[11]

AAPI voters are also harmed by violations that are aimed more generally at communities of color. For example, in 2012, Florida used a highly inaccurate matching program to systematically purge alleged noncitizen voters from the voter registration database. This initiative negatively affected naturalized citizens, a large majority of whom are minorities. According to the 2010 Census, Florida's population of 600,000 Asian Americans is currently the nation's eighth-largest and represents a 72 percent increase from the previous census.[12] Florida's faulty voter purge process will heavily impact the state's Asian American population, of which 67.9 percent above five years-old is foreign-born and 50 percent of citizens are naturalized.[13]

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discrimination. Cynthia Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 Hastings Women's L.J. 165, 181 (1995); Spencer K. Turnbull, Comment, *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 UCLA Asian Pac. Am. L.J. 72, 74-75 (2001); Terri Yuh-lin Chen, Comment, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 Asian L.J. 69, 72, 74-75 (2000); Jerry Kang, Note, *Racial Violence Against Asian Americans*, 106 Harv. L. Rev. 1926, 1930-32 (1993); Thierry Devos & Mahzarin R. Banaji, *American = White?*, 88 J. Personality & Soc. Psychol. 447 (2005) (documenting empirical evidence of implicit beliefs that Asian Americans are not "American").

[9] *See* Testimony submitted by Asian Americans Advancing Justice | AAJC for Senate Judiciary Committee Hearing "The Voting Rights Amendment Act, S.1945: Updating the Voting Rights Act in Response to Shelby County v. Holder," June 25, 2014, *available at* http://vrafortoday.org/wp-content/uploads/2014/07/AAJC-Testimony-for-6-25-14-Senate-Judiciary-Hearing-on-VRAA.pdf .

[10] H.R. Rep. No. 109-478, at 45; *see also Challenged Asian ballots in council race stir discrimination concern*, Associated Press State & Local Wire, Aug. 29, 2004, *available at* http://news.google.com/newspapers?nid=1817&dat=20040830&id=cc4dAAAAIBAJ&sjid=w6cEAAAAIBAJ&pg=6668,5046184. *See also* DeWayne Wickham, *Why renew Voting Rights Act? Ala. Town provides answer*, USA Today, Feb 22, 2006, *available at* http://www.usatoday.com/news/opinion/editorials/ 2006-02-22-forum-voting-act_x.htm.

[11] H.R. Rep. No. 109-478, at 45; *see also* Press Release, U.S. Dep't of Justice, *Justice Department to Monitor Elections in New York, Washington, and Alabama*, Sept. 13, 2004, *available at* http://www.justice.gov/opa/pr/2004/September/04_crt_615.htm ("In Bayou La Batre, Alabama, the Department will monitor the treatment of Vietnamese-American voters."). *See also*, Wickham, *supra.*

[12] ASIAN AMERICANS ADVANCING JUSTICE, A COMMUNITY OF CONTRASTS: ASIAN AMERICANS IN THE UNITED STATES, 2011, Appendix B (p. 60), *available at* http://advancingjustice-aajc.org/news-media/publications/community-contrasts-asian-americans-united-states-2011.

[13] Mexican American Legal Defense and Educational Fund, National Association of Latino Elected and Appointed Officials, and National Hispanic Leadership Agenda, *Latinos and the VRA: A Modern Fix for Modern-Day Discrimination* 8-9 (2014), *available at* http://latinosunited.org/votingrights/latinovraareport.pdf [hereinafter *Latino VRA Report*]. U.S. Census Bureau; American Community Survey, 2010 American Community Survey 5-Year

Efforts to minimize the AAPI vote are likely to increase as AAPIs become more visible and politically engaged. Unfortunately, the Supreme Court's decision in *Shelby County v. Holder* has stripped the community of its most powerful tool to monitor and combat these efforts. The decision goes well beyond simply invalidating the preclearance coverage formula in Section 4(b) of the Voting Rights Act (VRA). It also essentially eliminated the requirements under Section 5, including the requirement that certain states, counties, and other jurisdictions provide notice to their communities regarding new voting changes, and the ability for potentially discriminatory voting changes to be put "on hold" pending a federal determination of whether the proposed change is discriminatory. The tools remaining in the VRA are inadequate on their own to combat voting discrimination. Congress must pass legislation to fix this detrimental decision.

State Voter Laws

Restrictive state voter laws have also been on the rise. Between the 2010 and 2014 elections, twenty-one states had enacted new voting restrictions.[14] Several states that have passed at least one of these restrictive laws have growing AAPI populations that stand to be negatively impacted.[15] In fact, fifteen of the 21 states where restrictive voter suppression laws were passed experienced a growth rate of at least 50 percent in their Asian American populations. Moreover, seven of the 20 states with the largest Asian American populations enacted a restrictive voter law, reaching one-fifth of the nation's Asian American population.

AAPIs' ability to vote in future elections is threatened by these new voter suppression laws. For example, strict voter ID provisions and proof of citizenship requirements disproportionately impact AAPIs due to high rates of immigration and naturalization in the community. In addition to the time and fees involved to obtain acceptable identification documents, racial and ethnic minorities, including AAPIs, do not have the same access to identification as whites.[16] AAPIs are

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Estimates, Table B16005; generated by Terry Minnis; using American FactFinder; <http://factfinder2.census.gov>; (27 June 2014). U.S. Census Bureau; American Community Survey, 2010 American Community Survey 5-Year Estimates, Table B05001; generated by Terry Minnis; using American FactFinder; <http://factfinder2.census.gov>; (27 June 2014).

[14] *See* THE BRENNAN CENTER FOR JUSTICE, THE STATE OF VOTING IN 2014, *available at* http://www.brennancenter.org/analysis/state-voting-2014.

[15] For example, in Georgia, where restrictions to early voting were enacted and where photo ID and proof of citizenship legislation had already passed in previous years, the Asian American population of 365,000 grew 83 percent. In Alabama, which passed laws requiring voter ID and proof of citizenship for voter registration, the Asian American population grew 70 percent between 2000 and 2010. Florida and Texas also passed numerous restrictive laws and are states with large, rapidly growing Asian American populations, at almost 575,000 and over 1.1 million, respectively, and both with a 72 percent growth rate. Virginia, where a photo ID requirement and limits on third-party voter registration were enacted, is home to over half a million Asian Americans, with a 71 percent growth rate. Id.; *see also* A COMMUNITY OF CONTRASTS, *supra*.

[16] According to one study, Asian Americans were over 20 percent less likely to have two forms of identification compared to Whites. For example, Asian Americans and immigrants were significantly less likely to have at least a driver's license and one additional form of identification. There are also considerable group differences for forms of identification that many considered very basic or accessible. For example, Asian Americans were almost 24 percent less likely to have access to a recent bank statement. Additionally, in the case of family and multi-generational households, a living pattern Asian Americans are more likely to engage in, bills may be solely in the name of the male head of household, leaving the other adults without proof of their residency in that house. Asian American

also susceptible to profiling by voter ID provisions. For example, in Washington state, a private citizen challenged the right to vote of more than 1,000 people with "foreign-sounding" names, primarily targeting Asian and Hispanic voters.[17] Poll workers have also selectively applied voter ID requirements to Asian Americans but not others. For example, in 2012 a poll worker at a precinct in Minnesota insisted that a group of elderly Hmong American voters provide identification while telling a white male in line behind them who had begun to get out his identification that he did not need to do so.[18]

The negative impact of restrictive voting laws on AAPIs is compounded by the language barriers faced by the nearly one-third of the community that is limited English proficient[19] and the lack of in-language information available to them. In a 2014 pre-election survey conducted by Advancing Justice | AAJC and APIAVote of more than 1,300 AAPI registered voters, two-thirds – higher than the national average for registered voters – felt disengaged from politics because it is "too complicated." This is especially true for AAPI women, middle-age adults, and naturalized citizens, for whom barriers to understanding appear the greatest.[20]

Rather than focusing on creating obstacles to voting, we should be working on ways to increase access to the ballot box. Asian Americans have voter registration and turnout rates that lag behind those of Non-Hispanic Whites by approximately 20 percent.[21] While many factors account for this gap, including language barriers, the bottom line is that AAPI voter participation needs to increase and Congress should be advancing means to balance this disparity. For example, providing early voting would likely help to increase the number of AAPIs at the polls, who most often state that having a conflicting schedule or being too busy as the reason they did not vote.[22] Even as laws restricting access to voting have proliferated, progress has been made in some state election systems. Since 2012, sixteen states have passed laws to increase access to the election process and our collective focus should be centered on these types of efforts.

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voters are 18 percent less likely to be able to produce a utility bill and 11 percent less likely to be able to produce a property tax bill that would contain their name and current address. *See* Matt A. Barreto, et. al, Voter Id Requirements and the Disenfranchisements of Latino, Black And Asian Voters 1 (2007), *available at* http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf ("Voter ID Requirements Study")

[17] *Id.*

[18] *See* Testimony submitted by Asian American Justice Center for Senate Judiciary Committee Hearing "The State of the Right to Vote after the 2012 Election," December 19, 2012. Testimony on file with Advancing Justice | AAJC.

[19] A COMMUNITY OF CONTRASTS, p. 27.

[20] Asian Americans Advancing Justice, "Left, Right or Center? Asian American Voters in 2014" (2014) *available at* http://www.advancingjustice-aajc.org/news-media/publications/left-right-or-center-results-apia-vote-and-advancing-justice-aajc-2014-voter (last accessed October 2014)

[21] U.S. Bureau of the Census. 2013. The Diversifying Electorate—Voting Rates by Race and Hispanic Origin in 2012 (and Other Recent Elections). Department of Commerce. *Available at* http://www.census.gov/prod/2013pubs/p20-568.pdf (last accessed October 2014).

[22] Surveying elections over the last decade, at least 1 in 4 non-voting Asian Americans said they didn't vote because they were too busy or had a conflicting schedule per election. *See* U.S. Census Bureau, Current Population Survey, Population Characteristics (P20) Reports and Detailed Tables, *available at* http://www.census.gov/hhes/www/socdemo/voting/publications/p20/index.html.

AAPIs & Felon Disenfranchisement

Finally, felon disenfranchisement is a growing problem for the AAPI population. Nationally, an estimated 5.85 million Americans are denied the right to vote because of laws that prohibit voting by people with felony convictions.[23] From 1999 to 2004 the AAPI prison population soared by 30 percent while the white prison population rose by only 2.5 percent. During the prison boom in the 1990s, the AAPI prison population grew 250 percent to the overall prison population's 77 percent.

While there is a relatively low percentage of AAPIs overall who have been incarcerated, disaggregated data shows that mass incarceration has increasingly become more of an issue for specific AAPI communities. For example, according to a study by the Office of Hawaiian Affairs in 2010, Native Hawaiians comprised about 39 percent of Hawaii's state prison population in comparison to the state's overall Native Hawaiian population of 24 percent.[24] In California, a study found that 64.6 percent of the state's AAPI prisoners were immigrants and refugees. The largest populations among them were Vietnamese (22 percent) and Filipino (19.8 percent), followed by Pacific Islanders (9.9 percent) and Laotians (8.5 percent).[25] These trends are of concern to the AAPI community. It is important that Congress take action to restore voting rights in federal elections to the millions of Americans, including AAPIs, who have been released from incarceration but continue to be denied their ability to fully participate in civic life.

In closing, it is imperative that Congress take action to restore protections for all voters: to pass legislation at the federal level, dismantle state and local laws intended to dilute and suppress the minority vote, and restore voting rights to those who have been disenfranchised.

Thank you again for holding this hearing and for the opportunity to express the views of Asian Americans Advancing Justice | AAJC. We welcome the opportunity for further dialogue and discussion about these important civil and human rights issues.

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[23] Only two states have no restrictions on felon's voting rights. In 12 states, individuals convicted of a felony lose the right to vote for the rest of their lives. Thirteen states and the District of Columbia have voting bans for those currently in prison, 19 bar those in prison or under community supervision (parole or probation) from voting, and four ban those in prison or on parole from voting. *See* Letter in Support of the Democracy Restoration Act (S. 2235/H.R. 4459) from Civil Rights and Reform Organizations, July 22, 2014, https://www.aclu.org/sites/default/files/assets/dra2014_civil_rights_sign_on_letter.pdf

[24] OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM (2010), *available at* http://oha.org/sites/default/files/ir_final_web_rev.pdf

[25] Sarita Ahuja and Robert Chlala, Asian Americans/Pacific Islanders in Philanthropy, Widening the Lens on Boys and Men of Color: California AAPI & AMEMSA Perspectives, *available at* http://www.asianprisonersupport.com/wp-content/uploads/2014/01/aapip_bymoc-final.screen.pdf.

To: Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Regarding: Subcommittee Hearing on the State of Civil and Human Rights in the United States

Submitted on Behalf of: Ferguson Action Network

On behalf of the Ferguson Action Network we submit this testimony to the Senate Judiciary Subcommittee on Constitutional, Civil Rights, and Human Rights. The Ferguson Action Network is an informal collective of organizers, community leaders, and lawyers who, in the wake of the killing of Mike Brown and countless others, have been organizing with leaders on the ground to bring an end to systemic police discrimination and brutality.

We submit the federal recommendations included in this testimony on behalf of over eighty racial justice and human rights organizations who have endorsed our twelve point platform. These groups include established national organizations as well as dozens of local grassroots organizations that are on the frontlines of this growing movement, from Ohio to Ferguson. The support of on-the-ground organizations is especially important because although black youth are leading and sustaining this growing movement, they are often left out discussions about solutions. In elevating this platform we recognize and honor the leadership and sacrifice of the multitude of young black leaders who have taken to the streets to demand a recognition of the value of black life and an end to state sanctioned violence against their communities.

The killing of Eric Garner, Mike Brown, John Crawford III and Ezell Ford in the span of four weeks this summer and the subsequent failure to hold any officers involved in those killings responsible has resulted in nationwide protest and resistance. Community members in over two hundred cities across the country have planned die-ins, walk-outs, acts of civil disobedience and protests to demand recognition, not only in rhetoric but in deed, that black lives matter.

These killings, the vilification of the victims and the impunity reserved for the perpetrators, are not exceptional. They are reflective of an epidemic of state-sanctioned terror perpetuated against black communities through police violence and occupation, economic deprivation, incarceration, surveillance, and political isolation. According to woefully incomplete data by the Federal Bureau of Investigations a black person is killed on average of twice a week by law enforcement in this country.[1] This surpasses the estimated lynching rates in the early decades of the 20th century. In communities across the country the lack of transparency, accountability, and community input along with the surge of federal funds and federally supplied military equipment to local law enforcement have created police cultures of impunity, violence and abuse. In many communities the police have become an occupying force and children as young as twelve are so demonized and dehumanized by the weight of racism and racial profiling, that they are viewed as targets to be shot on sight.[2]

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[1] There is currently no accurate database reflecting the number of killings or incidents of excessive use of force by police officers. This despite a mandate under the 1994 Violent Crime Control Act to track and publish such data. The most complete database has some serious flaws—including the fact that only 750 of 17,000 agencies report data and the data is self-reported by law enforcement and is not audited by the FBI. Furthermore, the statistics on "justifiable" homicides have conflicted with independent measures of fatalities at the hands of police. Kevin Johnson, Meghan Hoyer & Brad Heath, "Local Police Involved in 400 Killings Per Year." August 15th, 2014, Available: http://www.usatoday.com/story/news/nation/2014/08/14/police-killings-data/14060357/

Those taking to the streets in resistance in large cities and countless medium and small towns across the nation, are not just demanding justice for Mike Brown and Eric Garner, they are also calling for the dismantling of a system that made these killings inevitable, and which arms and legitimizes a daily war against black and brown communities nationwide.

We recognize that policing is largely a local issue—in so far as many of the laws and regulations which control policing are implemented and monitored at the local level. However, throughout our history there have come times when local authorities' dismal and systemic failures to protect the life, rights and dignity of their residents has created a moral and constitutional imperative for federal action. We saw this in the years after the Civil War and throughout the Civil Rights Movement of the 1960s. The systemic and unchecked brutality visited upon black and brown communities by those deputized to protect and serve as well as the glaring inequities of a system, which daily condemns countless black and brown people to prison for minor offenses and yet refuses to indict and allow for a public airing of facts when a police officer summarily executes unarmed black men, has created such a moment. The scope and severity of these issues require action by the federal government.

Other groups, such as "Ferguson to Geneva," have described in their testimonies the horrors of police abuse. In support of those experiences and in a commitment to honor Eric Garner's last words, "This stops today," we offer a series of national demands aimed at Congress, the President and the Attorney General. Many of these demands could be implemented immediately and would likely save lives as well as begin the longer journey to address the underlying causes of police brutality.

We also are submitting a visionary platform which speaks to long term changes which must be made to end the devaluing of black lives and achieve equity under the law.

We submit the following demands to Congress, the President and the Attorney General:

1) **The De-militarization of Local Law Enforcement across the country.**

Strict limits on the transfer and use of military equipment to local law enforcement and the adoption of the Stop Militarizing Law Enforcement Act of 2014. The federal government should discontinue the supply of military weaponry and equipment to local law enforcement and immediately demilitarize local law enforcement, including eliminating the use of military technology and equipment.

2) **A Comprehensive Review of systemic abuses by local police departments, including the publication of data relating to racially biased policing, and the development of best practices.**

A comprehensive review by the Department of Justice into systematic abuses by police departments and the development of specific use of force standards and accompanying recommendations for police training, community involvement and oversight strategies and standards for independent investigatory/disciplinary mechanisms for excessive force. These standards must include a Department of Justice review trigger when continued excessive use of force occurs.

A comprehensive federal review of police departments' data collection practices and the development of a new comprehensive data collection system that allows for annual reporting of data on the rates of stops, frisks, searches, summonses and arrests by race, age, and gender. These standards must also include a DOJ review trigger when departments continue discriminatory policing practices.

3) **Repurposing of law enforcement funds to support community based alternatives to incarceration and the conditioning of DOJ funding on the ending of discriminatory policing and the adoption of DOJ best practices.**

The repurposing of Department of Justice funds to create grants that support and implement community oversight mechanisms and community based alternatives to law enforcement and incarceration—including community boards/commissions, restorative justice practices, amnesty programs to clear open warrants, and know-your-rights-education conducted by community members.

The development of a DOJ policy to withhold funds from local police departments who engage in discriminatory policing practices and condition federal grant funds on the adoption of recommended DOJ trainings, community involvement and oversight strategies, use of force standards and standards for independent investigatory/disciplinary mechanisms.

4) **A Congressional Hearing investigating the criminalization of communities of color, racial profiling, police abuses and torture by law enforcement.**

Congressional hearings investigating the criminalization of communities of color and systemic law enforcement discriminatory profiling and police abuses—including an examination of systemic structures and institutional practices and the elevation of the experiences and voices of those most impacted.

5) **Support the Passage of the End Racial Profiling Act.**

Support for the passage of the End Racial Profiling Act (ERPA) which in law would prohibit the use of profiling on the basis of race, ethnicity, national origin or religion by law enforcement agencies.

6) **The Obama Administration develops, legislates and enacts a National Plan of Action for Racial Justice.**

The development and enactment of a National Plan of Action for Racial Justice by the Obama Administration. The National Plan of Action for Racial Justice should be a comprehensive plan that address persistent and ongoing forms of racial discrimination and disparities that exist in nearly every sphere of life including: criminal justice, employment, housing, education, health, land/property, voting, poverty and immigration. The Plan would set concrete targets for achieving racial equality and reducing racial disparities and create new tools for holding government accountable to meeting targets.

We submit the following platform for visionary reform:

1) **We Want an End to all Forms of Discrimination and the Full Recognition of our Human Rights**

The United States Government must acknowledge and address the structural violence and institutional discrimination that continues to imprison our communities either in a life of poverty and/or one behind bars. We want the United States Government to recognize the full spectrum of our human rights and its obligations under international law.

2) **We Want An Immediate End To Police Brutality And the Murder Of Black, Brown & All Oppressed People**

Every 28 hours a black person in the United States is killed by someone employed or protected by the government of the United States. Other communities are also criminalized, targeted, attacked and brutalized. We want an immediate end to state sanctioned violence against our communities.

3) We Want Full Employment For Our People

Every individual has the human right to employment and a living wage. Inability to access employment and fair pay continues to marginalize our communities, ready us for imprisonment, and deny us of our right to a life with dignity.

4) We Want Decent Housing Fit For The Shelter Of Human Beings

Our communities have a human right to have access to quality housing , that protects our families and allows for our children to be free from harm.

5) We Want an End to the School to Prison Pipeline & Quality Education for All

We want an end to policies that criminalize our young people as well as discriminatory discipline practices that bar access to quality education. Furthermore, we want all children to be able to access free, quality education. Including free or affordable public university.

6) We Want Freedom from Mass Incarceration and an End to the Prison Industrial Complex

We want an end to the over policing of our communities. This will hasten an end to the criminalization of black and brown people and hyper incarceration everywhere. Policing in the United States has historically helped to enforce racist laws, policies and norms. The result is a massive prison industrial complex built on the warehousing of black people. We call for the cessation of mass incarceration and the eradication of the prison industrial complex all together. In its place we will address harm and conflict in our communities through community based, restorative solutions.

A selection of endorsers of the National Demands include:

Organizations for Black Struggle (OBS)

Center for Constitutional Rights

Amnesty International USA

Policy Link

Dream Defenders

US Human Rights Network

Black Youth Project 100

Black Lives Matter

NAACP Legal Defense Fund

PICO

Occupy Wall Street

National Domestic Workers Alliance

National Economic Social Rights Initiative

Million Hoodies

Freedom Side

National Network for Arab American Communities

Black Alliance for Just Immigration (BAJI)

Asian Pacific American Labor Alliance, AFL-CIO (APALA)

South Asian Americans Leading Together (SAALT)

United We Dream

DEMOS

Center for Popular Democracy

Ohio Student Association

Malcolm X Grassroots Movement

New Jim Crow Movement

Malcolm X Center for Self Determination

Missourians Organizing for Reform and Empowerment

Nationals Peoples Action

Veterans for Peace

Dignity & Power Now

On Earth Peace

GirlsTalk/GuysTalk

Peace and Justice Action League of Spokane

Washington University in St. Louis Association of Black Students

SustainUs

Media Alliance

Mosaic Cultural Complex

Communities United Collective

African American Voice

Justice Coalition of Kentucky Against Police Brutality & Mass Cooperation

The People's Power Assemblies

Educators in Solidarity

Missouri Chapter National Organization for Women

Police Reform Organizing Project

Urbana-Champaign Indy Media Center

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Statement for the Record

Suman Raghunathan, Executive Director
South Asian Americans Leading Together (SAALT)

"The State of Civil and Human Rights in the United States"

United States Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

December 9, 2014

Chairman Durbin, Ranking Member Cruz and members of the Subcommittee, South Asian Americans Leading Together (SAALT) welcomes the opportunity to submit a statement for the record for the December 9, 2014 hearing "The State of Civil and Human Rights in the United States." SAALT is a national, nonpartisan, non-profit organization that elevates the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States. SAALT works with a base of individual members and advocates and is the coordinating entity of the National Coalition of South Asian Organizations (NCSO), a network of 41 organizations across the country that provides direct services, organizes and advocates on behalf of South Asians in the United States.

We thank you for holding this critical and timely hearing on civil and human rights in the United States. The ability of all individuals residing in our country to freely exercise their voting rights, live free of hate violence and feel safe from police abuse is under question. Congressional investigation and action are needed to restore the rights and dignities promised to all who live in the United States.

Hate Violence

SAALT is especially heartened that a focus for today's hearing is an examination of hate crimes and the recent spate of anti-Arab and anti-Muslim bigotry as well as the pervasive underreporting of hate crimes. SAALT, along with our allies, recently commemorated the fifth anniversary of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act but we continue to note that much remains to be done to ensure all communities can live free from hate violence. This is particularly true for Arab, Middle Eastern, Muslim and South Asian (AMEMSA) communities. Just last week, a young Muslim boy was targeted and killed outside a mosque in Kansas City, Missouri. In September 2014 SAALT released *Under Suspicion, Under Attack: Xenophobic Political Rhetoric and Hate Violence against South Asian, Muslim, Sikh, Hindu, Middle Eastern and Arab Communities in the United States*. In this report, we examined reported incidents of hate violence directed at South Asian communities between 2011 and 2014 and found that our communities face a high level of hostility and hate violence.

Though hate crimes, generally have been on the decline, this decline has not been evenly felt by all groups and hate violence remains a pervasive problem for South Asian communities.[1] Hate crimes targeting South Asian communities continue to be at higher levels than before 9/11 and hate crimes motivated by anti-Muslim sentiment account for over one in tem of all hate crimes related to religious bias.[2] However, it is important to note that these figures reflect only the incidents of hate violence which are reported. Experts estimate that actual incidents occur at a rate fifteen times higher than those reported.[3] Under reporting may be even higher for South Asian communities who have unique fears related to seeking law enforcement assistance as a result of discriminatory policies and practices adopted since 9/11.

In light of these high levels of hostility and hate violence in our communities, the DOJ Guidance released yesterday needed much stronger reforms to ensure law enforcement agents at all levels and in all agencies are coordinated and mandated to protect our communities. Instead, the guidance continues to leave our communities open to profiling, mapping, and surveillance and vulnerable to hate violence by the very law enforcement agents tasked to protect us. The broad exemptions that remain for DHS, namely within Customs and Border Protection, the FBI, specifically its ethnic mapping activities, and the TSA will allow our communities, border communities, and Latino communities to be profiled under the guise of border and national security issues. This is an unacceptable breach of civil and human rights that creates second-class citizenship for some communities in this country. Furthermore, failing to expand applicability of the Guidance to state and local law enforcement agencies is especially disappointing in light of the national public outcry against the recent deaths of unarmed Black men and boys at the hands of local police. The repeated lack of recourse for this should be at the top of any civil and human rights discussion or policy in this country. The collective impact of this guidance on immigrant, border communities, and other communities of color makes us all less safe.

In *Under Suspicion, Under Attack* SAALT found that in the three year period ending at the beginning of 2014, there were 76 incidents of hate violence targeting South Asian and other communities impacted by post 9/11 backlash reported over the Internet and media.[4] Eighty-four percent of those incidents were motivated by anti-Muslim sentiment.[5] These incidents involve Muslims as well as those perceived to be Muslim.

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[1] U.S. Department of Justice, *Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later* (Apr. 2012) , *available at* http://www.justice.gov/crt/publications/post911/post911summit_report_2012-04.pdf.
[2] U.S. Department of Justice, Federal Bureau of Investigations, *Uniform Crime Report Hate Crime Statistics* (2012), *available at* http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/topic-pages/incidents-and-offenses/incidentsandoffenses_final.
[3] Southern Poverty Law Center, *Report: FBI Hate Crime Statistics Vastly Understate Problem*, Intelligence Report, Issue No 120 (Winter 2005), *available at* http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2005/winter/hate-crime.
[4] South Asian Americans Leading Together (SAALT), *Under Suspicion, Under Attack: Xenophobic Political Rhetoric and Hate Violence against South Asian, Muslim, Sikh, Hindu, Middle Eastern and Arab Communities in the United States* (Sep. 2014), *available at* http://saalt.org/wp-content/uploads/2013/06/SAALT_report_full_links1.pdf.
[5] *Ibid.*

Anti-Muslim hate violence targets individuals, community spaces and religious institutions. The attack on the Sikh Temple of Wisconsin in Oak Creek, Wisconsin in 2012, when a known white supremacist walked into a gurdwara and shot and killed congregants, stands out amongst the most horrific attacks on the religious institutions of our communities.[6] A spate of attacks on various mosques climaxed in 2012 and resulted in one mosque in Joplin, Missouri being burned to the ground.[7] Of religious institutions that were targeted by hate violence in the three year period examined in *Under Suspicion, Under Attack*, 87% involved mosques or other Islamic institutions.[8]

Given the steadily high level of hate violence targeting AMEMSA communities, SAALT and our allies have called on the Obama Administration to create a National Task Force to Prevent Hate Violence to focus on holistically addressing hate incidents directed at AMEMSA communities through relationship-building between communities and government, creating comprehensive and coordinated preventive measures and response protocols and engaging law enforcement at the federal, state and local levels. Recently, the Administration has announced the creation of an inter-agency task force on hate violence and SAALT will continue to collaborate with the Administration to ensure the task force focuses on the unique needs of South Asian and other communities impacted by post 9/11 backlash.

Suspicionless Surveillance

The hostility and violence faced by South Asian communities requires an immediate and multi-level response from government and policy makers. It is important to consider the overall climate faced by our communities and how the hostility is fueled. South Asian communities are often treated as a presumed threat to national security and new accounts of widespread surveillance against our communities are no longer surprising. Government policies that target South Asian communities through surveillance without basis or accountability can feed public misconceptions that South Asian communities are suspect and foreign. Suspicionless surveillance of entire communities is of grave concern to this Subcommittee and has far-reaching implications for impacted individuals.

Law Enforcement Profiling

SAALT has for years urged Congress to enact legislation that comprehensively and meaningfully prohibits profiling by all levels of law enforcement. With the weak reforms to the DOJ profile guidance yesterday, enactment of stronger legislation is an important first step to addressing the crisis in trust between communities of color and law enforcement and can be integral in beginning the healing process in the aftermath of Ferguson.

For South Asian communities, encounters with law enforcement profiling have been a constant concern, particularly in a post-9/11 world. Some examples include congressional hearings targeting Muslim American communities for heightened scrutiny; the suspicionless surveillance of mosques, student associations, and other community spaces of Muslims in New York City; the targeting of Sikhs

[6] *Ibid.*
[7] *Ibid.*
[8] *Ibid.*

for special screenings at airports; and immigration enforcement programs like the National Security Entry-Exit Registration System which unequivocally profiled many young South Asian Muslim males. Through government policies and practices, members of our communities have regularly been subject to profiling and discriminatory policing.

Immigration

The recent announcement from the President to take executive action on immigration has significant impact on our communities, with South Asian groups having some of the highest numbers of undocumented immigrants in this country. We welcome these administrative relief programs as a start and hope that your committee will continue to encourage your colleagues in Congress to pass full and comprehensive immigration reform.

We can and must ensure immigrant families can live in their communities with dignity and respect, and we must stop deportations that are tearing our communities apart. Congress must widen the circle of inclusion by passing comprehensive immigration reform that includes an affordable roadmap to citizenship, widens the visa pipeline while eliminating backlogs and wait times, and clearly prohibits discriminatory profiling.

Recommendations

SAALT urges the Subcommittee to continue to investigate the state of civil and human rights in the United States and Congress to:

- Pass legislation that eliminates border and national security loopholes in profiling and mandates all state and local law enforcement agents to comply with the latest DOJ profiling guidance.
- Pass the End Racial Profiling Act (ERPA) to end law enforcement profiling on the basis of race, religion, ethnicity, gender, gender identity, sexual orientation and national origin.
- Ensure that the Department of Justice is rigorously enforcing the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act and successfully implementing changes in hate crimes data collection to disaggregate hate crimes motivated by bias against Arabs, Hindus and Sikhs.
- Allocate appropriate funding for prevention, education and training initiatives for law enforcement regarding hate crimes and profiling.
- Conduct congressional hearings to investigate the discriminatory and suspicionless surveillance of South Asian communities by all levels of law enforcement.
- Publicly condemn all incidents of hate violence as well as divisive rhetoric motivated by hate emanating from other political leaders or government officials.
- Pass full and comprehensive immigration reform.

SAALT thanks the Subcommittee for its leadership in conducting this hearing. Together we can ensure that our country remains true to its fundamental principles of plurality, inclusion and respect. Thank you for the opportunity to submit this statement for the record.

For further information about the impact of hate crimes, suspicionless surveillance and law enforcement profiling as it relates to the South Asian community, please contact Lakshmi Sridaran, SAALT's Director of National Advocacy and Policy at lakshmi@saalt.org.

Statement for the Record of Human Rights First

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

"The State of Civil and Human Rights in the United States"

December 9, 2014

ABOUT HUMAN RIGHTS FIRST

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the global struggle for human rights, so we press the U.S. government and private companies to respect human rights and the rule of law. When they fail, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We are a non-profit, nonpartisan international human rights organization based in New York, Washington D.C., and Houston, TX. To maintain our independence, we accept no government funding.

OVERVIEW

On human rights, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to our country for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest: America is strongest when our policies and actions match our values. Human Rights First would like to direct the Committee's attention to ways Congress and the Executive Branch can address ongoing civil and human rights challenges in three key areas: the necessity of addressing the United States' use of torture in the aftermath of the 9/11 terrorist attacks; the continued damage to our nation's reputation and ability to lead internationally by our housing of prisoners at Guantanamo Bay, Cuba; and the need to better protect refugees and asylum seekers who look to the United States for help.

ENDING THE USE OF TORTURE

The United States' use of torture and cruel, inhuman, or degrading treatment in the so-called "enhanced interrogation program" after the 9/11 terrorist attacks was misguided and counterproductive. It violated domestic and international law, compromised the United States' global commitment to human rights, undermined counterterrorism efforts, bolstered the recruiting efforts of terrorist groups, and provided little—if any—significant intelligence that was necessary to disrupt terrorist plots. Existing criminal statutes, both state and federal, prohibit the use of torture, but although these laws were in place after the 9/11 attacks, lawyers in the

White House, Department of Justice, Department of Defense, and CIA were able to skirt them to advise that the use of so-called "enhanced interrogation techniques" was legal, and allow policymakers to authorize use of the techniques.

The imminent declassification of the Senate Select Committee on Intelligence's report on the post-9/11 CIA torture program is a promising first step that will lay the foundation for accountability and transparency regarding the use of torture. Beyond this essential first step, in order to build a durable consensus against torture and prevent the United States from ever returning to an official sanctioned policy of so-called 'enhanced interrogation techniques,' Human Rights First recommends that the U.S. government:

- Clarify legislation to reinforce and affirm the prohibition against torture.
- Mandate more thorough judicial review of state secrets claims.
- Mandate that the government notify the International Committee of the Red Cross (ICRC) of any individual in the custody of the U.S. government and allow the ICRC to access prisoners within 14 days.
- Mandate that all interrogations of detainees held by any department or agency of the U.S. government be video recorded, and repeal DOJ polices that allow interrogators to avoid recording requirements if the interrogation relates to national security.
- Clarify the extraterritorial scope of the Convention Against Torture (CAT).
- Direct the Attorney General to declassify and publish details on the Assistant U.S. Attorney John Durham's investigation into the CIA interrogation and mistreatment of detainees overseas.
- Declare a moratorium on specified renditions and make public reviews of rendition practices and diplomatic assurances.
- Sign, and seek advice and consent of the Senate to ratify, the International Convention for the Protection of all Persons from Enforced Disappearances and the CAT Optional Protocol

CLOSING THE PRISON AT GUANTANAMO BAY

As President Obama said in a 2013 speech at the National Defense University, the prison at Guantanamo Bay, Cuba "has become a symbol around the world for an America that flouts the rule of law."[1] The detention facility was designed to operate as a legal black hole where detainees were prevented from challenging their detention, stripped of their protections under the Geneva Conventions, and subjected to torture and other abuses. As more than three dozen of the nation's most respected retired generals and admirals said earlier this year, "Keeping the prison at Guantanamo open undermines American laws and values, and harms—not enhances—our

[1] President Barack Obama, Address at National Defense University (May 23, 2013), *available at:* http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university.

national security."[2] Guantanamo's continued operation bolsters terrorist recruitment[3] and undermines counterterrorism cooperation with our allies, while costing American taxpayers more than $2.9 million per year per detainee.[4] General Michael Lehnert, the first commander of the task force that opened the facility, wrote last year that keeping Guantanamo open "has helped our enemies because it validates every negative perception of the United States."[5] The ability of the United States to credibly push other governments to respect human rights is seriously compromised when we have failed to correct the post-9/11 abuses that have cast a shadow on America's foreign policy of the last decade. And that shadow will continue to loom large until Guantanamo is closed.

The recently-passed National Defense Authorization Act (NDAA) contains provisions that further limit the United States' ability to build and restore credibility abroad. The prohibitions on funds to transfer Guantanamo detainees to the U.S. and construct/modify facilities in the U.S. for Guantanamo detainees have been extended by one year to December 31, 2015. Detainees cannot be transferred to the U.S. for any reason—including to try them in federal court, if they have committed crimes that can be tried in civilian court.

The bill also provides $12 million for a new dining facility and $11.8 million for a health clinic. However, there is a limitation on the construction of new facilities at Guantanamo – no construction is permitted unless the Secretary of Defense certifies that the new construction has "enduring military value independent of a high value detention mission." Nothing in that limitation prohibits construction "to correct a deficiency that is life-threatening, health-threatening, or safety-threatening." Sustained leadership from Congress and the administration is essential to closing the facility. Human Rights First recommends that the U.S. government take the following steps to close the prison at Guantanamo Bay:

RECOMMENDATIONS TO CONGRESS:

- Congress should remove the prohibitions on funds to transfer detainees to the U.S. and construct/modify facilities in the U.S. for Guantanamo detainees.

RECOMMENDATIONS TO THE ADMINISTRATION:

- Communicate to Congress and the American people the administration's comprehensive plan for closing Guantanamo before leaving office.

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[2] Letter from Retired Military Leaders Group to Members of the United States House of Representatives and Senate (May 19, 2014) [*hereinafter RML Letter to Congress*], *available at:* http://www.humanrightsfirst.org/resource/retired-admirals-and-generals-urge-senate-lift-guantanamo-transfer-restrictions.

[3] Letter from James R. Clapper, Director of National Intelligence, to Dianne Feinstein and Saxby Chambliss, United States Senators (November 12, 2013), *available at:* http://www.scribd.com/doc/185248699/DNI-Letter-on-GTMO-11-14-13

[4] United States Department of Defense: Guantanamo Bay, Cuba (GTMO) Costs (Detention Operation), *available at:* http://www.humanrightsfirst.org/uploads/pdfs/Costs-DOD-GTMO-Data-Response-to-Congressional-Ltr-61713.pdf.

[5] Jane Sutton, *U.S. general who opened Guantanamo prison says shut it down*, Reuters, December 12, 2013, *available at:* http://www.reuters.com/article/2013/12/12/us-usa-guantanamo-idUSBRE9BB0QM20131212.

- Publicly defend transfers of detainees out of Guantanamo as consistent with, and reflective of, national security interests.
- Highlight the important changes the administration has made in the policy and practice of evaluating detainees for potential transfer.
- Correct misconceptions about the ability of U.S. prisons to safely hold Guantanamo detainees.
- Direct the president's top counterterrorism advisor to establish clear benchmarks for, and periodic reviews of, the relevant agencies' Guantanamo closure efforts to ensure the facility is closed by the end of the president's second term.

SOLIDIFY A LEGAL AND POLICY FRAMEWORK

- Veto any legislation that imposes transfer restrictions on Guantanamo detainees—including restrictions on transfers to the United States and to Yemen.
- Increase efforts to develop rehabilitation and reintegration programs to allow for transfers of Yemeni detainees.
- Complete all Periodic Review Board hearings for eligible detainees as soon as possible and no later than the end of 2015.
- Direct the Department of Justice not to oppose habeas petitions for detainees who are either too sick or too old to pose a security threat.
- End the military commissions and prosecute detainees who have committed crimes in civilian courts.

COMPLETE TRANSFERS

- Direct the Secretary of Defense to transfer detainees to the fullest extent possible, consistent with applicable law.
- Transfer eligible detainees to a civilian court in the United States or to an appropriate foreign jurisdiction.
- Transfer detainees serving military commission sentences to an appropriate high security federal prison or to their home countries to serve the remainder of their sentences.
- Transfer the detainees being held in law of war detention to an appropriate high security federal prison until the end of hostilities.

RISK MANAGEMENT

- Manage the risk posed by repatriation and resettlement by facilitating rehabilitation and monitoring, and developing security programs in countries receiving detainees, to ensure that transfers are consistent with U.S. national security interests and international legal obligations.

- Regularly communicate to Congress and the American people the compelling national security and rule of law reasons for closing Guantanamo.

STRENGHTHENING PROTECTIONS FOR REFUGEES AND ASYLUM SEEKERS

Over the last few years, there has been a sharp increase in the number of asylum seekers detained in "expedited removal" along the U.S. southern border who have expressed a fear of return to their home countries. The overwhelming majority of these people are from El Salvador, Guatemala, Honduras, and Mexico. A rise in murders, rape, violence against women, kidnappings, extortion, and other brutality in these countries, which varies due to the particular conditions in each country—fueled by political instability, economic insecurity, breakdown of the rule of law, and the dominance of local and transnational gangs—is prompting many people to flee their homes.

The administration should inject strong mechanisms into its activities to ensure better protection of asylum seekers, unaccompanied children, and individuals at risk of trafficking.

Human Rights First recommends that the U.S. government take the following steps to strengthen the immigration and asylum system:

- End the detention of families with children, and abandon the policy of automatically opposing requests from mothers and children for release on bond.
- Use case management and other effective and cost-efficient alternative appearance support mechanisms rather than detention for asylum seekers including families with children.
- Take additional steps to support access to legal representation and address the "rocket dockets" that undermine due process for children and families.
- Prioritize full funding for immigration courts and asylum offices, so all cases – not only those from the border – receive a hearing or interview in a timely manner, rather than waiting years.
- Until delays in non-border cases are eliminated, the Executive Office for Immigration Review (EOIR) should set up, and USCIS should be encouraged to continue, a process to allow prompt decisions in cases of urgent humanitarian need, including those where children/spouses are stranded in dangerous/difficult situations abroad.
- Strengthen measures for identifying and protecting asylum seekers and those at risk of trafficking in all border processes.

NETWORK
A National Catholic Social Justice Lobby

Statement on the State of Civil and Human Rights in the United States

Sister Simone Campbell
Executive Director, NETWORK, A National Catholic Social Justice Lobby

Statement for Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on December 9, 2014

Today, we face the consequences of deeply felt fear in our communities. This fear is especially evident when people – including our police officers – are called to interact with people who are "other" than themselves.

Our faith teaches that "racism is not merely one sin among many, it is a radical evil dividing the human family." Communities of color must deal on a daily basis with our nation's reluctance to address the sin or racism so deeply ingrained in our nation's soul.

And that racism stokes fear across the country.

Earlier this year, I traveled 6,800 miles with NETWORK's Nuns on the Bus to encourage civic engagement as a way to address divisions and to bring people together, thus lessening the fears. We met hundreds of people along the way, and here are a few of their stories.

In Iowa, we met Amy, Deb and Charlotta, who are currently residents in the McAuley Center's Transitional Housing Program in Cedar Rapids. All three previously served sentences for committing felonies, and all three are ineligible to vote. Upon taking office in 2011, Governor Terry Branstad took executive action to made Iowa one of the most restrictive states for voters who have committed felonies, rescinding an executive order by former Governor Tom Vilsack.

These three women and others like them are actively involved in their communities, employed, and participating in weekly educational programs and re-entry services. Despite this, they are barred from being active, voting members of their communities.

As a result, they are marginalized, with their needs easily ignored by elected officials. With the prevalence of money in our political system, how can people at the economic margins ensure that laws created will benefit the common good, and not just the wealthy?

Some good news: even though we witnessed real-life experiences of voter disenfranchisement and discrimination, we also encountered symbols of hope. Visiting the Dorothy Day Center in St. Paul, Minnesota, we saw how Catholic Charities has not only responded to the rising homelessness in the

community, but is fully committed to making sure that their guests are taking full advantage of Minnesota's accommodations for people who are homeless to fully participate in democracy.

In Baton Rouge, we witnessed the impact of the Gardere Initiative, a community-based organization in a neighborhood predominantly made up of voters of color at the economic margins. They, too, work to make sure that neighborhood residents are able to participate in elections. We know that fear is lessened when people are engaged and assured that their voices are heard.

My faith teaches that all people have an inherent human dignity, and that we are all equal in the eyes of God. Advocates continue to work hard to make sure we are all equal in the eyes of the Constitution. We still have much work to do, but there are signs of hope.

The recent but sadly not new stories of Mike Brown, Eric Garner, Dontre Hamilton and other victims of law enforcement jumping too quickly to the use of force are no longer ignored. Community activists and community members are joining together to say, "No more!"

On November 3, we Nuns on the Bus were able to stand with a pastor from Ferguson, joining with Maria and Nate Hamilton in Milwaukee. The crowd wore stickers that said "Mike Brown Can't Vote. But I Can."

By stopping the militarization of our police forces we can help turn fear into hope. And through hard work, including the building of inclusive communities where all can participate, we will build justice.

Let us all work together to make that happen.

STATEMENT OF
STEVEN W. HAWKINS, EXECUTIVE DIRECTOR

AMNESTY INTERNATIONAL USA

"THE STATE OF CIVIL AND HUMAN RIGHTS IN THE UNITED STATES"

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

UNITED STATES SENATE

DECEMBER 9, 2014

Senator Durbin, Ranking Member Graham and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Amnesty International USA regarding today's hearing on the state of civil and human rights in the United States. **While this statement will highlight many issues of concern regarding human rights in the United States, I would like to first focus my statement on a pressing issue of national importance in regards to race and policing.**

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. We reach almost every country in the world. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

We thank you for holding this critical and timely hearing on Civil and Human Rights in the United States. **This hearing about the state of civil rights and human rights in the United States comes at a critical time for many communities across the country. The recent deaths of Michael Brown, Eric Garner, Ezell Ford, Tamir Rice and others at the hands of police set off a long-overdue conversation on race, policing and justice as well as protests around the country that are ongoing. The human rights concerns range from the right to life, to freedom from discrimination to freedom of expression and assembly. These incidents of lethal force have demonstrated the need to take a deeper look at policing tactics on a national level. Law enforcement policies on the use of force vary widely from agency to agency and state to state and may not meet international standards. International standards provide that law enforcement officers should only use force as a last resort and that the amount of force must be proportionate to the threat encountered and designed to minimize damage and injury. Officers may use firearms as a last resort – when strictly necessary to protect themselves or others against the imminent threat of death or serious injury. The intentional lethal use of firearms is justified only when "strictly unavoidable in order to protect life."**

However, as much attention as these cases have received, we truly do not know how many similar cases happen each and every year. Hundreds of individuals may be shot and killed by law enforcement annually. However, due to the failure of the Department of Justice to collect accurate, comprehensive national data on police use of force, including the numbers of people killed or injured through police shootings or other types of force, it is impossible to truly understand the enormity of the issue across the country. It is imperative that the DOJ begin

collecting and publishing this data (disaggregated on the basis of race, ethnicity and gender) annually, in accordance with the Violent Crime Control and Enforcement Act (1994). The Department of Justice should lead efforts to collect and publish data on police shootings in order to determine whether shootings are indicative of trends for individual officers or law enforcement agencies.

Furthermore, the President and Congress should work together to convene a special commission on law enforcement, to comprehensively examine and produce recommendations on policing tactics, including use of force and lethal force, discriminatory policing, the militarization of police and the policing of protests to produce recommendations and ensure adherence of all law enforcement agencies to human rights standards for law enforcement. Amnesty International is urging the US Government to take these crucial steps to ensure that others do not die at the hands of law enforcement in the future.

In 2014, the United States' human rights record was reviewed by the United Nations' expert committees on racial discrimination and torture as well as by the Human Rights Committee. Amnesty International raised the following issues with those bodies based on the organization's research and reporting on the United States.

THE HUMAN RIGHTS SITUATION ON THE GROUND

(i) COUNTER-TERRORISM

Indefinite detention without charge or trial

More than four and a half years after President Obama's deadline for closing the detention facility at the US Naval Base in Guantánamo Bay passed, scores of detainees remain held at the base, most without charge or trial. A human rights-compliant approach to ending the Guantánamo detentions requires that any detainee not charged with a recognizable criminal offence for trial under fair procedures in an independent and impartial court be immediately released, into the USA if no other safe and just solution is immediately feasible. However, the USA continues to apply its own unilaterally developed "law of war" framework to these detentions.

Trials by military commission

The US military commissions at Guantánamo are creations of political choice, not of demonstrably legitimate necessity. The commissions lack independence, in substance and appearance, from the political branches of government that have authorized, condoned, and blocked accountability and remedy for, human rights violations committed against the very category of detainees to appear before them. Trial of civilians by military tribunals is inconsistent with international standards, especially when civilian courts are readily available. Applying inferior trial protections on the basis of nationality – US nationals cannot be tried by the military commissions – violates the right to equality before the law. Six detainees face possible death sentences at forthcoming trials by military commission. Execution following unfair trial violates the right to life under international law.

Accountability and remedy

Dozens of detainees were held in the CIA-operated program of secret detention authorized from 2001 to 2009. Systematic human rights violations were committed in this program, including the crimes under international law of enforced disappearance and torture. No-one has been brought to justice for these crimes and the limited investigations that have been conducted have been closed, with no

charges brought against those anyone. A combination of executive secrecy, judicial deference to the invocation of national security or war powers by the political branches, and domestic party politics continues to block accountability and remedy, resulting in continued non-compliance by the US with its international human rights obligations.

(ii) CRIMINAL JUSTICE

Police and correctional agencies

US law enforcement and correctional agencies generally operate under professional standards. However, there are frequent reports of ill-treatment and excessive use of force by police and custody officials. Such officials are rarely prosecuted for such abuses and some law enforcement agencies, as well as many prisons and jails, lack effective independent oversight bodies. There are no binding national guidelines governing use of restraints or "less lethal" weapons such as **Tasers**.

More than 12,000 US law enforcement agencies deploy Tasers: dart-firing electro-shock weapons which can also be used close-up as stun guns. Over 540 people have died in the USA since 2001 after being struck by police Tasers, raising serious concern about the safety of such devices. Although most of the deaths have been attributed to other factors, coroners have found that the Taser played a role in more than 60 deaths, and there are other cases where the cause of death was unclear. Tasers are widely used against individuals who do not pose a serious threat, including children, the elderly and people under the influence of drink or drugs.[i] In many of the cases documented by Amnesty International, the use of Tasers violates international standards prohibiting torture and other ill-treatment.

Racial minorities continue to be disproportionately represented in complaints of police ill-treatment. National data on the excessive use of force by police does not exist. Lesbian, gay, bisexual, transgender and intersex people are also at risk of discrimination and ill-treatment by police. There are concerns about **racial profiling** in many jurisdictions, with individuals allegedly stopped, searched, or arrested on account of their race, nationality, or perceived origin or religion. Legislation prohibiting racial profiling nationwide, with relevant data collection and monitoring, has been pending before Congress since 2001.

Since the late 1980s, more than 30 states and the federal government have introduced **"super-maximum security" (supermax) facilities** for the control of prisoners who are considered disruptive or a security threat. The conditions of prolonged isolation and sensory deprivation in such units have been criticized by UN treaty monitoring bodies as incompatible with international human rights standards.[ii] Prisoners in the most restrictive units are typically confined for 23 to 24 hours a day in small, sometimes windowless, solitary cells, with no work or rehabilitation programs, and no daily exercise. Although courts have ordered improvements to some supermax prisons, conditions remain extremely harsh in many states and often the review procedures for assignment to such facilities are inadequate.

The U.S. prison population has grown by 500 per cent over a 30-year period.[iii] More than 2.2 million Americans are incarcerated today, giving the United States the highest total prison population and incarceration rate in the world.[iv] **Persons of color have the highest rates of imprisonment, with Latinos and African Americans imprisoned at rates of 2.5 and 5.8 times the rate of whites respectively.**[v] In 2013 US Attorney General Eric Holder announced reforms to the federal criminal justice system, calling for changes to drug-related, mandatory minimum sentencing guidelines and diverting people convicted of low-level offenses to drug treatment and community service programs,

while expanding a program to allow for the release of some elderly, non-violent offenders and certain inmates who are the only possible caregiver for their dependents.

Substantial and comprehensive reforms are needed to address all aspects of mass incarceration, including discriminatory profiling by law enforcement; harsh mandatory minimum sentences, prison conditions and the racial and economic disparities that exist at every stage of the criminal justice system in the United States.

The death penalty

There have been nearly 1,400 executions in the USA since judicial killing resumed under revised statutes in 1977, and about 3,000 prisoners remain on death row around the country, including more than 50 on federal death row. The US capital justice system is marked by arbitrariness, discrimination, and error. Studies demonstrate that race, particularly race of murder victim, plays a role in who is sentenced to death. More than 130 prisoners have been released from death row since 1977 on grounds of innocence. In numerous cases, prisoners have gone to their deaths despite serious doubts about their guilt or where inadequate legal representation for indigent defendants meant that the sentencing jury had not been presented with the full array of mitigating evidence available in the case. People with serious mental illness continue to be subjected to the death penalty. Harsh conditions on death rows in many states add to the inherent cruelty of the death sentence.

Life sentences for children

Hundreds of individuals are serving sentences of life without parole for crimes committed when they were under 18 years old.[vi] The imposition of a sentence of life without the possibility of parole against such individuals – regardless of the nature of that crime or its consequences – is an unequivocal violation of international law.

Sexual violence against Indigenous women

Indigenous women suffer disproportionately high levels of rape and sexual violence. Data collected by the Department of Justice (DOJ) indicates that Native American and Alaska Native women are more than 2.5 times more likely to be raped or sexually assaulted than women in the USA in general.[vii] The DOJ found that more than one in three American Indian and Alaska Native women will be raped during their lifetimes, compared to one in five in the USA overall.[viii] Recently enacted legislation[ix] has provided some solutions but is limited in scope: it only applies to domestic violence related crimes, precludes prosecution of the majority of non-Indian perpetrators without ties to the tribe and does not apply to the Alaska Native Tribes.[x]

Migrants in detention

More than 350,000 men, women and children are detained by US immigration authorities annually.[xi] International human rights standards require that detention in immigration cases should only be used in exceptional circumstances, and that it must be justified in each case and be subject to judicial review. However, immigrants can be detained for months or years in the USA without any form of meaningful individualized judicial review of their detention. Amnesty International has documented pervasive problems regarding the conditions under which immigrants are held. These conditions violate both US and international standards on the treatment of detainees.[xii]

Gun violence

Each year, more than 11,000 people are killed as a result of gun violence.[xiii] In 2011, African Americans accounted for 55.7 per cent of all homicides with a "firearm" despite accounting for only 13 per cent of

the US population.[xiv] The problem is especially pervasive among African American youth; African American children and teens (ages 0-19) accounted for 60.75 per cent of all homicides due to firearms for that age range.[xv] The failure of US authorities to prevent gun violence violates international human rights law.[xvi]

(iii) ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Maternal mortality

64 countries have lower maternal mortality rates than the USA,[xvii] with hundreds of women dying each year in preventable pregnancy-related deaths.[xviii] The maternal mortality rate in the USA has increased from 13 per 100,000 births in 2000, to 17 per 100,000 births in 2005, to 28 per 100,000 births in 2013.[xix] African American women are nearly four times more likely to die of pregnancy-related complications than white women.[xx] This disparity holds steady regardless of income, education or location.[xxi]

RECOMMENDATIONS FOR ACTION BY THE UNITED STATES GOVERNMENT

Amnesty International calls on the government and agencies of the USA to:

International law and standards

- Ratify and implement into domestic law the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the Rome Statute of the International Criminal Court, the American Convention on Human Rights, and the Vienna Convention on the Law of Treaties;
- Review its current ratifications, with a view to withdrawing all reservations, understandings and declarations, in particular those which are considered by treaty bodies to defeat the object and purpose of the treaty;
- Review all outstanding recommendations from UN treaty bodies and experts with a view to implementing them.

Counter-terrorism

- Release all detainees still held at Guantánamo, unless they are to be charged and tried without further delay in ordinary federal civilian courts, applying fair trial standards fully consistent with international law. If repatriation is not possible then release into the USA or any safe alternative, without placing conditions on the transfers of detainees that would violate international human rights law and standards;
- Initiate effective independent criminal investigations, including into crimes under international law such as torture and enforced disappearance, committed by individuals acting for or on behalf of the USA, including in the programmes of rendition, interrogation and detention operated by the CIA between 2001 and 2009;
- Ensure that all victims of human rights violations have full access to meaningful remedy;
- Declassify, with redactions only where strictly necessary, the full report of the Senate Select Committee on Intelligence on the CIA detention and interrogation program, as well as other

relevant information relating to the CIA programs of rendition, detention and interrogation between 2001 and 2009.

Criminal justice

- The U.S. Department of Justice should ensure the collection and publication of nationwide statistics on police shootings in accordance with the Violent Crime Control and Enforcement Act (1994). The data collected should be disaggregated by race, ethnicity and gender;
- The U.S. Department of Justice should review and update the Department of Justice's Guidance on the Use of Deadly Force by law enforcement officials to ensure compliance with international law and standards, by limiting the use of lethal force by law enforcement to only in those instances where it is needed to protect life and to ensure that sure that firearms are used as a last resort only if other means have failed or are not likely to be efficient, and even where the use of a firearm is unavoidable that they are used in a way that seeks to minimize harm and loss of life;
- The U.S. Department of Justice should promptly implement a DOJ-led review of police tactics and practices nationwide;
- The U.S. Department of Justice should champion the creation of a national commission to examine and produce recommendations on policing issues, including use of excessive and lethal force, policing of protests and adherence of all law enforcement agencies to human rights standards for law enforcement; and
- The U.S. Department of Justice should update the DOJ's Guidance on the Use of Race by law enforcement officials to include a comprehensive ban on racial profiling by federal law enforcement agencies;
- Review and revise state statutes on the use of lethal force to bring laws in line with international standards and ensure that police departments publish regular statistics on the number of people shot and killed or injured by police officers. Police departments should also provide information on the internal disciplinary process by publishing regular statistical data on the type and outcome of complaints and disciplinary action.
- Suspend the use of Tasers and similar devices in law enforcement unless strictly regulated and limited to situations where they are necessary to protect life and avoid resort to firearms;
- Review conditions in federal supermax prisons and to develop national standards to ensure humane conditions in all such units, with adequate review and monitoring procedures;
- Increase investigations by the Civil Rights Division of the Justice Department of ill-treatment in prisons, and of police departments accused of a "pattern or practice" of abuses, and collect data nationally on the use of force by police departments;
- Ensure that state and federal authorities impose a moratorium on executions with a view to abolishing the death penalty nationwide, and that prosecutors in all jurisdictions cease pursuing death sentences;
- End the use of life imprisonment without parole for offenders under the age of 18 at the time of the crime, regardless of the nature of that crime, and to review all existing sentences in order to ensure that any such convicted offender has the possibility of parole.
- The US Congress should pass, and the President should sign the National Criminal Justice Commission Act, which would conduct a comprehensive review of the U.S. criminal justice

system and implement reforms that would address mass incarceration, prison conditions, capital punishment, harsh mandatory minimum sentences, discriminatory profiling by law enforcement, excessive use of force by law enforcement, as well as racial and economic disparities that exist at every stage of the criminal justice system.

Detention of migrants

- Detain migrants only in exceptional circumstances, in humane conditions, with such detention justified in each individual case and subject to judicial review.

Gun violence

- Ensure the development and implementation of a national program of action to prevent gun violence.

Sexual violence against Indigenous women

- Ensure that all reports of rape and sexual violence against Indigenous women are promptly and thoroughly investigated, and that perpetrators are prosecuted and appropriately punished.

Maternal mortality

- Ensure that all women have equal access to timely and quality maternal health care services.

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[i] See USA: 'Less than lethal'? The use of stun weapons in US law enforcement, December 2008, http://www.amnesty.org/en/library/info/AMR51/010/2008/en, and USA: Statistical analysis of deaths following police Taser deaths, February 2012, http://www.amnesty.org/en/library/info/AMR51/013/2012/en

[ii] For example, Human Rights Committee, Concluding Observations on USA 2014, para. 20. Committee against Torture, Concluding Observations on USA, 2000, para 3(f).

[iii] Fact Sheet: Trends in U.S. Corrections: U.S. State and Federal Prison Population, 1925-2012, The Sentencing Project, available at http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf

[iv] Correctional Populations in the United States, 2012, Bureau of Justice Statistics, Appendix Table 1, http://www.bjs.gov/content/pub/pdf/cpus12.pdf ; Global figures are based on numbers as of February 2013. *See:* http://www.statista.com/statistics/262962/countries-with-the-most-prisoners-per-100-000-inhabitants/

[v] Incarceration Rates by Race and Ethnicity, 2010, The Prison Policy Initiative, available at http://www.prisonpolicy.org/graphs/raceinc.html

[vi] In 2010, in *Graham v. Florida*, the US Supreme Court prohibited the imposition of sentences of life without parole for defendants convicted of non-homicide crimes committed when they were under 18 years old. And, in 2012, in *Miller v Alabama*, it outlawed mandatory life imprisonment without parole for such offenders. According to the Court at the time of the *Miller* ruling, 28 states and the federal government made life without parole sentences mandatory for some children convicted of murder in adult court with more than 2,000 inmates sentenced under mandatory sentencing schemes. States have responded in a variety of ways to the *Miller* ruling, including on whether they will apply it retroactively or not.

[vii] Bureau of Justice Statistics, A BJS Statistical Profile, 1992-2002, American Indians and Crime, 7, U.S. Dept. of Justice, December 2004, available at http://www.bjs.gov/content/pub/pdf/aic02.pdf

[viii] National Institute of Justice, Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey, U.S. Dept. of Justice, 22, November 2000, available at https://www.ncjrs.gov/pdffiles1/nij/183781.pdf.

[ix] In July 2010, the US Congress passed the Tribal Law and Order Act and signed it into law. Tribal Law and Order Act of 2010. P.L. 111-211. This Act endeavors to increase coordination between Tribal and federal law enforcement and to better equip Tribal courts to punish crime, with greater sentencing authority. In March 2013, Congress reauthorized the Violence Against Women Act. The reauthorization includes new provisions to protect Indigenous women which will allow Tribal courts to

prosecute non-Native men for certain offenses, including domestic violence, dating violence and protection order violations. The DOJ found that 86% of rapes and sexual assaults are perpetrated by non-Native men, making it critical that Tribal governments are able to act against this epidemic. Violence Against Women Reauthorization Act of 2013 ('VAWA 2013'), Pub. L. 113-4 (2013). VAWA 2013 § 904; Department of Justice, VAWA 2013 and Tribal Jurisdiction over Crimes of Domestic Violence, 14 June 2013, http://www.justice.gov/tribal/docs/vawa-2013-tribal-jurisdiction-overnon-indian-perpetrators-domesticviolence.pdf.

[x] While the Tribal Law and Order Act increased the sentencing abilities of Tribal courts, Tribal courts can still only impose a maximum of three years in prison for any crime, including rape, and Tribal courts still lack jurisdiction to try non-Native perpetrators outside of the limited domestic violence context allowed by VAWA 2013. The new VAWA provisions exclude Alaska Native Tribes and a number of crimes, including sexual assaults between strangers, child abuse that does not involve a protection order, and crimes committed by a non-Native perpetrator who lacks ties to the Tribe, such as a man who does not live or work on the reservation.

[xi] See ICE and ERO statistics for Fiscal Years 2001 – 2012, available at: http://www.ice.gov/doclib/foia/reports/ero-facts-and-statistics.pdf.

[xii] These include co-mingling of immigration detainees with individuals convicted of criminal offenses, inappropriate and excessive use of restraints, inadequate access to healthcare including mental health services, and inadequate access to exercise. Many individuals have limited or no access to family and legal or other assistance throughout their detention. See, Amnesty International, Jailed Without Justice: Immigration detention in the USA, available at: http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf.

[xiii] See Center for Disease Control, Table 2, page 19, Assault (Homicide) by discharge of firearms for 2011 (preliminary) and 2010, http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf

[xiv] Centers for Disease Control and Prevention, "Fatal Injury Reports, National and Regional, 1999-2011," available at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html Gun violence has been shown to reduce African-American male life expectancy by a full year with African-American males being almost seven times more likely to die by firearm homicide than white males. 1 J. Lemaire, "The Cost of Firearm Deaths in the United States: Reduced Life Expectancies and Increased Insurance Costs", Journal of Risk and Insurance, 2005, Vol 72, No. 3, 359-374, available at http://www.fox.temple.edu/cms/wp-content/uploads/2012/06/JeanLemaire.pdf

[xv] Centers for Disease Control and Prevention, "Fatal Injury Reports, National and Regional, 1999-2011," available at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html

[xvi] Under international human rights law, states have a duty to take positive measures to prevent acts of violence and unlawful killings, including those committed by private persons. Where a foreseeable consequence of a failure to exercise adequate control over the civilian possession and use of arms is continued or increased violence, states might be held liable for this failure under international human rights law. The state responsibility to exercise due diligence does not lessen the criminal responsibility of those who carry out gun crimes.

[xvii] "Maternal mortality ratio." The World Bank. http://data.worldbank.org/indicator/SH.STA.MMRT?order=wbapi_data_value_2013+wbapi_data_value+wbapi_data_value-last&sort=asc

[xviii] M. Heron et al, Deaths: Final Data for 2006, National Vital Statistics Reports, Vol.57, No.14, April 2009, p.116, Table 34; available at http://www.cdc.gov/nchs/data/nvsr/nvsr57/nvsr57_14.pdf.

[xix] See also USA: Deadly Delivery: The maternal health care crisis in the USA, AI Index AMR 51/007/2010, 12 March 2010, http://www.amnesty.org/en/library/info/AMR51/007/2010/en. USA: Deadly Delivery: The maternal health care crisis in the USA: One year update, AI Index AMR 51/108/2011, 7 May 2011, http://www.amnesty.org/en/library/info/AMR51/108/2011/en.

[xx] GK Singh, Maternal Mortality in the United States, 1935-2007.

[xxi] Women of certain groups are disproportionately affected, as age, gender, race, ethnicity, immigration status, Indigenous status or income level can all affect a woman's access to health care, the way she is treated by health care providers, and the quality of health care she receives. This results in disparities in health outcomes. AI's report cited above noted that for 2005-2007, the maternal mortality rate was highest among black women at 34.0 per 100,000 births, followed by Native American and Alaska Native women at 16.9 per 100,000 births, Asian and Pacific Islanders at 11.0 per 100,000 births, non-Hispanic whites at 10.4 per 100,000 births, and Hispanics at 9.6 per 100,000 births. USA: Deadly Delivery: The maternal health care crisis in the USA: One year update, AI Index: AMR 51/108/2011, 7 May 2011, http://www.amnesty.org/en/library/info/AMR51/108/2011/en; GK Singh, Maternal Mortality in the United States, 1935-2007.

STATEMENT OF

Nadia Tonova, Director, National Network for Arab American Communities

Senate Judiciary Hearing on The State of Civil and Human Rights in the United States

UNITED STATES SENATE

December 9th, 2014

I am honored to submit this testimony for the record on behalf of the National Network for Arab American Communities regarding today's hearing on the State of Civil and Human Rights in the United States. NNAAC, which was established in 2004, currently has 23 members in 11 states. Our member organizations are grassroots nonprofits located in the most highly concentrated Arab American communities in the country. Since 9/11, NNAAC has been at the forefront of public discourse, policy campaigns and grassroots organizing to address grave civil and human rights violations against Arab Americans and American Muslims. I commend you on your leadership once again for bringing these critical issues to the forefront of public discourse and amongst our government representatives. We at NNAAC believe in the values our nation was built on; inclusion, plurality, and diversity. We continue to be committed to upholding the civil and human rights of all Americans.

The Arab American and American Muslim communities continue to face one of the most hostile civic environments since 9/11. It has been thirteen years since the tragic events of 9/11, and unfortunately, Arab Americans, South Asians, Muslim Americans, and those perceived to be Muslim continue to be impacted by post 9/11 policies. Anti-Arab sentiments and Islamophobia have been on the rise and increased dramatically this past summer. Hate crimes against Muslims and those perceived have also rose significantly. According to the NYPD's Deputy Chief Michael Osgood, hate crimes against Muslims increased by 143% in New York. I urge members of Congress and federal government agencies to take increased measures to prevent, address, and combat hate crimes in the United States. While it has been nearly five years since the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act was signed in 2009, strengthening existing legal protections, yet hate crimes and hate groups continue to be a serious threat facing this country. According to the 2013 FBI hate crimes statistics, 48.3 percent of the 5,790 single-bias incidents were racially motivated, while 19.6 percent resulted from sexual orientation bias and 19 percent from religious bias. Of the 7,164 hate crime victims, 55.4 percent were victims of crimes against persons and 41.8 percent were victims of crimes against property. 39.6 percent of the victims of crimes against persons suffered simple assaults, while 37.5 percent were intimidated and 21.5 percent were victims of aggravated assault. (Law enforcement also reported 10 murders and 15 rapes as hate crimes.) An overwhelming majority—75.6 percent—of the victims of crimes against property were

victimized by acts of destruction, damage, and/or vandalism. South Asian Americans Leading Together (SAALT) conducted a recent report about xenophobia and hate crimes and of the 78 hate incidents they looked at, 80% were motivated by anti-Muslim hate. Hate crimes and biased incidents not only affect individuals but also target communities. Trauma incurred upon a survivor and targeted community sends the misguided message that they do not belong in this country.

Additionally, we are also faced with the very serious issue of public discourse that can be divisive. Statements made by elected and public officials premised on racism/homophobia/sexism/xenophobia/hatred toward religious groups shape public's perception of minority populations and can fuel individual actions motivated by hate. A number of prominent public officials at local, state and federal levels have used Islamophobic rhetoric. A recent example of this is Jack Whitely, a former Republican Party county chairman in Minnesota who was fired after posting anti-Muslim comments on social media. Rep. Peter King (R-N.Y.) held a series of five anti-Muslim congressional hearings, which were subjected to broad-spectrum push back, but also enjoyed significant support. We believe that elected and public officials have a greater responsibility to refrain from making such statements because of the visible positions that they hold and broad range of audiences that they reach. Public officials should refrain making statements based on racism, xenophobia, homophobia, sexism, or religious intolerance. Public officials should also take a pledge to not engage in such rhetoric as well as condemn such statements when they do occur in the public sphere. Unfortunately, many recent incidents have also shown that Islamophobic rhetoric remains socially acceptable among broader society in some circumstances. Research released by the Council on American Islamic Relations in 2011 found, "citizens are quite comfortable not only opposing [extending citizenship to legal Muslim immigrants], but also being public about that fact."

Another issue plaguing and deeply impacting Arab American and American Muslim communities across the country is racial and religious profiling by local, state and federal law enforcement. We have learned through investigative reports, FOIA requests and lawsuits that agencies target communities by religion and national origin. For instance, we learned through the Associated Press that the NYPD engages in unwarranted surveillance of American Muslim communities in the Northeast. They continue to spy on every aspect of Muslim daily life; cafes, mosques, bookstores, community centers, and Muslim student associations. The NYPD has gone as far as attempting to infiltrate the Board of Directors of one of our member agencies in New York City. Unwarranted surveillance, racial and religious profiling clearly violates the constitutional rights of these communities. Surveillance chills free speech and creates unnecessary fear, alienation, and isolation. The actions by members of law enforcement can perpetuate biased perceptions of community members through discriminatory policing. Discriminatory police practices diminish trust of law enforcement by targeted communities, including during times when assistance is needed when faced with hate crimes.

To address these issues, the National Network for Arab American Communities has been an active member of the Rights Working Group, which was formed in the aftermath of September 11th to promote and protect the human rights of all people in the United States. We are coalition of more than 350 local, state and national organizations. RWG works collaboratively to advocate for the civil liberties and human rights of everyone regardless of race, ethnicity, religion, national origin, and citizenship or immigration status. As part of Rights Working Group, we convene and mobilize its diverse constituencies and amplify their efforts to hold the U.S. government accountable to protecting human rights, focusing on the evolving connections among national security, counter-terrorism, immigration enforcement and criminal justice policies and systems. Based on the challenges laid out above, RWG works towards some of the following: ensuring due process and the right to a fair trial for all people, ending arbitrary and indefinite detentions and arbitrary and unfair deportations, and protecting everyone's rights to privacy and right to be free of unreasonable searches and seizures. RWG recognizes the issues faced by Arab American and American Muslim communities outlined above, and remains steadfast in their support of and commitment to finding positive solutions to these issues.

Furthermore, NNAAC conducted a listening tour in highly concentrated Arab American communities across the country, including San Francisco, Houston, New York, Dearborn, Chicago, Anaheim, and Philadelphia, and the top concerns of all the focus groups was the increase of anti-Arab sentiment in their local communities specifically, and nationally. These conversations helped inform the creation of our Campaign to Take on Hate, a multi-year, grassroots campaign to challenge this country's growing prejudice and persistent misconception of Arab and American Muslims, including refugees of Arab and Muslim descent. As part of this campaign, we are committed to working with Congress and others to enact meaningful policy change to address the issues faced by our communities that have been outlined above. **To that end, the National Network for Arab American Communities puts forth the following policy recommendations:**

a. We call on the Senate Judiciary Committee to hold official hearings that create a formal record of post 9/11 abuses and profiling. These hearings will give platform to directly impacted communities to share their stories, policy experts to provide recommendations, and elected officials who have been champions on addressing the disparate impact of post 9/11 policies in the name of national security that have created fear and paranoia in Arab, South Asian, Muslim and Sikh American communities and widened the gap of mistrust between communities and law enforcement.

b. Ensure robust and comprehensive implementation of the Mathew Shepherd and James Byrd, Jr. Hate Crimes Prevention Act (HCPA): Enacted in 2009, this law encourages partnerships between federal and state law enforcement officials to more effectively address hate violence and provides limited authority for federal investigations and prosecutions when local authorities are unwilling or unable to

act. To ensure robust enforcement, DOJ should file appropriate cases under HCPA; vigorously defend the constitutionality of the Act; and ensure continued education, outreach, and training to federal, state, and local law enforcement officials on HCPA and its requirements.

c. Allocate and prioritize federal funding for initiatives that prevent, investigate, and combat hate crimes, hate groups, and domestic extremism: Congress should establish or increase appropriations for: prevention, education, and training initiatives for law enforcement around existing hate crimes policies and their requirements; anti-bias education initiatives; existing government agencies specifically devoted to addressing and investigating hate crimes, hate groups, domestic extremism, and community tensions; and government resources, such as online portals and websites, geared specifically towards youth affected by bias and hatred. In addition, Congress should urge DHS to release its previously retracted 2009 public on right-wing extremist groups.

d. Congress should pass robust anti-profiling policies, such as the End Racial Profiling Act (S. 1670; H.R. 3618) which prohibits profiling based on race, religion, ethnicity, or national origin by federal, state and local law enforcement; establishes requirements for law enforcement to collect data, provide anti-profiling trainings, and develop a complaint mechanism for affected individuals; allow DOJ to withhold grants to entities that fail to comply with the law and provide funding to these seeking to eliminate the practice; and allow affected individuals to seek redress in court.

We at NNAAC look forward to working with the Senate Judiciary Committee to ensure that these recommendations are implemented. Thank you for bringing light to a very important issue.

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Testimony of Hilary O. Shelton

on behalf of the

National Association for the Advancement of Colored People (NAACP)

for a hearing of the

Senate Judiciary Committee

Subcommittee on the Constitution, Civil Rights, & Human Rights

"The State of Civil and Human Rights in the United States"

December 9, 2014

Good afternoon Chairman Durbin, Ranking Member Cruz, and esteemed Members of the Subcommittee. Let me begin by thanking you for this very important, and incredibly timely, hearing.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau and the Senior Vice President for Policy and Advocacy. I have been the Director of the NAACP Washington Bureau, our Association's federal legislative and national political advocacy arm, for over 17 years.

Founded more than 105 years ago, in February of 1909, the National Association for the Advancement of Colored People, the NAACP, is our nation's oldest, largest, and most widely-recognized grassroots based civil rights organization. We currently have more than 2,200 membership units across the nation, with members in every one of the 50 states.

The NAACP, a non-profit, non-partisan organization was established with the objective of insuring the educational, political, social, and economic equality of racial and ethnic minorities in our country. The NAACP has as its mission the goal of eliminating race prejudice and removing all barriers of racial discrimination through the democratic process.

As we have seen in recent months, weeks and days, while we have clearly made gains in our struggle, we still have a long way to go.

I would like to begin by talking about the most fundamental civil right for most Americans: the right to vote. As we know, *Shelby County, Alabama v. Holder*, challenged the constitutionality of the "preclearance" provisions of the 1965 Voting Rights Act. The NAACP submitted an Amicus Brief on behalf of Attorney General Holder and the Voting Rights Act. On June 25, 2013, the Supreme Court issued its decision in which the Court did not invalidate the principle that preclearance can be required. However, it held that Section 4B of the Voting Rights Act, which sets out the formula that is used to determine which state and local jurisdictions must comply under Section 5's preapproval requirement, is unconstitutional and can no longer be used. Thus, although Section 5 survived, it has no actual effect unless and until Congress can enact a new statute to determine who should be covered by it.

This means that there is no longer a functioning mechanism in place to prevent states with a history of voter disenfranchisement from enacting such laws. The NAACP is very disappointed in this decision, as the constitutionally guaranteed rights of millions of voters have now been put in peril. In fact, we have already seen a number of disenfranchising practices, from photo ID requirements and the shortening of early voting periods at the state level to shenanigans at the local level, such as the closing of polling places in predominantly African American neighborhoods, voter registration forms being "lost," and malfunctioning voting machines.

Congress must act to restore the Voting Rights Act, and to protect would-be voters. The 1965 Voting Rights Act. If there is a silver lining to the *Shelby* decision, it is that Members of Congress and even the Supreme Court agree with the NAACP that voting discrimination is a serious problem even today that requires a solution. Congress must now act thoughtfully, but swiftly, to ensure that all voters are protected, including racial and minority voters. It is now up to states and Congress and the President to pass and sign a new law to create a formula to determine which jurisdictions should need to be "precleared" before making any changes to the time, place, or manner in which their voting laws or procedures would be administered.

By almost every indicator, racial and ethnic minorities still fall behind our White peers. The life expectancy of a White American today is almost 79 years; for a person of African descent, that number falls to below 75 years[1]. Contributing to this disparity is the fact that infants of African American women in 2008 had the highest death rate, which was more than twice as large as

[1] The Henry J. Kaiser Foundation, "Life Expectancy at Birth (in years), by Race/Ethnicity," Issued November, 2014, found at: http://kff.org/other/state-indicator/life-expectancy-by-re/

infants of white women[2]. During their lives, African Americans in 2009 had the largest death rates from heart disease and stroke[3]. In 2010, the prevalence of diabetes among African American adults was nearly twice as large as that for white adults[4].

Furthermore, during his lifetime, a Caucasian American will earn, on average, over $31,400 annually. An African American, on the other hand, will earn on average just over $21,200 annually[5]. Even the level of education does not eliminate the disparity: White American men with a professional degree earn, on average, over $4.75 million annually. African American men with the same degree, however, earn an average of just over $3.5 million[6]. This disparity exists at every level: Caucasian men without a high school degree earn an average more than 22% over their lifetimes than African American men with the same educational attainment[7]. Caucasian men with a college degree earn more than 25% that of their African American peers[8].

The difference in median household incomes between white Americans and African Americans has grown from about $19,000 in 1967 to roughly $27,000 in 2011 (as measured in 2012 dollars). Median African American household income was 59% of median white household income in 2011.

On the issue of education, while we have clearly made gains, as with everything else, African Americans still lag behind their white counterparts in terms of educational attainment. In 2013, just over 94% of Caucasians between the ages of 25 and 29 had at least a high school diplomaa or an equivalent; for African Americans, that number was closer to 90%. As recently as 1970, those number were almost 78% for Caucasians and just over 58% for African Americans[9]. Yet the higher the educational level, the greater racial disparity remains firmly entrenched. In 2013, just over 40% of all Caucasians had obtained a bachelor's degree or higher (compared to just over 17% in 1970). Compare this to African Americans, with only 20.5% earning bachelor's degrees or higher in 2013 (compared to just 10% in 1970)[10].

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[2] Centers or Disease Control, "Minority Health; Black or African American Populations," Issued February, 2014. Found at: http://www.cdc.gov/minorityhealth/populations/REMP/black.html
[3] Centers or Disease Control, "Minority Health; Black or African American Populations," Issued February, 2014. Found at: http://www.cdc.gov/minorityhealth/populations/REMP/black.html
[4] Ibid.
[5] Julian, Tiffany and Kominski, Robert, "Education and Synthetic Work-Life Earnings Estimates" U.S. Bureau of the Census, Issued September, 2011, found at: http://www.census.gov/prod/2011pubs/acs-14.pdf
[6] Ibid
[7] Ibid
[8] Ibid.
[9] National Center for Education Statistics, "Digest of Education Statistics", 2013 Tables and Figures, found at: http://nces.ed.gov/programs/digest/d13/tables/dt13_104.20.asp
[10] Ibid

The lower life expectancy, the increased health problems (and their associated costs), the lower earnings and lower educational attainment have all resulted in a lingering, significant, disparities. They, along with other disparities and instances of unequal treatment, have also contributed to the final area I am going to talk about today: disparities in our nation's criminal justice system. There are also a number of disparities unique to our criminal justice system which can and must be reformed if we are ever to be the truly equal society for which we all strive.

At every stage of the criminal justice process, serious problems undermine basic tenets of fairness and equity, and as a result racial and ethnic minorities are treated harsher, and with more suspicion. The consequences of this disparity have been in evidence over the past few days in the streets of New York, Boston, Chicago, and Ferguson, Missouri, and right here in Washington, D.C.

Since its inception, the NAACP has been concerned with the impact of crime on our communities, as well as the need for effective, unbiased criminal justice policies and community policing. W.E.B. DuBois, a founding father of the NAACP expressed concern about crime in our communities and issued a call for strong community oriented policing both in his seminal paper, "The Study of the Negro Problem" in 1898 and also in his book "The Souls of Black Folks" in 1903. This tradition was still in evidence in December of 1994, when Professor Charles Ogeltree released *Beyond the Rodney King Story: An Investigation Of Police Conduct In Minority Communities*. This book was a result of hearings held by the NAACP throughout the country, and pointed out major challenges in police-community relations.

Whenever I talk about policing issues or problems in our nation's criminal justice system, someone invariably brings up the problems associated with black-on-black crime. It is true; this is a problem in our communities.

To some extent, the answer lies with us; we should talk to our brothers and sisters and develop tools to help our own. But another part of the necessary equation is to have an effective local policing agency helping us deter, prevent, investigate, solve, and bring to justice those responsible for the crime. And in order to be effective, a law enforcement agency, whether it be federal, state, or local, must be trustworthy. They must have the confidence of the community they serve that they will be fair, unbiased, and that they are all working for the same good.

Sadly, as we have witnessed over the past few weeks and months, there is tremendous mistrust of law enforcement agents and agencies among the populations served and represented by the NAACP.

Let me say from the outset that the NAACP recognizes and celebrates the fact that the majority of law enforcement officers are hard working men and women, whose concern for the safety of those they are charged with protecting and serving is often paramount, even when their own safety is on the line. Their dedication cannot and should not be underscored.

However, if and when even one of their colleagues engages in racial profiling, whether it be conscious or subconscious, the trust of the entire community can be, and will be, lost. Law enforcement agents should not endorse or act upon stereotypes, attitudes, or beliefs that a person's race, ethnicity, appearance, religious affiliation, or national origin increases that person's general propensity to act unlawfully.

From the point of initial contact, your fate is largely determined by color. As a result, despite the fact that just over 36% of our country's population currently belongs to a racial or ethnic minority group, more than 60% of the people in prison are now racial and ethnic minorities. For Black males in their thirties, 1 in every 10 is in prison or jail on any given day. One in three African American male babies born in this century can expect to be incarcerated at some point in their lifetimes[11]. Not only is the incarceration rate disproportionately stacked against African Americans, but the sentencing is harsher: Currently, 42% of those on death row, the ultimate punishment in our nation today, are African American[12].

While there has been some progress in the past few years, most notably the *Fair Sentencing Act of 2010* and Senate consideration of comprehensive sentencing reform this Congress, the fact remains that much still needs to be done. Specifically, in response to recent events in Ferguson, Missouri, and New York, as well as continuing problems across our Nation, the NAACP has reemphasized its long-standing support for key reforms which need to enacted before law enforcement at any level can genuinely earn the trust and respect of the American people. These reforms include:

- Enactment of the *End Racial Profiling Act*, (S. 1038 / H.R. 2581) at the federal level and equivalent laws at the state and local level. Specifically, effective anti-racial profiling legislation at any level will have the following elements:

[11] The Sentencing Project, found at: http://www.sentencingproject.org/template/page.cfm?id=122
[12] Death Penalty Information Center, Facts About the Death Penalty, updated November 26, 2014, found at: http://www.deathpenaltyinfo.org/documents/FactSheet.pdf

- It must clearly defines the racially discriminatory practice of racial profiling by law enforcement at all levels;
- It must create a federal prohibition against racial profiling;
- It must mandate data collection so we can fully assess the true extent of the problem;
- It must provide funding for the retraining of law enforcement officials on how to carry out their policing responsibilities more effectively by discontinuing and preventing the use of racial profiling; and
- It must hold law enforcement agencies that continue to use racial profiling accountable by providing both an administrative solution as well as a process for a private right of action.

- Enactment of data collection legislation, because in order to manage a problem, we must first be able to measure it.
  - The NAACP is very supportive of HR 1447, the *Death in Custody Reporting Act*, which passed the US House in December of 2013, and has passed the House by overwhelming, bi-partisan margins since the 111th Congress, and is pending in the US Senate
  - It passed the Senate Judiciary Committee by unanimous voice vote on November 20, 2014;
  - This legislation merely requires all state and local law enforcement agencies report when a suspect dies while in the custody of law enforcement, from initial contact through to incarceration;
    - Currently, there is no uniform reporting requirement, which leaves us incapable of truly assessing the problem or comparing one jurisdiction to another.
- We also strongly support the establishment of civilian policing review boards. We must restore and give power to local communities over the agencies which are meant to "protect and serve." Specifically, these boars must have the following qualities:
  - They must be completely independent and fully funded in order to have the confidence and respect of their communities, as well as be able to be fair and effective;
    - In order to be effective, the review board will be ***independent*** in that it will have the power to conduct hearings, subpoena witnesses and report findings and recommendations to the public and it shall be housed away from police headquarters to maintain credibility;
    - It needs to be ***relevant*** in that it will have investigatory power to independently investigate incidents and issue findings on complaints, it will be able to spot problem policies and provide a forum for developing

reforms, it will have complete access to police witnesses and documents through legal mandate and subpoena power, and Board findings will be considered in determining appropriate disciplinary action; the Civilian Board will also have the capacity to compel prosecutors offices to bring charges against police officers to a panel or Grand Jury to try the case;

- Finally, it will be ***reflective*** of the racial and ethnic make-up of the community in that the Board and staff will be broadly representative of the community it serves.

- We support legislation to codify standards for the acceptable use of force that were established by a two-year US Department of Justice Review process that involved law enforcement agencies, police unions, civil rights and civil liberties organizations and religious groups. We are currently faced with a hodge-podge of policies in the use of force when apprehending a suspect.

- The NAACP has also testified before the US Senate to express our concerns about the militarization of local law enforcement without adequate training. The key is to avoid communities feeling as though they are being occupied by a military force. We have also pushed for civilian police officers and their departments to shift away from military style occupation type strategies to civilian community-based policing.

- We also support a reform of the system whereby any time a law enforcement agent is accused of excessive force, a special prosecutor is brought in from the outside to investigate, and potentially take the case to the grand jury, and even try the case (if warranted). As we have painfully witnessed in Ferguson, Missouri and New York in recent weeks, and as too many Americans have witnessed too many times, allegations of police misconduct are not fully investigated and pursued, due in large part to the almost incestuous relationship between law enforcement and local prosecutors. By bringing in a special prosecutor from the outside, we are asking an impartial individual to look at the evidence in a case, not at their neighbor or a person whose testimony I another, unrelated, case, is crucial to a conviction.

Senator Durbin, Members of this subcommittee, as I said earlier, the NAACP sincerely appreciates this hearing. The state of civil rights in our nation is a serious issue, and one that clearly merits the attention of the U.S. Senate. We further appreciate all that you have done since coming to the US Senate to support us in our endeavors.

We look forward to continuing to work with you and other Members of the Senate to address racial and ethnic minority disparities. Together, we can and should do all that we can to ensure that the next time we are together, we can report on more progress in the area of civil and human rights in the United States.

The National Coalition of Blacks for Reparation In American (N'COBRA) and the Chicago Alliance Against Racial and Political Repression (CAARPR) Joint Statement to

The State of Civil and Human Rights in the United States

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

On June 13, 2005 the United States Senate apologized to people of African descent for its failure to enact legislation that would have made it a federal crime to lynch a Black person in America. On more than three occasions anti-lynching legislation died in the Senate.

Aside from the thousands of lives the legislation would have saved, and the hundreds of thousands of family's members would have been spared the grief of losing a love one, millions of other Blacks would not have been terrorized by the continued practice.

Here we have a similar situation. Not only did those who lynched and terrorized the Afrikan community have the law on their sides, many lynchings were in fact committed by the lawmen themselves. There are countless stories where the lynch-men came to the police stations and were given their victims and joined in their evil acts by the police.

Police crimes in America against Afrikan descendants have many such parallels to lynching and more so to enslavement of Africans. The police, growing up out of overseer and paddy patrol ranks of the system of enslavement, are seen as continuing in the practice from which their origins sprung. During enslavement, the paddy patrolmen's job was to deny the expression of liberty and human dignity to the captive Afrikan. Today, many people in the African community feel that this is also the major role of the police today. During both the system of enslavement and lynching, all acts, even unto death, against the Afrikan, was always deemed justified. It was justified to uphold the system of inequality, exploitation, and subjugation. The African community today are told over and over again that every use of deadly force, regardless of the circumstances is also justified. This is always the case when the police themselves make the statements, even before evidence is shown one way or the other.

The terror created by the system of enslavement, lynching, and current day police crimes in the African community can said to be of equal nature as well. Every Black man in America, registers fear whenever blue lights flash behind their motor vehicle. So in essence, like the periods of enslavement and Jim Crow segregation, the African community in America exist in a state of psychological terror. And like the other two periods, the police force or policing forces ares the terrorizer.

America looks everywhere other than its charcter of that of a criminal entity in relationship to people of African descent, as noted by the World Conference of Racism's Durbin Declaration and Program of Action, when discussing any issue that faces the African descendant community. In every instance the past is intimately tied to the present. In the instance of police shootings of Blacks, it is very easy to see and trace the historical thread.

The United Nations have declared 2015-2025 as the International Decade of People of African Descent, under the theme "Recognition, Justice and Development." The Senate has the opportunity, to be pro-active now and not 50 years later as was the case with the anti-lynching laws. In doing so it should fully align its legislative actions with the theme of the IDPAD. Legislation that fully recognizes the humanity of

Africans – African lives matter, - legislation that fully meets the criteria of justice – the police cannot and will not act justly against itself, therefore federal intervention wherever an Afrikan life is extinguished by a police officer. Legislations that fully develops the community's right to self-determine the control and safety mechanism within their communities

Specifically, NCOBRA and CAARPR recommends that the U.S. Senate encourage all fifty states to introduce legislation that would

1. Promote self-determinant aspirations by establishing initiatives such as the 'Civilian Police Accountability Council' (CPAC) being organized by the Chicago Alliance Against Racist and Political Repression. http://stoppolicecrimes.files.wordpress.com/2012/10/new-proposed-legislation-33.pdf
2. Establish an Office for the Victims of Police Crimes similar to the Office of Victims of Crimes. (See CCPR/C/USA/3 para 115)
3. Provide more resources for investigations of police departments to determine ongoing police misconduct other than torture in accord with the Pattern or Practice of Police Misconduct provision of the 1994 Crime Bill and the Police Misconduct Initiative. CCPR/C/USA/4. Para 183
4. Establish a national system to investigate all police shooting to ensure there are incompliance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. CCPR/C/USA/3/Rev1, Para 30

In addition, NCOBRA and CAARPR asserts that only Federal intervention can address the practices that are so rooted in the racial history in America. In CAAPRA response to an inquiry at the United Nations in regards to police force in Chicago and past or possible intervention by state and local authorities, we had this to say:

> HUMAN RIGHTS COMMITTEE MEMBER NAME: **Mr. Kalin**
>
> QUESTION: **Have there been any attempts at state or city level to investigate Chicago Police Department?**
>
> ANSWER (Submitted in writing)
>
> To begin, the CAARPR must note that there is a unique and triple problem in city of Chicago in regards to police crimes that has made all attempts at city and state level investigations/intervention futile. In particular:
>
> 1. There is a deeply entrenched, constant, and repeated pattern and practice of criminal activity in the Chicago Police Department. Out of a 12,500-person force that has garnered over 9,700 complaints, about 700 known officers are responsible for nearly 80% of all abuses;
>
> 2. There is a CPD code of silence that includes intimidation of witnesses and victims and harassment of investigative journalists that has produced what a 7th Circuit Federal Justice called a "culture of inpunity";

3. There is complicity of appointed and elected officials in maintaining this "culture of impunity" by ignoring complaints, refusing to prosecute police, refusing to aid in investigations (Chicago Corporation Council, Mayor Richard Daley) and denying the innocence of victims of police crimes even when DNA has exonerated them. (Cook County States Attorney Anita Alverez.). As in CPD's torture history, the city and county officials have notoriously closed their eyes and shielded the CPD. Lacking UN intervention, and the response of the DOJ, Burge would have gotten away with the decades-long torture of innocent boys and young men. Although other involved officers have not been investigated.

Specific ignored or thwarted attempts of local government intervention/investigation have been:

- The Families of victims and the CAARPR's Organizing Committee to Stop Police Crimes members have joined others and spoken before the Chicago Police Board asking for some action against police criminals (murderers) in regards to Flint Farmer, Dakota Bright, and many other Afrikans.

- The Alliance has formally requested, investigations and justice for Howard Morgan an American of African descent shot 28 times by the CPD, and survived only to be maliciously charged and convicted of shooting at them even though a jury found exonerated him of shooting at all.
- The Alliance has also met with several City Council members about this issue.
- The Alliance notes that as a rule, the Illinois Attorney General does not conduct criminal investigations. They leave that to the county prosecutors. That would he the same Anita Alverez in Cook County (Chicago) as noted above. There is no other state level recourse.
- The Alliance further notes, that the only time that the CPD is brought under strict scrutiny is the rare instance when a criminal or civil case, resulting from a violation, is brought to the attention of the media or UN. The investigation is case-specific and whatever rectifications are made have heen isolated to that case (sanction of the officer or monetary awards to the victims). Even then the Chicago Corporation Counsel has a history of ignoring subpoenas issued in federal cases, making the investigation that much more difficult.

Taking in all of the above, CAARPR again concludes, Chicago Police Department has a culture of police criminality that cannot be self-corrected at the local or state governmental level ,nor without pressing and relevant community oversight like the CPAC, and respectfully asks this Committee to conclude the same.

Being thus submitted, N'COBRA and CAARPR jointly suhmits this statement to be considered for the record, for continued discussion, and policy formation.

Anti-Defamation League®

December 8, 2014

The Honorable Dick Durbin
Chair
Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
United States Senate
Washington, D.C. 20510

The Honorable Ted Cruz
Ranking Member
Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Cruz:

In advance of this week's Subcommittee hearings on "The State of Civil and Human Rights in the United States," we write to provide the views of the Anti-Defamation League (ADL) on a number of civil and human rights priorities that Congress and the Administration should address. We appreciate the opportunity to contribute and would ask that this statement be included as part of the official hearings record.

The Anti-Defamation League

Since 1913, the mission of ADL has been to "stop the defamation of the Jewish people and to secure justice and fair treatment to all." Dedicated to combating anti-Semitism, prejudice, and bigotry of all kinds, defending democratic ideals and promoting civil rights, ADL is proud of its leadership role in the development of innovative materials, programs, and services that build bridges of communication, understanding, and respect among diverse racial, religious, and ethnic groups.

Countering Hate Violence

Over the past three decades, the League has been recognized as a leading resource on effective responses to violent bigotry, conducting an annual *Audit of Anti-Semitic Incidents*, and drafting model hate crime statutes for state legislatures. Now 45 states, the District of Columbia, and the federal government have enacted hate crimes laws based on (or similar to) ADL's model statute. ADL has also long been in the forefront of national and state efforts to train law enforcement officials and civic leaders to deter and counteract hate crimes.

For more than a decade, we were privileged to lead a broad coalition of civil rights, religious, educational, professional, law enforcement, and civic organizations working in support of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA). Enacted in 2009, the HCPA encourages partnerships between state and federal law enforcement officials to more effectively address hate violence, and provides expanded authority for federal hate crime investigations and prosecutions when local authorities are unwilling or unable to act.[1] The HCPA is the most important, comprehensive, and inclusive federal hate crime enforcement law passed in the past 40 years.

The HCPA has proven to be a valuable tool for federal prosecutors. The Department of Justice has brought more than two dozen cases over the past five years – and has successfully defended the constitutionality of the Act against several constitutional challenges.[2] Enactment of the HCPA has also sparked a welcome round of police training and outreach – and the development of a number of significant new hate crime training and prevention resources,[3] including an updated Hate Crime Model Policy prepared by the International Association of Chiefs of Police.

[1] *State Hate Crime Statutory Provisions*, Anti-Defamation League (Sept. 2014), http://www.adl.org/assets/pdf/combating-hate/2014-adl-updated-state-hate-crime-statutes.pdf
[2] *ADL-Led Coalition Defends the Hate Crimes Prevention Act*, Anti-Defamation League (Mar. 7, 2014), http://blog.adl.org/civil-rights/adl-led-coalition-defends-the-hate-crimes-prevention-act.
[3] *Hate Crimes Data Collection Guidelines and Training Manual*, U.S. Dep't of Justice and Fed. Bureau of Investigations (Dec. 19, 2012), http://www.fbi.gov/about-us/cjis/ucr/data-collection-manual.

The fifth anniversary of the HCPA provides an important teachable moment.[4] It is a fitting occasion for advocates, the Obama Administration, and Congress to promote awareness of the HCPA, to report on the progress our nation has made in preventing hate violence, and to rededicate ourselves to effectively responding to bias crimes[5] when they occur.

The White House commemorated the fifth anniversary with a November 6 White House event, and announced a series of hate crime prevention and training initiatives:

- Interagency Initiative on Hate Crimes. This initiative, coordinated by the White House Domestic Policy Council, will all the relevant federal agencies and hold quarterly meetings to help ensure identification of best practices and effective collaboration.
- Expanding Use of Incident Based Crime Data. The FBI and the Justice Department's Bureau of Justice Assistance will work to increase the participation of law enforcement agencies in the Bureau's National Incident Based Reporting System (NIBRS).
- Expanded training for State and Local Law Enforcement and Community Leaders on Hate Crimes. The Department of Justice Civil Rights Division, FBI, and the Department's Community Relations Service (CRS) will expand existing training on the HCPA and the importance of hate crime data.
- Attorney General Holder Letter to US Attorneys on Enforcement and Prevention of Hate Violence. The Attorney General highlighted the effective work that the Department has done in enforcing the Act, emphasizing the continued need to engage community leaders and local law enforcement.

Improving Hate Crimes Statistics

Since 1990, the FBI has been charged with collecting and publishing hate crime data from the nation's 18,000 law enforcement agencies. The FBI released its 2013 HCSA data[6] (the most recent data available) today. In its report, the FBI documented 5,928 hate crimes, reported by 15,016 law enforcement agencies across the country. The most frequent were motivated by race, followed by sexual orientation and religion. Of the crimes motivated by religion, more than 60 percent targeted Jews or Jewish institutions.

Unfortunately, it appears that more than 80 cities with populations over 100,000 either did not participate in the FBI 2013 data collection program or affirmatively reported zero (0) hate crimes. That is an unacceptably-high level of non-participation. As FBI Director James B. Comey said in remarks to the 2014 ADL Leadership Summit, "We must continue to impress upon our state and local counterparts in every jurisdiction the need to track and report hate crime. It is not something we can ignore or sweep under the rug."

Following the tragic murder of six Sikh worshippers at their Gurdwara in Oak Creek, WI on August 5, 2012, the League helped lead a successful coalition to expand the HCSA categories to include hate crimes directed against Sikhs, Hindus, and Arabs. ADL is working with FBI officials and coalition partners to prepare training materials on the new hate crime categories, with the FBI set to begin collecting this data on January 1, 2015.

Recommendations:

- With funding from Congress, the FBI, the Justice Department, and US Attorneys should create incentives for police participation in the FBI's HCSA date collection program – including national recognition, targeted funding, matching grants for state and local HCSA-related training, and mechanisms to promote replication of effective and successful programs. Some Justice Department funding should be made available only to those agencies that are demonstrating credible participation in the HCSA program.
- The Administration should create a Web site – similar to www.stopbullying.gov/ – or expand existing Justice Department and Department of Education Web sites, to serve as portals for an array of prevention, enforcement, and response resources. Federal agencies should publicize and make information available about effective hate crime laws, prevention policies, best practices, and

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[4] *See, e.g., Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act Fifth Anniversary*, Anti-Defamation League Current Events Classroom(2014), http://www.adl.org/assets/pdf/education-outreach/hate-crimes-prevention-act-fifth-anniversary.pdf.

[5] *See Addressing Hate Online: Countering Cyberhate with Counterspeech*, Anti-Defamation League Current Events Classroom (2014), http://www.adl.org/assets/pdf/education-outreach/addressing-hate-online.pdf.

[6] *About Hate Crimes Statistics*, 2013, Fed. Bureau of Investigation (2013), http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2013

training initiatives, while ensuring that all online materials are fully accessible following all regulations of Section 508 of the Rehabilitation Act.

- Recognizing the limits of legal responses to hate violence, the Administration and Congress should promote the enactment of comprehensive legislation focusing on inclusive anti-bias education, hate crime prevention, and bullying, cyberbullying, and harassment education, policies, and training initiatives. They should also support efforts by leading Internet companies to develop and enhance procedures and initiatives to counter the spread of hate online.
- In cooperation with the Department of Justice and the FBI, the Department of Education should expand outreach and training with colleges and universities to improve campus hate crime reporting. The Department of Education should continue to effectively integrate and implement its new Violence Against Women Act (VAWA)-mandated campus hate crime data collection categories, including gender identity, and harmonize with FBI HCSA data collection categories and definitions.
- The United States, through the Department of State, Department of Justice, delegation to the Organization for Security and Cooperation in Europe (OSCE), and other multilateral organizations, should:
    - Maintain comprehensive and inclusive Department of State monitoring and public reporting on anti-Semitic, racist and xenophobic, anti-Muslim, homophobic, transphobic, anti-Roma, disability-bias and other bias-motivated violence abroad;
    - Provide appropriate technical assistance and other forms of cooperation, including training of police and prosecutors in investigating, recording, reporting, and prosecuting violent hate crimes;
    - Demonstrate international leadership by providing political and financial support designed to increase civil society engagement and work on xenophobic and bias-motivated violence in addition to expanding information campaigns, and encouraging states to implement existing commitments, such as to collect and report hate crime data.

Protecting Voting Rights

Next year will mark the fiftieth anniversary of the Voting Rights Act of 1965 (VRA), one of the most important and effective pieces of civil rights legislation ever passed. The League has strongly supported the VRA and its extensions since its enactment. ADL has consistently filed briefs before the U.S. Supreme Court supporting the constitutionality of the VRA, including in *Shelby County v. Holder.*[7]

In the almost half century since its passage, the VRA has secured and safeguarded the right to vote for millions of Americans. Its success in eliminating discriminatory barriers to full civic participation and in advancing equal political participation at all levels of government is undeniable. Between 1964 and 1968 – the presidential elections immediately before and after passage of the VRA respectively – African American voter turnout in the South jumped by seven percentage points.[8] The year after passage of the VRA, Edward Brooke became the first African American in history elected to the Senate by popular vote, and the first African American to serve in the Senate since Reconstruction.[9] By 1970, the number of African Americans elected to public office had increased fivefold.[10] Today there are more than 9,000 African American elected officials,[11] including the first African American president. According to some analyses, in 2012 the percentage of African American voters who turned out matched, or even passed, white voter turnout for the first time in history.[12]

On June 25, 2013 the U.S. Supreme Court, in a sharply-divided 5-4 ruling in *Shelby County v. Holder*, struck down §4(b) of the VRA, the formula to determine which states and political subdivisions would have to preclear all voting changes with the federal government pursuant to §5. The majority held that "the formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance,"[13] but

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[7] 133 S. Ct. 2612 (2013).
[8] U.S. Bureau of the Census, *Current Population Reports*, Series P-20, No. 192, "Voting and Registration in the Election of 1968," 1 (1969), *available at* http://www.census.gov/hhes/www/socdemo/voting/publications/p20/1968/p20-192.pdf.
[9] United States Senate, *Ethnic Diversity in the Senate*, https://www.senate.gov/artandhistory/history/common/briefing/minority_senators.htm.
[10] *See* H.R. Rep. No. 109-478, at 18, 130 (2006), *reprinted in* 2006 U.S.C.C.A.N. 618.
[11] H.R. Rep. No. 109-478 at 18.
[12] Hope Yen, *Black Voter Turnout Rate Passes White in 2012 Election*, Associated Press Apr. 28, 2013, http://www.huffingtonpost.com/2013/04/28/black-voter-turnout-2012-election_n_3173673.html.
[13] *Shelby County*, 133 S. Ct. at2631.

specifically found that "Congress may draft another formula based on current conditions."[14] Absent congressional action that creates a new coverage formula, however, the critical protections of §5 have been "immobilized."[15]

To be sure, §2 of the VRA, which prohibits discrimination based on race, color or membership in a language minority group in voting practices and procedures nationwide, has helped to secure many of the VRA's advances. Yet it is undeniable that §5 of the VRA, which requires certain states and political subdivisions with a history of discriminatory voting practices to provide notice and "pre-clear" any voting law changes with the federal government, has played an essential and invaluable role in the VRA's success. Between 1982 and 2006, pursuant to §5, the Department of Justice (DOJ) blocked 700 proposed discriminatory voting laws, the majority of which were based on "calculated decisions to keep minority voters from fully participating in the political process."[16] Proposed laws blocked by §5 included discriminatory redistricting plans, polling place relocations, biased annexations and de-annexations, and changing offices from elected to appointed positions, similar to many of the tactics used to disenfranchise minority voters before 1965.[17] In addition, states and political subdivisions either altered or withdrew from consideration approximately 800 proposed voting changes between 1982 and 2006, indicating that §5's impact was much broader than the 700 blocked laws.[18]

In her dissenting opinion in *Shelby County*, Justice Ginsburg noted that the large numbers of voting law changes submitted for preclearance that DOJ declined to approve "augur[ed] that barriers to minority voting would quickly resurface were the preclearance remedy eliminated."[19] She further observed that "throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."[20] This November's elections – the first in fifty years without a fully functioning VRA – confirmed Justice Ginsburg's predictions.

There were new voting restrictions in 21 states for the 2014 election, including voter ID requirements, early voting cutbacks, and registration restrictions.[21] Texas's discriminatory voter ID law is particularly illustrative of the impact of *Shelby County* and a crippled VRA. Within hours of the Supreme Court's decision in *Shelby County*, Texas Attorney General Greg Abbott announced that the state's voter ID law and a redistricting plan, both of which had been previously blocked by §5, would go into effect immediately.[22] The Department of Justice and civil rights organizations filed suit. In October a federal district court in Texas issued a 147-page decision permanently enjoining enforcement of the voter ID law.[23] The court found that more than 600,000 disproportionately-minority registered Texans lacked proper ID for the elections – and that the law would not only have a discriminatory effect on the state's minority voters, but also that it had been enacted *with an intent* to disenfranchise African Americans and Latinos. After an emergency appeal, however, the Fifth Circuit Court of Appeals and later the U.S. Supreme Court allowed the law to go into effect for the 2014 elections.[24] Although there are not yet conclusive studies about how many would-be voters were disenfranchised in Texas, media reports confirm that significant numbers of registered voters were blocked from exercising their fundamental right to vote.[25]

In his speech proposing the Voting Rights Act, President Lyndon Johnson said, "Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument. Every American citizen can and must have an equal right to vote. There is no reason which can excuse the denial

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[14] *Id.*
[15] *Id.* at 2633 n.1 (Ginsburg, J. dissenting).
[16] *Shelby County*, 133 S. Ct. at 2639 (Ginsburg, J. dissenting) (citing H.R. Rep. 109-478 at 21).
[17] H.R. Rep. No. 109-478, at 36.
[18] *Shelby County*, 133 S. Ct. at 2639 (Ginsburg, J. dissenting).
[19] *Id.* at 2634 (Ginsburg, J. dissenting).
[20] *Id.* at 2650 (Ginsburg, J. dissenting).
[21] *States With New Voting Restrictions Since 2010*, Brennan Center for Justice (Nov. 12, 2014), http://www.brennancenter.org/new-voting-restrictions-2010-election.
[22] Zachary Roth, *That Was Quick: Texas Moves Ahead with Discriminatory Voting Laws*, MSNBC (Jun. 25, 2013), http://www.msnbc.com/msnbc/was-quick-texas-moves-ahead-discri.
[23] *Veasey v. Perry*, 2014 U.S. Dist. LEXIS 144080 (S.D. Tex. 2014).
[24] *Veasey v. Perry*, 769 F.3d. 890 (5th Cir. 2014), *aff'd*, 125 S. Ct. 9 (2014).
[25] See, e.g., Zachary Roth, *Texas Sees Surge of Disenfranchised Voters*, MSNBC (Nov. 3, 2014), http://www.msnbc.com/msnbc/texas-sees-surge-disenfranchised-voters; Dana Liebelson and Ryan J. Reilly, *This Is What Happened Because Congress Didn't Fix the Voting Rights Act*, Huffington Post (Nov. 4, 2014), http://www.huffingtonpost.com/2014/11/04/voter-id_n_6103634.html?1415151886=&ncid=tweetlnkushpmg00000067.

of that right. There is no duty which weighs on us more heavily than the duty we have to ensure that right."[26] Almost 50 years later, President Johnson's words ring true today.

Recommendations:

- **Congress should enact the Voting Rights Amendment Act (VRAA).**
  Although not perfect, S. 1945, the VRAA, which seeks to restore many of the crucial protections gutted in *Shelby County,* creates a modern, flexible, rolling formula to determine which states and political subdivisions will have to pre-clear their laws with the federal government. The formula will not require preclearance in all of the political subdivisions that have moved to restrict voting rights in the past year, but, over time, the rolling formula will sweep in many of the most problematic jurisdictions. It will restore critical safeguards, preventing enactment of discriminatory voting laws by once more "shift[ing] the advantage of inertia and time from the perpetrators of the evil to the victims."[27]

  Congress has both the power and the imperative to pass the VRAA and restore critical voting rights protections. The Fifteenth Amendment to the U.S. Constitution proclaims that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."[28] Section 2 of the Amendment expressly declares that "Congress shall have the power to enforce this article by appropriate legislation."[29] As the Supreme Court has recognized, "by adding this authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in §1,"[30] and "Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting."[31] Passage of the VRAA is not only rational. It is critical to enforcing the constitutional prohibition on racial discrimination in voting and protecting the fundamental right to vote for all Americans.

Education Equity

On May 17, 1954 the U.S. Supreme Court issued a landmark decision in *Brown v. Board of Education* desegregating America's schools. Finding that "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education," the Court concluded that education "is a right which must be made available to all on equal terms."[32] Sixty years after *Brown*, however, the promise of education equity in the United States remains unfulfilled.

Today black and Latino students are approximately twice as likely as their white peers to drop out of high school.[33] There are myriad factors that contribute to the persistent achievement gap, but school suspensions and expulsions are among the best predictors of which students will drop out of school. Disparate treatment in school discipline means that students of color are much more likely to be suspended or expelled from school as their white peers. Data from the Department of Education's Civil Rights Data Collection Program confirms that African American students are three times as likely to be suspended or expelled as white students.[34] Harsh school discipline policies have a similarly disproportionate impact on students in other marginalized communities. Students with disabilities are more than twice as likely to receive out-of-school suspensions as students with no disabilities[35] and Lesbian, Gay, Bisexual, and Transgender (LGBT) youth are much more likely than their heterosexual peers to be suspended or expelled.[36] Contrary to some hypotheses, studies have found little difference in students' behavior across racial lines to account for the disproportionality. Rather, studies have concluded that African American students tend to receive harsher

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[26] President Lyndon B. Johnson, Special Message to the Congress: The American Promise, 1 Pub. Papers 281, 282 (March 15, 1965), available at http://lbjlibrary.org/lyndon-baines-johnson/speeches-films/president-johnsons-special-message-to-the-congress-the-american-promise.
[27] *S.C. v. Katzenbach*, 383 U.S. 301, 328 (1966).
[28] U.S. CONST. amend. XIV, §1.
[29] *Id.* at §2.
[30] *Katzenbach*, 383 U.S. at 325-26.
[31] *Id.* at 324.
[32] *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).
[33] Mary C. Stetser & Robert Stillwell, *Public High School Four-Year On-Time Graduation Rates and Event Dropout Rates: School Years 2010-11 and 201-12*, U.S. Dep't of Educ. (Apr. 2014), http://nces.ed.gov/pubs2014/2014391.pdf
[34] *Civil Rights Data Collection Data Snapshot: School Discipline*, U.S. Dep't of Educ. Office of Civil Rights (March 2014), http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf.
[35] *Id.*
[36] Katherine E.W. Himmelstein & Hannah Bruckner, "Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study," *Official Journal of the American Academy of Pediatrics* (Dec. 6, 2010), *available at* http://pediatrics.aappublications.org/content/early/2010/12/06/peds.2009-2306.

punishment for less serious behavior, and are more often punished for subjective offenses, such as "loitering" or "disrespect."[37]

Dropping out of school has lasting, irreparable consequences. Students who drop out of school have more difficulty finding gainful employment, have lower earning potential, and ultimately are more likely to become involved with the criminal justice system. One study found that rates of incarceration for young adults who dropped out of high school were more than 63 times higher than rates of incarceration for young adults with college degrees.[38] This cycle of suspensions and expulsions that leads to students dropping out of school, which in turn leads to increased likelihood of incarceration, has become known as the "school-to-prison pipeline."

In January 2014, the U.S. Department of Justice and the U.S. Department of Education jointly issued landmark guidance for schools "to assist public elementary and secondary schools in meeting their obligations under Federal law to administer student discipline without discriminating on the basis of race, color, or national origin."[39] The Department of Justice's Civil Rights Division is responsible for enforcing Title IV of the Civil Rights Act of 1964, which prohibits discrimination in public elementary and secondary schools based on race, color or national origin, among other factors.[40] The Department of Education's Office for Civil Rights and the Department of Justice are jointly responsible for enforcing Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color or national origin by recipients of Federal financial assistance.[41]

Many of the recommendations in the Guidance focus on the need for increased training, including urging schools to implement training programs for all school personnel that includes alternatives to "zero tolerance" and harsh discipline policies. The Guidance also urges schools to conduct trainings that enhance staff awareness of "their implicit or unconscious biases and the harms associated with using or failing to counter racial and ethnic stereotypes."[42] Furthermore, it outlines specific recommendations for how schools should approach the relationship with law enforcement placed in schools, commonly referred to as "school resource officers." The Guidance urges schools to "clearly define and formalize roles and areas of responsibility to govern student and school interaction with school resource officers and other security or law enforcement personnel,"[43] and to create a written agreement or memorandum of understanding formalizing those roles and responsibilities with appropriate law enforcement agencies. Critically, it urges schools to "ensure that school personnel understand that they, rather than school resource officers or law enforcement personnel, are responsible for administering routine school discipline."[44]

A top priority for the Anti-Defamation League is working to create safe, inclusive schools and communities and ensuring that all students have access to equal educational opportunities. Over the past decade, the League has emerged as a principal national resource developing education[45] and advocacy[46] tools to prevent prejudice and bigotry. ADL has built on award-winning anti-bias education and training initiatives, including the A WORLD OF DIFFERENCE®[47] Institute, to craft innovative programming and advocacy to address bullying and its pernicious electronic form known as cyberbullying.[48] ADL takes a holistic approach

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[37] Russel J. Skiba, et al., "Race is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline," *School Psychology Review* 40, No. 1, 86-7 (2011), *available at* http://www.indiana.edu/~equity/docs/Skiba%20et%20al%20Race%20is%20Not%20Neutral%202011.pdf.

[38] Andrew Sum, et. al., The Consequences of Dropping Out of High School: Joblessness and Jailing for High School Dropouts and the High Cost for Taxpayers (Oct. 2009), available at http://www.northeastern.edu/clms/wp-content/uploads/The_Consequences_of_Dropping_Out_of_High_School.pdf

[39] *Joint 'Dear Colleague Letter*, U.S. Dep't of Justice & U.S. Dep't of Educ. (Jan. 8, 2014), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html.

[40] 42 U.S.C. §§ 2000c, *et seq.*

[41] *Id.*

[42] *Joint 'Dear Colleague Letter.'*

[43] *Id.*

[44] *Id.*

[45] *See, e.g.,* Bullying and Cyberbullying Prevention Strategies and Resources, Anti-Defamation League (2014), http://www.adl.org/education-outreach/bullying-cyberbullying/c/strategies-and-resources.html.

[46] *See, e.g.,* Cyberbullying Prevention Law: An ADL Model Statute, Anti-Defamation League (2014), http://www.adl.org/assets/pdf/education-outreach/ADL-Cyberbullying-Prevention-Law-Model-Statute.pdf.

[47] *A World of Difference Institute,* Anti-Defamation League (2014), http://www.adl.org/education-outreach/anti-bias-education/c/a-world-of-difference.html.

[48] *Cyberbullying: Understanding and Addressing Online Cruelty*, Anti-Defamation League, http://archive.adl.org/education/curriculum_connections/cyberbullying/default.html

to addressing bullying and cyberbullying,[49] tracking the nature and magnitude of the problem, developing education and training programs, and advocating — at the state and federal level — for policies and programs that can make a difference.

Recommendations:

- Congress should support the Department of Justice and Department of Education's critical efforts to dismantle the school-to-prison pipeline and, in so doing, close the achievement gap in schools.
- Congress should provide financial support for enforcement efforts pursuant to Titles IV and VI of the Civil Rights Act of 1964, as well as provide critical resources for trainings for teachers, administrators, staff and school resource officers around the country about the discriminatory impact of harsh school discipline polices and effective alternatives to suspensions and expulsions that keep students safe, support a positive school environment, and increase graduation rates.
- Bullying creates school climates that make it difficult for students to learn. Congress should enact inclusive anti-bullying legislation and the Administration should continue to expand and promote awareness of the wide array of anti-bullying training and prevention initiatives at www.stopbullying.gov/.

Beyond Ferguson and Staten Island: Expanding Trust in Police and the Criminal Justice System. In the wake of two grand jury decisions – in Ferguson, Missouri and Staten Island, New York – not to indict the white police officers who were involved in the killing of unarmed black men, a myriad of ideas and federal and state legislative initiatives have been proposed. These initiatives include diversity training for the police, funding to provide body cameras for police officers, appointments of special prosecutors to try cases in which the defendant is a police officer, and Administration and legislative proposals to tighten standards on military-style equipment for local police departments. These are all worthy ideas and should be pursued with both speed and care.

These Missouri and New York communities are not unique – and they are not alone. These cases and their aftermath have put a spotlight on serious racial divisions and discrimination in the country – and a need for active efforts to combat the distrust and hostility between law enforcement and the communities they serve. In this regard, we welcome the Justice Department's announcement that they are expeditiously investigating the possibility of federal civil rights charges against the officers involved and the legality of policies, procedures, and practices for the Departments involved in these cases. Public safety requires trust and communication between law enforcement and the communities they are committed to serve.

It is a sad truism that, sixty years after *Brown v. Board of Education* and fifty years after passage of the Civil Rights Act, racism and implicit bias persists in the United States. Implicit bias is a positive or negative (usually negative) mental attitude towards a person or group that we hold at an unconscious level. FBI statistics reveal that African-Americans are consistently the most frequent targets of hate crimes in America. In our nation's schools, black students are three times as likely to be suspended or expelled as their white peers, often for offenses that fall under subjective and amorphous categories like "willful defiance."[50] Social science predicts that one in three black babies born today will spend at least some time in prison during their lives.[51] And studies confirm that bias plays out in other arenas as well, for example, making doctors more likely to prescribe pain medication for white patients with a broken leg than for black or Latino patients.[52] There can be no doubt that bias and prejudice continues to infect some parts of the law enforcement community, as they do in all professions. We have come a long way since the frequent, infamous images of police officers using dogs, fire hoses and billy clubs against peaceful civil rights protestors, but clearly there is need for deeper neighborhood engagement and training for law enforcement officials and community members to address bias and ensure equal procedural justice.

Recommendations:

- Congress and the Administration should seize this extraordinary teachable moment. Now is the time to commit to a meaningful conversation about structural racism and implicit bias, about building trust in police-community relations, and about how we can ultimately turn these tragic events into a catalyst for positive change.

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[49] Education & Outreach: Bullying/Cyberbullying, Anti-Defamation League (2014), http://www.adl.org/education-outreach/bullying-cyberbullying/.
[50] *Civil Rights Data Collection: Data Snapshot: School Discipline* (March 2014), http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf
[51] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Color Blindness* (The New Press, 2010).
[52] Joshua H. Tamayo-Sarver, et al., *Racial and Ethnic Disparities in Emergency Department Analgesic Prescription*, Am J Public Health, v.93(12) (Dec 2003).

- Congress and the Administration should fund and help schools create anti-bias learning environments[53] where different perspectives are not only welcomed, but are seen as enriching. When schools want to address bias in the classroom, they tend to focus on discrimination and overt forms of racism, sexism and other injustices. This is critical. However, in order for our society to make progress in advancing equality and fairness, we also need to talk about, explain, teach, understand and do something about implicit bias.
- Congress and the Administration should fund and encourage schools to teach about Ferguson and beyond,[54] helping students to understand the racial disparities in the criminal justice system and solicit their ideas for turning this around.
- Congress and the Administration should work together to fully implement the promise of the federal racial profiling guidance[55] that was issued earlier today. Training and accountability on this guidance can ensure that they reflect fundamentally-important dual commitments – keeping our nation safe, while upholding our nation's core values.

Expanding LGBT Rights
The Anti-Defamation League has a longstanding commitment to protecting civil rights, and has been a key partner in advancing Lesbian, Gay, Bisexual, and Transgender (LGBT) rights. At the federal, state, and local levels, ADL has advocated in support of anti-discrimination statutes, for strong and inclusive hate crime and bullying prevention laws, and for marriage equality. However, much work remains to be done.

Marriage Equality
ADL has opposed barriers to marriage equality, including the so-called federal "Defense of Marriage Act" (DOMA) of 1996 and related state laws and ballot propositions. The League has filed *amicus* briefs,[56] on behalf of itself and nearly two dozen religiously-affiliated civil rights groups, challenging the Federal DOMA and similar state laws, constitutional amendments, and ballot measures that defined marriage as exclusively between one man and one woman. ADL's briefs – often filed on behalf of a coalition of religious and civil rights groups – have argued that overturning a marriage ban would not only ensure that religious considerations do not improperly influence which marriages the state can recognize, but would also allow religious groups to decide the definition of marriage for themselves.

In June, 2013 the U.S. Supreme Court struck down key parts of the "Defense of Marriage Act" ("DOMA") in *United States v. Windsor*.[57] The decisions paved the way for marriage equality. However, barriers to marriage equality remain in several states and the U.S. Supreme Court's holding in *Windsor* left intact Section 2 of DOMA, which expressly permits states to disregard same-sex marriages granted in other states.

Countering Discrimination
For more than 25 years, ADL has supported anti-discrimination laws that explicitly bar discrimination in employment, housing, and public accommodations on the basis of sexual orientation and gender identity. ADL has advocated for inclusive anti-discrimination laws such as the Employment Non-Discrimination Act and urged executive action that would bar discrimination by federal contractors on the basis of sexual orientation and gender identity. The League has also advocated for an inclusive interpretation[58] and enforcement of existing federal anti-discrimination laws, such as Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964.

However, workplace discrimination on the basis of sexual orientation remains legal in twenty-nine states and thirty-two states lack explicit language prohibiting discrimination on the basis of gender identity or gender expression. A comprehensive federal law that explicitly prohibits discrimination on the basis of sexual orientation and gender identity in employment, public accommodations, and housing is essential.

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[53] See Creating an Anti-Bias Learning Environment, Anti-Defamation League (2014), http://www.adl.org/education-outreach/curriculum-resources/c/creating-an-anti-bias-learning-environment.html.

[54] Teaching About Ferguson and Beyond, Anti-Defamation League (2014), http://www.adl.org/education-outreach/curriculum-resources/c/teaching-about-ferguson-and.html.

[55] http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf

[56] See Amicus Briefs, Anti-Defamation League (2014), http://www.adl.org/civil-rights/adl-in-the-courts/.

[57] 133 S. Ct. 2884 (2013)

[58] Letter from Deborah M. Lauter and Michael Lieberman, Anti-Defamation League, to Jean-Didie Gaina, U.S. Dep't of Educ. (Jul. 21, 2014) (on file with author), *available at* http://www.adl.org/assets/pdf/combating-hate/ADL-comments-supporting-VAWA-Clery-Act-amendments.pdf.

Implementing the Repeal of "Don't Ask, Don't Tell"
ADL opposed this ill-conceived exclusionary military policy enacted in 1996, supported the successful repeal efforts, and has urged full implementation of the repeal. The League has also advocated for the elimination of barriers preventing transgender people from serving their country. ADL opposes any rollback to these efforts and advocates the elimination of barriers that remain in place that prevent transgender people from serving their country.

Mandatory Civil Rights Data Collection
Since 1968, the Civil Rights Data Collection (CRDC) has been collecting school and district level data. It is now the largest, most important, and most comprehensive data collection instrument of its kind. Much of the data that informs national patterns and policy guidance for schools and organizations comes from the CRDC. Since 2009, OCR has collected data at the school level through the CRDC regarding bullying/harassment on the basis of (1) sex, (2) race/color/national origin, and (3) disability.

ADL helped lead a broad coalition effort in support[59] of adding CRDC questions about bullying and harassment on the basis of sexual orientation and religion – and for data on incidents based on gender identity. The inclusion of new questions that will elicit this information is essential for ensuring that the data provides an accurate overall representation of the experiences of all students, and will help ensure that schools and school districts are providing all students with equal educational opportunities.

Recommendations:
- Congress should enact a comprehensive federal law that explicitly prohibits discrimination on the basis of sexual orientation and gender identity in employment, public accommodations, and housing.
- Congress and the Administration should continue to identify and remedy remaining federal programs containing vestiges of discrimination from DADT and DOMA.
- Congress and the Administration should work to ensure that schools and school districts are reporting CRDC data accurately – and using the data to improve the climate for learning for all students.

Immigration Reform
ADL has advocated for fair and humane immigration policies since its founding in 1913. Many in the Jewish community have parents or grandparents who came to the U.S. seeking refuge and a better life, underscoring the need for reform that honors our values as "a nation of immigrants." Embracing this concept as the title of his famous 1958 ADL-published monograph, then-Massachusetts Senator John F. Kennedy was mindful that all eight of his Irish great-grandparents had crossed the Atlantic in search of a better life in America. Fifty-six years later, President Kennedy's vision and call to conscience remains vital and relevant today.

The League has also helped expose anti-immigrant hate that has been a fixture of the current immigration debate, and has called for a responsible public debate that will honor America's history as a nation of immigrants.

In June 2013 the U.S. Senate approved an urgently-needed comprehensive immigration reform bill, S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, by a vote of 68-32. The bill combined a pathway to citizenship for the roughly 11 million undocumented immigrants living, working and contributing to American society, with a strong border security strategy and reforms to the legal immigration system. The House, however, failed to pass comprehensive immigration reform.

On November 20, 2014 President Obama announced that, through executive action, he would defer deportation for three years for parents of children who are either U.S. citizens or lawful permanent residents and relax the restrictions on deferred action for those who were brought to the United States as children.[60] To receive deferred action, applicants must first pass criminal background checks. These reforms will help to free the government's resources to focus on people who pose dangers to society and national security while keeping families together. The executive action also shifts resources to the border, provides new

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[59] ADL Coordinates Coalition Letter On Dep't of Educ. Bullying Data Collection Proposal, Anti-Defamation League Blog (Aug. 20, 2014), http://blog.adl.org/civil-rights/adl-coordinates-coalition-letter-on-department-of-education-bullying-data-collection-proposal.
[60] *Fact Sheet: Immigration Accountability Executive Action*, White House (Nov. 20, 2014), http://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action.

incentives for immigrants focusing in STEM fields, and enhances options for foreign entrepreneurs whose work would help to boost the American economy. By focusing enforcement efforts on those who threaten national security and public safety, and by bringing more undocumented immigrants out of the shadows and under the rule of law, this move is also a boost to both security and accountability.

ADL has closely tracked and exposed efforts extremist forces in our society over the past decade to capitalize on the immigration debate to advance their agenda of hate and bigotry. White supremacists have also tried to exploit the issue of immigration to promote their racist views.

This demonization and anti-immigrant rhetoric not only counteracts progress towards sound policy solutions, but it also puts minority communities at risk. For example, after passage of Proposition 187 in California, a ballot initiative which would have denied public benefits to undocumented immigrants that spurred widespread anti-immigrant rhetoric, hate crimes against Latinos and Asian-Americans spiked in the state.[61] The hate crimes targeted citizens and non-citizens alike.

Recommendations:

- Although President Obama's executive action marks significant progress towards fixing our broken immigration system, it is only a temporary patch. Congress should reject efforts to undo and dismantle President Obama's executive action, including by opposing H.R. 5759, which seeks to make the action "null and void and without legal effect." Rather, Congress must set aside bipartisan differences to create meaningful change that honors our values as a nation of immigrants, and pass a comprehensive immigration reform bill that combines a pathway to citizenship with strengthened border security strategies. Absent passage of comprehensive immigration reform, the current system fails more than just immigrant communities, or families torn apart by visa backlogs, or undocumented students. It fails all communities, all families, and all children who deserve a future that embraces diversity and equal access to the American dream.
- Members of Congress must maintain a respectful debate that focuses on the issues surrounding comprehensive immigration reform, rather than allowing anti-immigrant rhetoric to derail the conversation and undermine the Framers' vision of a nation that affords life, liberty and the pursuit of happiness to all.

  The policies adopted in the halls of government – and the words used in the debate,[62] whether on the floors of Congress or on the nightly news – directly impact our ability to sustain a society that ensures dignity and equality for all. The climate of bias and hostility against immigrants that pervades the immigration debate hurts our country and stands in the way of the kind of reform Americans desperately seek to fix the broken immigration system.

Thank you for conducting these important hearings and for your consideration of the views of the Anti-Defamation League. We welcome the opportunity to provide further information and resources on this issue of high priority to our organization.

Sincerely,

Christopher Wolf
Chair
National Civil Rights Committee

Deborah M. Lauter
Director, Civil Rights

Michael Lieberman
Washington Counsel

[61] Hector Tobar and Claudia Kolker, *Hate Crimes Against Latinos On Rise, Study Finds*, Los Angeles Times (Jul. 27, 1999), http://articles.latimes.com/1999/jul/27/news/mn-60030.
[62] Code Words of Hate (Jun. 25, 2008), https://www.youtube.com/watch?v=5kCpoXbCpqQ.

HUMAN
RIGHTS
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Written Statement of
David Stacy
Government Affairs Director
Human Rights Campaign
"The State of Civil and Human Rights in the United States"
before the
Subcommittee on the Constitution, Civil Rights, and Human Rights
Committee on the Judiciary
United States Senate
December 9, 2014

Mr. Chairman and Members of the Committee:

My name is David Stacy, and I am the Government Affairs Director for the Human Rights Campaign, America's largest civil rights organization working to achieve lesbian, gay, bisexual and transgender (LGBT) equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBT citizens and realize a nation that achieves fundamental fairness and equality for all. On behalf of HRC's 1.5 million members and supporters nationwide, I am honored to submit this statement into the record for this important hearing on identifying ongoing civil and human rights challenges that the government must continue to addressed.

Hate Crimes

LGBT Americans will never be truly equal or free to pursue happiness until they are safe from bias-motivated violence. Achieving that objective is not easy and requires action by federal, state and local law enforcement officials, policy-makers, community groups, and every day Americans. Hate crimes laws and enforcement is a key component.

A hate crime, also known as bias-motivated crime, occurs when a perpetrator intentionally selects the victim because of a bias or prejudice. Each year, thousands of violent hate crimes occur motivated by sexual orientation and gender identity. Hate crimes affect not only the victims and their families, but the entire community or group of people that they target. The term "hate crime" can also describe bias-driven property crimes that are meant to send a signal to a particular community.

In 2009, after eleven long years of struggle, Congress finally passed and President Barack Obama signed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA). It is the first major piece of civil rights legislation protecting LGBT individuals.

Five years since the law's passage, we are grateful for the leadership of President Obama, allies in Congress, and the tireless work of the Department of Justice, including the Civil Rights Division, Community Relations Service, and the Federal Bureau of Investigation, in enacting and enforcing this law. In 2012, the law was used for the first time to prosecute individuals for kidnapping and assaulting a gay man.[1]

Five years after President Obama signed the HCPA, there is little doubt that the law has become a key tool in the arsenal in the fight against violent, bias-motivated crimes. This includes offering grants to state and local communities to cover the extraordinary expenses of investigating and prosecuting hate crimes, as well as hosting trainings across the country for thousands of law enforcement officials to ensure that first responders to an assault know what questions to ask and what evidence to gather at the scene in order to help prosecutors assess whether a case should be prosecuted as a hate crime. Since 2009, nine individuals have been prosecuted under the HCPA for crimes committed on the basis of a victim's sexual orientation. Of those individuals, six have plead guilty for violating the HCPA. The remaining individuals are serving time in prison for underlying crimes.

The Federal Bureau of Investigation (FBI) produces an annual report on hate crimes statistics, which is based on statistics voluntarily submitted by state and local jurisdictions. The FBI's 2012 report (the most recent report which provides data on hate crimes committed in 2012) recorded that 1,730 law enforcement agencies reported 7,350 hate crime incidents involving at least 7,495 offenses.[2] Of those, 19.6 percent of all hate crimes were motivated by sexual orientation, second to crimes motivated by racial bias. While reported incidents against gay men and lesbians decreased from the previous year, the number of law enforcement agencies that participated in hate crime reporting has dropped considerably.[3]

For example, in the FBI's latest hate crimes report, eight cities with a population between 250,000 and one million did not report a hate crime. None of those eight cities performed well on the Human Rights Campaign Foundation's 2014 Municipal Equality Index (MEI).[4] And for the twenty cities with populations between 100,000 and 200,000 that did not report a hate crime, only three cities achieved a score higher than the average.[5]

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[1] United States v. Jenkins, 2013 U.S. Dist. LEXIS 87606 (E.D. Ky. June 20, 2013) (Sentencing Memorandum Opinion).

[2] The FBI Uniform Crime Reporting (UCR) Program received the hate crime data of nearly 1,500 law enforcement agencies after the publication deadline for its 2012 hate crimes report. The FBI issued an addendum as a one-time exemption. The new data, however, is not aggregated with the original 2012 report.

[3] At the time of this publication, data on hate crimes motivated by gender identity were not yet available.

[4] The MEI is the first of its kind nationwide evaluation of municipal law and policy. The MEI evaluates cities across the nation on the basis of the LGBT inclusiveness of their laws and policies. The third edition, to be published in November 2014, will evaluate 353 cities nationwide.

[5] Fifteen cities met the city selection criteria for participating in the 2014 MEI.

What is more, six cities with populations of 250,000 or more reported zero hate crimes. Two of those cities – Atlanta, Georgia, and Tampa, Florida – scored high on MEI's latest evaluation, with two scoring around the average and the remaining two receiving scores in the bottom third. A local jurisdiction's commitment to reporting its hate crime statistics is a critical part of its overall commitment to serving its LGBT constituents. Respectful and fair law enforcement includes responsible reporting of hate crimes, and the 2014 MEI found that cities who reported hate crimes statistics had an average total score nearly twice as high as the average total score of cities who did not report their hate crimes statistics to the FBI. There is a direct correlation between a local jurisdiction's commitment to hate crime reporting and its general commitment to LGBT equality.

HRC is dedicated to continuing its federal, state, and local advocacy and education efforts to ensure that cities improve their hate crimes reporting and overall commitment to LGBT equality. HRC is further committed to engaging in advocacy and education efforts to bring awareness to hate based violence and to expand legislation aimed at addressing hate crimes. Several priorities include:

- **Amend the Hate Crimes Statistics Act to mandate reporting.** In August 2014, FBI Director James Comey explained, "We must continue to impress upon our state and local counterparts in every jurisdiction the need to track and report hate crime. It is not something we can ignore or sweep under the rug." One effective way of ensuring greater compliance is to mandate hate crimes statistics reporting for local jurisdictions. This would provide a more complete picture of hate based violence in the United States and allow for target efforts to address areas with high levels of hate crimes.

- **Passage of state laws that protect LGBT individuals from hate crimes.** The HCPA only protects LGBT victims from violent crimes where the federal government has jurisdiction over the underlying criminal act, regardless of the bias motivation. Since most crimes in the U.S. are still prosecuted at the state level, LGBT victims remain particularly vulnerable to hate crimes in the more states that do not provide protections for individuals based on sexual orientation or gender identity. Passage of state level HCPAs allows states to prosecute hate crimes without a federal nexus and in many instances crimes against property.

- **Expand education and training initiatives.** The government must complement tough laws and vigorous enforcement – which can deter and address violence motivated by bigotry – with education and training initiatives designed to reduce prejudice. The federal government has an essential role to play in helping law enforcement, communities, and schools implement effective hate crimes prevention programs and activities. Education and exposure are the cornerstones of a long-term solution to prejudice, discrimination and bigotry against all communities. A federal anti-bias education effort would exemplify a proactive commitment to challenging prejudice, stereotyping, and all forms of discrimination that affect the whole community.

Nondiscrimination

The LGBT community has made tremendous progress in achieving non-discrimination protections over the last four decades. LGBT employees of the federal government and federal contractors can work openly and honestly without fear of termination for who they are or who they love. LGBT Americans have explicit workplace and housing protections in 18 states and the District of Columbia. In numerous cities and towns across the country, laws protect LGBT people from discrimination that would make them unsafe in public accommodations. These advances have been critical to ensuring the safety and security of LGBT people across the country. And yet despite these significant steps forward, LGBT Americans lack basic legal protections in the majority of states across the country. The patchwork nature of current LGBT civil rights protections protects millions of people, but leaves millions more subject to uncertainty and potential discrimination that impacts their safety, their family, and their very way of life.

For example, a couple who moves from suburban Maryland to a suburban Georgia town when an employer relocates them loses not only recognition of their marriage, but also state-level protections against discrimination. A transgender man who moves from Iowa to Oklahoma to take care of a relative loses any safeguards in public accommodations, putting him at risk of being legally turned away at a restaurant or movie theater. Too often, LGBT Americans are forced to choose where to live based on the legal protections available in a particular jurisdiction.

In order to provide guaranteed redress for LGBT people in all 50 states, HRC is committed to working towards federal legislation that would address discrimination in each of these core civil rights categories:

- Credit: There exist no explicit protections prohibiting the denial of credit based on sexual orientation or gender identity. The Equal Credit Opportunity Act currently prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age or because a person receives public assistance. Credit protections would ensure that LGBT people who are credit worthy could not be denied home or school loans, car leases, or access to credit cards.
- Education: There are no explicit, consistent federal protections for students based on sexual orientation or gender identity. Discrimination on the basis of race, color, religion, sex, national origin, and disability in education is prohibited by several federal laws including the Civil Rights Act of 1964, the Education Amendments of 1972, and the Rehabilitation Act of 1973. Education protections would ensure that LGBT people have full access to K-12 and post-secondary educational programs that accept federal funds as well as remedies for harassment in educational settings.
- Employment: Nondiscrimination protections are not consistently available to all LGBT employees nationwide. Individual corporations or businesses, or even cities and municipalities, may have policies that protect LGBT workers, but a majority of Americans live in states without uniform protections based on sexual orientation or gender identity. Discrimination on the basis of race, color, religion, sex, national origin, disability, and age in employment is prohibited by several federal laws including the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. Employment protections would ensure that qualified

LGBT employees could not be discriminated against in hiring, promotions, and termination as well as providing remedies for harassment in the workplace.

- Federal funding: Despite nondiscrimination protections now available to the employees of federal contractors, entities receiving federal funding through other mechanisms, such as grants, can still discriminate against LGBT people based on sexual orientation or gender identity. Discrimination on the basis of race, color, national origin, and disability by entities receiving federal funds is prohibited by the Civil Rights Act of 1964 and the Americans with Disabilities Act. There are more limited protections from discrimination for entities accepting federal funds on the basis of sex and age. Protections in all programs receiving federal funding would reach LGBT people in a wide range of ways including, health care, homelessness services, child welfare, and education.
- Housing: Currently, federal law does not explicitly prohibit discrimination in private housing based on sexual orientation or gender identity. Discrimination on the basis of race, color, religion, sex, national origin, disability, and family status in housing is prohibited by the Fair Housing Act. Housing protections would ensure that qualified LGBT renters and prospective home buyers cannot be discriminated against in leasing or purchasing homes, securing home loans, or accessing brokerage services.
- Jury service: There exist no explicit protections based on sexual orientation or gender identity for jury discrimination at the federal level. Discrimination on the basis of race, color, religion, sex, national origin or economic status in jury service is prohibited by the Jury Selection and Services Act. Jury service protections would ensure that LGBT people are not at risk of being removed from federal jury pools.
- Public accommodations: There are no federal protections that prohibit discrimination against LGBT people in public spaces, leaving LGBT people at risk in restaurants, places of entertainment and hotels. Discrimination on the basis of race, color, religion, national origin or disability in public accommodations is prohibited by the Civil Rights Act of 1964 and the Americans with Disabilities Act. Public accommodations protections would ensure that LGBT people do not face discrimination or harassment while having dinner, visiting the theater or renting a room at motel.

LGBT Immigration Detention

The Prison Rape Elimination Act (PREA) was enacted as a result of an alarming rate of sexual violence in American confinement facilities. Passed and signed into law in 2003, PREA received bipartisan support. After nine years of extensive comment periods and discussion with advocates and state and local officials, the Department of Justice and subsequently the Department of Homeland Security promulgated comprehensive regulations to implement PREA. In its summary of the final rule, DOJ recognized "the particular vulnerability of inmates who are [lesbian, gay, bisexual, transgender, or intersex] LGBT or whose appearance or manner does not conform to traditional gender expectations."[6] DHS's regulations adopted the overall structure of the DOJ regulations, but "tailored individual provisions to maximize their efficacy in DHS confinement facilities."[7]

[6] 28 C.F.R. § 115 (2012).
[7] 6 C.F.R. § 115 (2014).

Unfortunately, DHS's tailored provisions have not worked to protect LGBT detainees. DHS's regulations require detention centers to "*consider* the detainee's gender self-identification as gay, lesbian, bisexual, transgender, intersex, or gender non-conforming,"[8] and that a detention center should not base a decision on, for example, housing, solely on identity documents or physical anatomy. All decisions, however, shall be "consistent with the safety and security considerations of the facility." This language potentially provides less protection to LGBT detainees than the DOJ's regulations which state that "A transgender or intersex inmate's own views with respect to his or her own safety shall be given *serious consideration.*"[9]

Instead, DHS's relies on administrative segregation as a means to protect transgender detainees. Segregation, however, should be used as a as a form of last resort and not as a policy norm because studies have shown that administrative segregation can have lasting emotional and psychological harm[10] on a detainee even when used as a non-punitive measure. Human Rights Watch has noted that "most independent psychiatric experts, and even correctional mental health staff, believe that prolonged confinement in conditions of social isolation, idleness, and reduced mental stimulation is psychologically destructive. How destructive depends on each prisoner's prior psychological strengths and weaknesses, the extent of the social isolation imposed, the absence of activities and stimulation, and the duration of confinement."[11]

This presents an untenable dilemma for many transgender detainees: speak out about a reasonable fear to one's safety and risk being segregated, which, if placed there for too long, can potentially cause lasting emotional and psychological harm. Given the unique challenges that LGBT detainees face, the frustratingly slow pace of policy changes is concerning. It is only through policy changes that the government will truly be able to help to prevent sexual assault. These policy changes should include:

- While placing a detainee in a housing facility that is based on gender identity should be the primary goal, if that is requested by a detainee, DHS should also employ alternatives to confinement for non-dangerous detainees. While the Department has done so in the past, there appears to be no consistent policy as it pertains to transgender detainees.

- DHS should limit the use of administrative segregation to situations where safety is in jeopardy and there are no alternatives to detention available.

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[8] *Id.* § 115.42 (emphasis added).
[9] 28 C.F.R. § 115.42 (emphasis added).
[10] *See generally* Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, *available at* http://www.hrw.org/reports/2003/usa1003/18.htm#_ftn516 (last visited Sept. 19, 2014), David Kaiser and Lovisa Stannow, *The Shame of Our Prisons: New Evidence*, The New York Review of Books (Oct. 24, 2013), *available at* http://www.nybooks.com/articles/archives/2013/oct/24/shame-our-prisons-new-evidence/ (last visited Sept. 19, 2014), *and* Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, Crime and Justice Vol. 34 No. 1, 441, 455 (2006), *available at* http://www.jstor.org/stable/10.1086/500626 (last visited Sept. 19, 2014). ("While it is often very difficult to compare prison populations, prison conditions (segregation is not necessarily solitary confinement), and health issues across national borders, it is reasonable to conclude that significantly higher rates of psychiatric morbidity should be expected among prisoners in disciplinary or administrative segregation/isolation compared with the general prison population.")
[11] Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, *available at* http://www.hrw.org/reports/2003/usa1003/18.htm#_ftn516 (last visited Sept. 19, 2014).

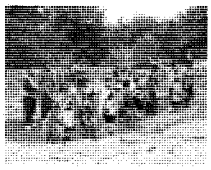
- The United States must fully implement the Prison Rape Elimination Act. In the immigration context, this requires concerted effort by DHS to implement its regulations and ensure that an LGBT individual's assessment with respect to his or her safety, and the need for housing in facilities consistent with gender identity, becomes a paramount consideration. Until full implementation occurs, DHS should continue to find ways to employ alternatives to detention for more detainees than those who currently qualify. Other federal agencies that have confinement facilities under their authority, such as the Departments of Justice and Health and Human Services, should also hasten to implement their regulations.

- Under federal law, individuals seeking asylum are required to apply within one year of last entry into the United States. Many individuals are unaware of this deadline, and the consequences are particularly acute for LGBT individuals. LGBT refugees often do not know that persecution for being LGBT can sometimes on its own be a sufficient basis to apply for asylum. What is more, many who have fled an oppressive and unforgiving environment for sexual minorities are uncomfortable disclosing their sexual orientation or gender identity. The one year deadline is arbitrary, and Congress should remove it.
- A further problem of cultural competency arises for those who play a role in the asylum process. This lack of understanding, which asylum seekers report has also occurred when interacting with both international organizations and U.S. government officials, inhibits an official's ability to work with an asylum applicant to articulate the reasons why safe haven in the United States is vital.

Our work is far from complete. We must continue to ensure successful implementation of the federal hate crimes law, as well as work harder than ever before to pass state-inclusive and comprehensive federal laws that protect the LGBT community. Moreover, we cannot allow LGBT detainees to continue to be placed in harmful, punitive detention. HRC looks forward to continuing to work with Congress and the Administration on these important subjects. Thank you for the opportunity to testify.

Southwest Native Cultures
Albuquerque, New Mexico

December 8, 2014



Honorable United States Senator Dick Durbin,
Chairman of the Senate Judiciary Subcommittee on the Constitution,
Civil Rights, and Human Rights
Washington, D.C.

Honorable Senator Durbin:

I am deeply concerned on the issues occurring today regarding Ferguson, Missouri and New York, New York. I hope you and the United States Judicial system look closely at those events and the current outcome.

I am a Navajo and Hopi Native American from Tuba City, Arizona born in Shiprock, New Mexico, born to the Kinyaa'áanii - Towering House People Clan and born for the Tó'aheedlíinii - Water-Flows-Together Clan. I am also deeply concerned about Human Rights violations occurring against the Navajo and Hopi people by Peabody Energy through the Black Mesa, Arizona coal mine. Although the mine is no longer in full operation, the reclamation of the mined land is not being conducted properly in accordance with regulation. In addition, attempts to obtain United States Office of Surface Mining, "Life of Mine' permits are in play without the proper full Environmental Impact Statement assessments taking into account the previous 60 billion gallons of water pumped in the last 30 years as part of Peabody's previous coal slurry process utilizing pristine Hopi and Navajo water. In addition an attempt is being made in the current life of mine application without Hopi tribal concurrence that includes underground mining permission which we fear will again impact the Hopi and Navajo water tables. The lands in central northern Arizona, particularly the Hopi and Navajo reservations are extremely arid and dry where water is precious for Life.

This is all being done in violation of the United States adopted United Nations Declaration on the Rights of Indigenous Peoples doctrine of "Free, Prior, Informed, Consent" which was affirmed by the President in 2010. This and other doctrines were again reaffirmed by the United States and the World, at the World Conference on Indigenous Peoples as the Outcome Document on September 22, 2014 at United Nation (UN) Headquarters New York. I was in attendance at that confernce and participated in consultations with the Department of State with the Deputy Assistant Secretary of State for Human Rights, Humanitarian, and Social Affairs Paula Schriefer.

In addition to the above violations, there is also a continued disturbance of land that is sacred and culturally significant to the Hopi people at the Black Mesa Mine, particularly burial sites and sacred watering holes that have since dried up due to the coal slurry process, but continue to be sacred watering holes.

Southwest Native Cultures
Albuquerque, New Mexico

Other Human Rights violations are also occurring in the State of Connecticut with the Schaghticoke Indian Tribe, where their United States Federal Tribal recognition was stripped from them in 2005 in petty litigation that is currently moot in regards to current "new" regulations regarding Federal Tribal Recognition under 25 CFR Part 83. Since then, the Town of Kent and local utility companies have encroached on their land without any legal recourse and recognition of the UN Doctrine of Free, Prior, Informed, Consent. This is also being done in violation of the UN Declaration on the Rights of Indigenous Peoples. Honorable Senator, you can read current news reports on this conflict pro and con, within the last four weeks in the local Connecticut newspapers.

Thank you for this wonderful opportunity to provide our thoughts on the "state" of Human rights. Keep up the wonderful work you and your staff are doing for the People.

Many Blessing to you and your family, and have a Merry Christmas and a Happy New Year,

Terry A. Sloan

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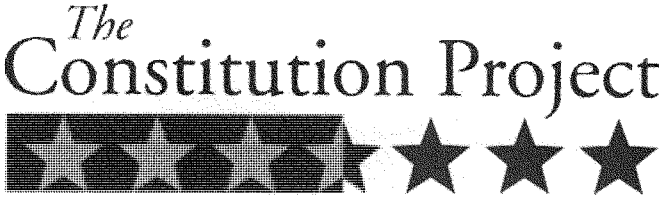

WRITTEN STATEMENT OF THE CONSTITUTION PROJECT

For a Hearing on

"The State of Civil and Human Rights in the United States"

**Submitted to the U.S. Senate Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights, and Human Rights**

December 9, 2014

The Constitution Project
Virginia Sloan, Director
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I. Introduction

The Constitution Project ("TCP") submits this statement for the hearing of the Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights on "The State of Civil and Human Rights in the United States," and congratulates the Subcommittee for holding a hearing on such a vital topic.

TCP was founded in 1997 as a nonpartisan organization that promotes and defends constitutional safeguards. We bring together legal and policy experts from across the political spectrum to promote consensus-based solutions to pressing constitutional issues. Our work includes reforming the nation's broken criminal justice system, strengthening access to justice, protecting civil liberties, and ensuring government transparency and accountability. TCP undertakes original research; develops policy recommendations; issues reports, statements, and policy briefs; files *amicus* briefs; testifies before Congress; and holds regular briefings with legislative staff and policymakers.

TCP's policy recommendations and in-depth reports are guided by several bipartisan and diverse committees[1] that include current and former judges, prosecutors, defense attorneys, legal scholars, former agency and administration officials, policy experts, and advocates. These individuals have come together for one common purpose: to push for practical reforms that will better ensure adherence to constitutional safeguards, make a real difference in communities across the country, and improve the state of civil and human rights in the United States.

In light of the tragic deaths of Michael Brown, Eric Garner, and too many others like them – the effects of which have rippled across the country – the nation is paying special attention to our criminal justice system's failure to ensure equal access to justice and a level playing field for all those touched by the system. It is virtually impossible to divorce our broken criminal justice system from the current precarious state of civil and human rights in the United States. Consequently, there is an urgent need for the practical, bipartisan approach to reform that TCP has promoted for nearly two decades. A path to replacing existing practices, which have enormous financial and human costs, is found in TCP's many substantive reports,[2] issued by our expert committees. Below, we set forth some of our recommendations for reform to improve adherence to human and civil rights in the criminal justice system.

II. Indigent Defense

Ensuring that poor people accused of crimes receive competent legal representation is a bedrock principle of our criminal justice system. The work of public defenders and others who represent indigent defendants is not simply a discretionary expenditure. It is a constitutional mandate. Moreover, because individuals accused of crimes are disproportionately poor and people of color, the right to effective assistance of counsel is a critical civil and human rights issue. Unfortunately, over 50 years after the Supreme Court recognized the right to counsel as "fundamental and essential to fair trials" in *Gideon v. Wainwright*,[3] states and counties continue to resist meeting their constitutional responsibility to provide effective defense counsel, or struggle to do so. The problem is exacerbated by the federal government's unbalanced provision of resources in favor of prosecution and police functions, with far less funding available to ensure that those who face criminal prosecution are also provided with a competent lawyer to defend them. TCP's National Right to Counsel Committee has examined the inadequacies in our country's provision of indigent defense and offered the following recommendations for the federal executive and legislative branches to protect the Sixth Amendment right to counsel for all Americans.[4]

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[1] The list of TCP policy and issue committees is available at: http://www.constitutionproject.org/about-us/policy-and-issue-committees/.

[2] A full list of TCP reports is available at: http://www.constitutionproject.org/documents/.

[3] 372 U.S. 335 (1963).

[4] For detailed recommendations and examples of advocacy by TCP's National Right to Counsel Committee, *see* http://www.constitutionproject.org/issues/criminal-justice-reform/right-to-effective-counsel/.

A. Establish Federal Research and Grant Parity

Although funding of indigent defense has increased considerably since the 1960s, inadequate financial support continues to be one of the greatest obstacles to delivering competent, diligent, and effective assistance of counsel, as required by the rules of the legal profession and the Sixth Amendment. In light of this, TCP is troubled that government funding for indigent defense services is dramatically less than the resources and financial support provided to prosecution and law enforcement. In its 2009 report, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* ("*Justice Denied*"), TCP's bipartisan National Right to Counsel Committee highlighted its concern regarding the dramatic funding disparity and proposed the solutions below.[5]

Justice Denied noted that public defenders are asked to represent far too many clients; sometimes defenders have over 100 clients at a time, with many clients charged with serious offenses in courts managing heavy dockets and moving cases quickly through the system. These excessive caseloads make it virtually impossible to provide constitutionally sufficient representation, or to practice law in accordance with the profession's ethical and other rules. Attorneys cannot interview clients properly, effectively seek pretrial release, conduct the necessary fact-finding investigations, file appropriate motions, responsibly negotiate with the prosecutor, or adequately prepare for hearings.

In courtrooms across the country, overloaded dockets result in a complete lack of counsel, or provision of counsel too late, for people facing felony and misdemeanor charges. *Justice Denied* found that judges may advise large groups of defendants in custody that they have the right to a lawyer, but that the circumstances almost impel indigent defendants to plead guilty and give up their right to counsel, often because it is the only way to obtain release before trial.[6] The inability to provide adequate representation is perhaps the most visible sign of inadequate funding to indigent defense services.

The resulting effect of disparate funding practices is not simply denial of a constitutional right. Ineffective lawyering is also one of the chief causes of wrongful convictions in this country.

While the federal government supports commendable projects, programs, and financial support to indigent defense in many jurisdictions in the country, it is still substantially less than the sum spent to support prosecution and law enforcement services. In order to make meaningful progress in supporting indigent defense – and to ensure a level playing field for poor people accused of crimes – Congress must require that financial support of prosecution and defense be substantially equal. Congress should also request that the Government Accountability Office (GAO) regularly gather data and track the distribution of federal funds to state and local criminal justice systems to assess how it is divided between law enforcement, prosecution, and indigent defense. At present, such information is not collected.

B. Create a National Body and Standards for Indigent Defense Services

The federal government should also establish an independent, adequately funded National Center for Defense Services ("Center") and establish national standards for the provision of indigent defense. The duty to provide indigent defense derives from decisions of the U.S. Supreme Court and the federal Constitution's Sixth Amendment, yet it is states and local governments that are struggling to meet this obligation. A federal program can assist states defray the costs of defense services. Decades ago, the American Bar Association endorsed the creation of a federally funded center for defense services. In *Justice Denied*, creation of the

[5] THE CONSTITUTION PROJECT, JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL, 200-201, Rec. 12 (2009), [*hereinafter* JUSTICE DENIED] *available at* http://www.constitutionproject.org/wp-content/uploads/2012/10/139.pdf.

[6] JUSTICE DENIED at 85-86.

Center was a major recommendation to address the neglect of indigent defense services.[7] The Center would strengthen the services of publicly funded defender programs in all states through the administration of grants, pilot projects, and supporting training, research, and critical data collection and analysis. Creation of the Center would support provision of competent counsel in some of the neediest jurisdictions that presently and exclusively rely on appointed and contract counsel. It could also have a tremendous impact on addressing crushing caseloads and by increasing training and support services for defense counsel, thereby drastically improving fundamental fairness and meaningful access to counsel in our criminal justice system. Finally, it would give defenders the vital independence to do their jobs that prosecutors and other actors in the system already have, but that defenders are denied.

III. Criminal Discovery Reform

Just as effective legal representation is a cornerstone of a fair and impartial justice system, so too is meaningful discovery and adherence to the dictates of *Brady v. Maryland*,[8] in which the Supreme Court held that prosecutors have a constitutional obligation to provide the defense with "evidence favorable to an accused . . . where the evidence is material either to guilt or to punishment." Thorough discovery protects innocent individuals from wrongful convictions and ensures that a person who is the subject of a criminal prosecution has the opportunity for a full and fair hearing. Thus, a critical component of a fair federal criminal justice system is U.S. Attorneys' adherence to discovery requirements and appropriate remedies when prosecutors fail to do so.

Over the past few years, TCP has observed a troubling number of cases involving failures to disclose evidence to the defense pursuant to *Brady*. Perhaps no case is more notable in this regard than the prosecution of the late Senator Ted Stevens. The U.S. Department of Justice ("DOJ") moved in April 2009 to set aside the jury verdict in Senator Stevens's case and dismiss the indictment after discovering that prosecutors had withheld evidence they were required to disclose—evidence that would have impeached the trial testimony of a key government witness and bolstered the Senator's defense. A subsequent, court-ordered investigation concluded that the prosecution had been "permeated by the systematic concealment of significant exculpatory evidence which would have independently corroborated Senator Stevens's defense and his testimony, and seriously damaged the testimony and credibility of the government's key witness."[9]

Further, prosecution discovery policies have a direct impact on defender workloads and competent and diligent representation of indigent defendants. When evidence subject to *Brady* and other disclosure obligations is not provided, defense attorneys must spend additional time, resources, and costs to obtain the same information that is already in the possession of the prosecution. The additional time and process leads to higher costs for courts and prosecution, as defense counsel must file and litigate motions, delay plea deals, or even proceed to trials that could have been avoided. Most troubling, innocent clients are more likely to be convicted due to the inability of their attorneys to present a proper defense.

A. Encourage Open File Discovery Policies

TCP's National Right to Counsel Committee endorses the practice of open file discovery, in which prosecutors provide defense counsel with access to all evidence in their possession.[10] This practice promotes the prompt and fair disposition of cases and is a way to prevent accidental or erroneous failures to disclose. This policy would also significantly reduce indigent defense costs and workloads. In jurisdictions around the country that provide open file discovery, these benefits have occurred.

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[7] *Id.* at 201-202, Rec. 13.
[8] 373 U.S. 83 (1963).
[9] Report to Hon. Emmett G. Sullivan of Investigation Conducted Pursuant to the Court's Order ("Schuelke Report"), Apr. 7, 2009, *In re Special Proceedings*, No. 1:09-mc-00198-EGS (D.D.C. Mar. 15, 2012), *available at* http://www.wc.com/assets/attachments/Schuelke%20Report.pdf
[10] *Id.* at 77-78, 207, Rec. 16.

B. Clarify Federal Prosecutors' Discovery Obligations and the Appropriate Remedies for Violations

Presently, the constitutional obligation to disclose exculpatory evidence is anything but clear. Even when prosecutors are acting in good faith, the inconsistent, shifting and sometimes contradictory standards for criminal discovery have made compliance with *Brady* difficult. Even more, many violations often go uncovered unless discovered by defense counsel. Although it is impossible to know how often *Brady* violations occur, groups and individuals across the political spectrum have noted that these violations occur with enough frequency and with significant human costs[11] that Congressional action is necessary.

In 2012, Senator Lisa Murkowski (R-AK) introduced the *Fairness in Disclosure of Evidence Act*, S. 2197, to clarify what evidence prosecutors must disclose and to provide remedies for *Brady* violations. TCP urged Congress to pass this bill.[12] Over 140 former judges, prosecutors, law enforcement, defense attorneys, and conservative leaders joined a letter[13] urging Congress to pass similar legislation that would include the following:

1. Rather than a materiality standard, provide that the scope of the prosecution's discovery obligation extends to *all* information, regardless of inadmissibility, that could be reasonably considered favorable to the defendant, with respect to pretrial motions, guilt, witness impeachment, or sentencing.

2. Clarify that a prosecutor must exercise due diligence in obtaining favorable evidence from other parties involved in the investigation and/or prosecution, including law enforcement or other agencies.

3. Require that prosecutors disclose information without delay, clarifying that the Jencks Act (requiring the disclosure of law enforcement-collected statements) does not trump the disclosure requirement. If the prosecution has legitimate objections to disclosure, the concerns may be raised with the court.

4. Impose an appropriate remedy for violations, including exclusion of evidence or witness testimony, a new trial, dismissal of the charges, an order that the government reimburse defendant's attorneys' fees related to the violation, criminal contempt, or other remedies to be determined by the court. Courts generally have the power to fashion appropriate remedies under their general supervisory powers, but this law would clarify that the court shall use that power to fashion an appropriate remedy each time a violation of the disclosure requirement has occurred.

Such reforms are necessary to address a troubling problem that goes to the heart of fairness and accuracy in the criminal justice system.

C. Implement Legislation Regarding Forensic Science Reform

In its 2014 report, TCP's Death Penalty Committee, comprising former governors, judges and prosecutors who have overseen the death penalty in their respective jurisdictions, highlighted increasing concerns about problems in forensic laboratories and the importance of reliability for forensic testimony in criminal cases.[14] For example, forensic science facilities often have inadequate educational programs and typically lack mandatory and enforceable standards founded on rigorous research, testing, certification requirements, and

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[11] National Association of Criminal Defense Lawyers (NACLD), *Faces of* Brady*: The Human Cost of* Brady *Violations*, May 2013, *available at* http://www.nacdl.org/Champion.aspx?id=28479

[12] The TCP letter was submitted for the 2013 Senate Judiciary Committee hearing entitled "Ensuring that Federal Prosecutors Meet Discovery Obligations." The text of the letter is available at: http://www.constitutionproject.org/wp-content/uploads/2012/08/60512_senatecriminaldiscoveryhearingletter.pdf

[13] The text of the letter is available at: http://www.constitutionproject.org/wp-content/uploads/2012/10/callforcriminaldiscoveryreform.pdf

[14] THE CONSTITUTION PROJECT, IRREVERSIBLE ERROR: RECOMMENDED REFORMS FOR PREVENTING AND CORRECTING ERRORS IN THE ADMINISTRATION OF CAPITAL PUNISHMENT, 11-22, Rec. 9 (2014), [*hereinafter* IRREVERSIBLE ERROR] *available at* http://www.constitutionproject.org/wp-content/uploads/2014/06/Irreversible-Error_FINAL.pdf.

accreditation programs. The facilities are often in terrible condition and are under-funded and under-staffed, leading to significant backlogs that could contribute to errors and discourage submission of evidence to reduce backlogs. Failures to test or errors in testing important evidence could lead to wrongful convictions or failure to exonerate the innocent.

Currently, no federal standards exist regarding the accreditation of forensic laboratories. TCP recommends that Congress establish federal standards and procedures for accrediting forensic laboratories and improving the use of forensic evidence in criminal cases. It further recommends that states should apply these federal standards or adopt their own, more stringent standards.

Two bills are pending in the Senate that could improve the state of forensic science. The first is the *Criminal Justice and Forensic Science Reform Act*, S. 2177, co-sponsored by Senators Patrick Leahy (D-VT) and John Cornyn (R-TX). The second bill, the *Forensic Science and Standards Act of 2014*, S. 2022, was introduced by Senator John "Jay" Rockefeller (D-WV). These bills would improve the use of forensic evidence in criminal cases with unified federal strategy and research and create enforceable federal standards for forensic evidence. Passage of such legislation will strengthen and promote confidence in criminal justice proceedings by ensuring consistency and scientific validity in forensic testing.

IV. Protections and Remedies for Innocent Individuals

Nationwide, an astounding number of wrongfully convicted individuals have been exonerated post-trial, some of whom have spent decades in prison – or even on death row – for crimes they did not commit. Most often, such exonerations come after pain-staking and *pro bono* work by dedicated teams of attorneys, law students, and journalists who investigate innocence claims long after the appeals process has ended. While wrongful convictions exact an intangible toll on those who languish in prison for crimes they did not commit, they are also costly. In Texas, for example, the state has paid over $60 million to those it has wrongfully imprisoned. Finally, wrongful convictions present a serious public safety concern: the innocent are imprisoned while the guilty are free, in some cases committing additional crimes. TCP sets forth several possible remedies to reduce the likelihood of the errors that lead to conviction of the innocent.

A. Reauthorize the Justice for All Act

The *Justice for All Act of 2004*[15] was signed into law by President George W. Bush and passed Congress with overwhelming bipartisan support. The *Justice for All Reauthorization Act of 2013*, S. 822 ("JFAA"), co-sponsored by Senators John Cornyn (R-TX) and Patrick Leahy (D-VT), is widely supported and should be passed. As the justice system is made up of many parts, JFAA necessarily addresses various components of the system which can lead to wrongful convictions.

The Act protects victims of federal crimes, works to eliminate the substantial backlog of DNA samples collected at crime scenes, provides resources for states to improve DNA and non-DNA forensics, and offers post-conviction DNA testing to exonerate the innocent. The Act includes bipartisan improvements to the Edward Byrne Memorial Justice Assistance Grant ("Byrne JAG"), the largest federal grant earmarked for public safety and administered by the U.S. Department of Justice. The Act also takes important steps in protecting the constitutional right to effective assistance of counsel. Finally, the Act reauthorizes the Debbie Smith DNA Backlog Reduction Act, addressing the backlog of untested rape kits and other important DNA evidence. The Act not only reauthorizes the Justice for All Act of 2004, but it includes meaningful improvements and strengthens key provisions and grant programs in the original bill. Many of these changes also help the government save money in the long term and responsibly reduce the total authorized funding under the Justice for All Act.

[15] H.R. 5107, Public Law 108-405.

B. Establish an Innocence Commission to Identify Appropriate Reforms

The most critical function of our criminal justice system is convicting the guilty and exonerating the innocent. When the criminal system fails, the government must take a hard look at this failure to determine the causes and appropriate reforms. The establishment of an innocence commission at the federal level would be an important first step toward this important goal. TCP recommends that the DOJ establish and Congress appropriate funds for a specific office tasked with reviewing innocence claims.[16] Further, jurisdictions, including the DOJ, should have in place ongoing mechanisms to identify process improvements to avert wrongful convictions before they occur.

V. Sentencing Reform and Recidivism Reduction

As is now well-known, the implementation of mandatory minimum sentencing has had a profound negative impact on the rate and length of incarceration in this country, increasing our nation's federal prison population by 500% over the last 30 years. Over a decade ago, TCP began to examine this issue and established a Sentencing Initiative to study the federal sentencing regime instituted in the mid-1980s and offer its recommendations for reform. The Sentencing Initiative is guided by a Committee comprising a former U.S. Attorney General, other prosecutors, judges, defenders, and legal scholars from across the political spectrum. Its first report was issued 2000.[17] Its second major report was in response to the U.S. Supreme Court's decisions in *Blakely v. Washington*[18] and *United States v. Booker*[19], which redefined the constitutional landscape of sentencing and presented opportunities for policymakers to consider meaningful sentencing reform.

TCP's Sentencing Committee focuses on addressing a dysfunctional federal sentencing regime with practical, bipartisan solutions. While it is critical of a number of components of the Federal Sentencing Guidelines, the Sentencing Committee believes the best mechanism for consistency, individualization, transparency, and enhanced due process is a system of guidelines. In its view, "mandatory minimum sentences are generally incompatible with the operation of a guidelines system and thus should be enacted only in the most extraordinary circumstances."[20] It has forced judges to impose "one-size-fits-all" sentences without allowing judges to consider the circumstances of an individual case or whether there is a real risk public safety. Mandatory minimum sentences for drug offenders have also had a disproportionate impact on communities of color and eroded trust between these communities and law enforcement.

TCP's commonsense, bipartisan recommendations are aimed at reducing crime *and* spending. There is no doubt that our prison populations are fueled in large part by our sentencing policies, which favor costly incarceration over cheaper and effective alternatives and/or rehabilitation. Generally, legislation must be passed to: (a) reduce the severity and scope of mandatory minimum penalties; (b) improve and expand the federal safety valves for mandatory minimum sentencing to allow for more judicial discretion; and (c) eliminate the crack/powder cocaine sentencing disparity from 18:1 to 1:1. TCP also proposes that the savings from implementing its recommendations be allocated to treating addiction or funding community-based programs to reduce recidivism.

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[16] IRREVERSIBLE ERROR at 7-8; Rec. 4(b)-(c), supra note 14.
[17] THE CONSTITUTION PROJECT, PRINCIPLES FOR THE DESIGN AND REFORM OF SENTENCING SYSTEMS: A BACKGROUND REPORT (2005) [hereinafter PRINCIPLES], available at http://www.constitutionproject.org/wp-content/uploads/2012/10/34.pdf.
[18] 542 U.S. 296 (2004) (striking down the Washington state sentencing guideline system, finding it in violation of the Sixth Amendment right to trial by jury).
[19] 543 U.S. 220 (2005) (finding the Federal Sentencing Guidelines unconstitutional as applied and invalidating sections of the Sentencing Reform Act of 1984 to make the guidelines "essentially advisory").
[20] PRINCIPLES at 27.

These recommendations are not only an important step forward for fairer administration of justice, but would also save valuable taxpayer dollars. The federal prison population is above capacity, with about half of those incarcerated for drug offenses and sentenced in accordance with lengthy mandatory minimum laws. Note, for example, the U.S. Sentencing Commission's announcement that the government saved over half a billion dollars when guidelines for crack cocaine offenses, modified by the Fair Sentencing Act, were made retroactive.

It is clear that Members of Congress appreciate the need for a comprehensive approach to address mass incarceration and a number of vehicles presently exist to make federal sentencing reform and recidivism reduction a reality.

A. Pass Legislation Aimed at Restoring Judicial Discretion and Reducing Recidivism

One year ago, TCP coordinated a letter to Senators Dick Durbin (D-IL) and Mike Lee (R-UT) in strong support of their bill to address harsh sentencing practices, the *Smarter Sentencing Act*, S. 1410 ("SSA").[21] The letter was signed by over 100 former judges, law enforcement officials, and prosecutors. The signatories emphasized the consequences of harsh federal mandatory minimum sentences on the explosive and costly growth in incarceration and the need for reforms included in the bill. Some of these important reforms include changes to drug-related mandatory minimums, such as reducing some mandatory minimums and providing retroactivity for the Fair Sentencing Act of 2010. The SSA is aimed at reducing our nation's massive prison population by addressing nonviolent drug offenses and restoring some judicial discretion so judges may sentence according to the individual circumstances of each case. The SSA also saves taxpayers money. Just this September, a study by the Congressional Budget Office found that the SSA would reduce the costs of incarceration by $4.36 billion over ten years.[22]

In another letter coordinated by TCP last year, many of the same signatories wrote to Senators Patrick Leahy (D-VT) and Rand Paul (R-KY) in support of their bipartisan *Justice Safety Valve Act*, S. 619.[23] If enacted, the bill would authorize federal courts to impose a prison sentence below the mandatory minimum in cases where the minimum is not necessary to protect the public, the defendant is not likely to re-offend, and in other situations where the minimum is unwarranted. For example, in a drug case, a court could determine that a shorter prison term combined with mandatory drug treatment would be more likely to prevent an individual from reoffending.

B. Pass Legislation Aimed at Reducing Recidivism

TCP encourages Congress to pass the *Recidivism Reduction and Public Safety Act*, S. 1675, introduced by Senators Sheldon Whitehouse (D-RI) and John Cornyn (R-TX). The bill, which passed with broad bipartisan support out of the Senate Judiciary Committee in March, requires the Bureau of Prisons to assess the risk of recidivism for each prisoner and provide programming to reduce that risk. It also permits some prisoners to earn time in pre-release custody.

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[21] The letter is available at: http://www.constitutionproject.org/wp-content/uploads/2013/12/Letter-re-Smarter-Sentencing-Act-12-9-13.pdf

[22] Emily Long, "Smarter Sentencing Bill would reduce prison costs by more than $4 billion," KCSG.com, Sept. 15, 2014, *available at* http://www.kcsg.com/view/full_story/25783253/article-Smarter-Sentencing-Bill-would-reduce-prison-costs-by-more-than-$4-billion?instance=more_local_news1.

[23] The letter is available at: http://www.constitutionproject.org/wp-content/uploads/2013/07/JSVA-Letter-from-Former-Prosecutors-and-Judges-7-17-2013.pdf?utm_source=PR%3A+Release+-+Former+Federal+LEOs+on+JSVA&utm_campaign=Release+-+LEO+Letter+on+JSVA&utm_medium=archive

In addition to the bills outlined above, there are a number of other pieces of legislation that have been introduced in the Senate that have a positive impact on sentencing, reentry, and the criminal justice system. TCP asks Congress to consider passage of these bills. These include the *Reclassification to Ensure Smarter and Equal Treatment Act* of 2014, RESET Act, S. 2657 (to eliminate the crack/powder cocaine sentencing disparity) and the *Record Expungement Designed to Enhance Employment*, REDEEM Act, S. 2567 (providing a process for sealing or expungement of records related to nonviolent or juvenile offenses).

VI. Ensuring Consular Access

Article 36 of the Vienna Convention on Consular Relations ("VCCR") requires that foreign nationals detained for any reason shall be notified "without delay" of their right to communicate with consular offices of their home country.[24] Article 36 embodies mutual obligations that apply to foreign authorities who arrest or detain U.S. citizens abroad. The policies underlying the VCCR are similar to those underlying the right to counsel guaranteed by the United States Constitution.

Unfortunately, in 2005, the U.S. withdrew from the Optional Protocol to the VCCR ("Optional Protocol"), which grants jurisdiction to the International Court of Justice ("ICJ") to resolve disputes with respect to VCCR.[25] In *Medellin v. Texas*, U.S. Supreme Court subsequently held that without implementing legislation, ICJ decisions are not binding federal law.[26] Thus, the ICJ no longer has jurisdiction over claims from foreign countries whose citizens have been convicted in the U.S., in violation of the VCCR. This should be deeply troubling to Congress, as the U.S. is precluded from asserting the rights of U.S. citizens convicted in foreign courts without consular access. Further, since *Medellin*, Texas has executed three Mexican nationals who were denied consular access when arrested in the United States and, consequently, denied the opportunity for consular officials to provide their nationals with competent trial counsel.

The U.S. is still a party to the VCCR and must still remain in compliance to uphold its international law obligations. In order for the VCCR to preempt state criminal procedures and have meaningful effect, the U.S. should rejoin the Optional Protocol and Congress should adopt implementing legislation to ensure full compliance. TCP recommends Congressional action and further believes that law enforcement or other government officials have an obligation to notify consular officials as soon as they realize that an arrested person is a foreign national. Further, we recommend additional compliance incentives, such as exclusionary rules barring the introduction of evidence obtained in the absence of consular notification and legislation rendering foreign nationals ineligible for the death penalty if they are not provided with their consular rights in a timely fashion. Our Death Penalty Committee commends federal and state law enforcement agencies that have created educational materials about the VCCR, but believes implementing legislation is required to give domestic effect to the Optional Protocol.[27]

VII. Safeguarding Racial Fairness, Civil Rights, and Civil Liberties

Study after study consistently demonstrates glaring racial disparities in our capital punishment and criminal justice system. For example, a 2013 study by the U.S. Sentencing Commission confirms racial disparities and racial discrimination in the U.S. justice system: prison sentences of black men are nearly 20 percent longer than those of white men who commit similar crimes.[28] These disparities have diminished the public's faith and trust in our justice system. It is critical that race and other factors, such as ethnicity or

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[24] Organization of American States, Vienna Convention on Consular Relations art. 36(b), Apr. 24, 1963.

[25] The U.S. withdrawal occurred in response to the ICJ decision in *Mexico v. United States of America*, in which Mexico sought to halt the execution of 54 Mexican nationals; the ICJ found that the U.S. had failed to inform 51 of those individuals of their rights under the VCCR and that the U.S. must review and reconsider the convictions and sentences. *See Avena & Other Mexican Nat'ls*, 2004 I.C.J. 12, 53-55 (Mar. 31).

[26] 552 U.S. 491 (2008).

[27] IRREVERSIBLE ERROR at 120-23; Rec. 33, supra note 14.

[28] Joe Palazzolo, *Racial Gap in Men's Sentencing*, WALL ST. J., Feb. 15, 2013 at A3.

gender, are not the countervailing factors that determine whether a person faces arrest, conviction or a particular form of punishment.

Given the complexity of racial and ethnic disparities, TCP acknowledges the difficulty of crafting recommendations for a "remedy." There is evidence that even subconscious or implicit bias plays a role in our system, which can affect jury deliberations and sentencing. Instead, TCP encourages gathering data and experimenting with solutions, with people of color playing substantial leadership roles in reform efforts. It is also critical that each jurisdiction ensure that people of color are part of every decision-making process within the criminal justice system, including in the ranks of defense counsel, prosecutors, jurors, and judges.

Today, TCP is considering the Obama administration's request to fund body cameras for local law enforcement. In 2007, TCP's Liberty and Security Initiative released a report regarding guidelines for public video surveillance.[29] TCP believes many of the civil liberties concerns regarding public video surveillance are applicable to the use of body cameras. Body cameras can create a strong sense of transparency and accountability that is needed in many regions to strengthen trust between communities and law enforcement. Such cameras provide documentary evidence of encounters between law enforcement and the public and may also serve as a check against the abuse of power by officers and protect police officers against false allegations of abuse. At the same time, the legal, social, and technological issues are complex and evolving, particularly with respect to retention of data, prospects for increased government surveillance, and privacy concerns. The bottom line is that body cameras can be a valuable tool if designed to preserve accountability and strong procedural safeguards are implemented to protect rights of privacy, freedom of speech, and freedom of expression.

VIII. Conclusion

The Constitution Project thanks Chairman Durbin and the Committee for its attention to the pressing civil and human rights concerns presented by the current operation of the criminal justice system in the United States. We continue to believe that multi-partisan agreement can be forged on each of the problems described above as we have, over the last 17 years, been able to foment consensus among our committee members of diverse partisan stripes and experience on these very issues. We are convinced of the immediate and vital need to transform our criminal justice system and offer our support to the Committee as it reinvigorates existing reform efforts and develops new solutions to create a fairer, impartial and more accurate criminal justice system.

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[29] THE CONSTITUTION PROJECT, GUIDELINES FOR PUBLIC VIDEO SURVEILLANCE: A GUIDE TO PROTECTING COMMUNITIES AND PRESERVING CIVIL LIBERTIES, *available at* http://www.constitutionproject.org/documents/guidelines-for-public-video-surveillance-a-guide-to-protecting-communities-and-preserving-civil-liberties/.

Monday, December 8, 2014

Dear Senator Durbin and Members of the United States Senate Subcommittee on the Constitution, Civil Rights and Human Rights,

Please accept the following statement as part of the formal record for the Tuesday, December 9, 2014, 2:30 p.m. hearing on the subject of the **"The State of Civil and Human Rights in the United States."**

My name is Mark Patrick George and I am the Coordinator of a racial justice organization called the Mary Turner Project (www.maryturner.org). Our organization was created in 2007 in Valdosta, Georgia to research and address historical and contemporary forms of racial injustice. It is named in honor of a 1918 lynching victim named Mary Turner who, while eight months pregnant, was brutally eviscerated and lynched in Brooks County, Georgia for publicly speaking out against the lynching of her husband Hayes Turner. With her courage and memory at heart, for over eight years the project has conducted research and held events aimed at educating the public about the long legacy of racial terrorism in the United States and its connections to current day racial injustices.

In light of the recent deaths of Michael Brown and Eric Garner, it appears our nation has once again been forced to pause, momentarily, and ponder the state of race relations and civil rights. We say forced because the United States has repeatedly had to be forced, by social protest, to address the state of civil and human rights for African Americans and other people of color who are citizens of this nation. One contributing factor central to this fact is that, unlike other nations, the United States has refused to engage in any authentic, long-term racial truth and reconciliation process relative to its 400 year history of racial injustice. As you know, those four centuries have included the genocide and reservation of indigenous peoples, 246 years of chattel slavery, decades of racial debt peonage, thousands of lynchings, Jim Crow segregation, redlining by financial institutions, etc. Instead of being interested in a reconciliation and healing process, our nation has repeatedly been forced, by social protests, to live up to its stated values. It in turn has made "concessions" when it comes to its own civil and human rights violations. Noting that concession and conciliation is not reconciliation, many in this nation seemed dumbfounded about why we are ever haunted by the specter of race?

With that history in mind, we write today to formally ask your subcommittee to acknowledge and address the context many Black Americans find themselves in today and what that reality reflects about the state of civil and human rights in this nation. That is, we ask you to think about the cultural backdrop that is part of everyday life for millions of Black people and what it reflects about how insignificant their thoughts, feelings, and rights are in many parts of this nation. This everyday reality may not be as dramatic as the recent deaths of Mr. Brown or Mr. Garner but it nonetheless exemplifies the ongoing dehumanization many African Americans experience every day, a process that also communicates the message that "Black lives really don't matter."

In particular, the Mary Turner Project wants to bring your attention to the scores of African Americans who reside in states where millions of their tax dollars are used each year to celebrate and glorify a treasonous government that sought to preserve and expand their

enslavement. That same government also held that Black people were savages and racially inferior to White people.

In particular, the Mary Turner Project wants to bring your attention to the fact that today millions of Black people in Georgia, and throughout the south, without their consent and representation, have their tax dollars used to pay for countless Confederacy celebratory events, the sponsorship/management of Civil War enthusiasts' battle "reenactments," memorial sites that lionize racist Confederate leaders and distort history, state sponsored Confederate holidays, among other activities. This occurs regardless of what Black people may think or feel about these practices, and regardless of what the historical records demonstrates about that White supremacist government.

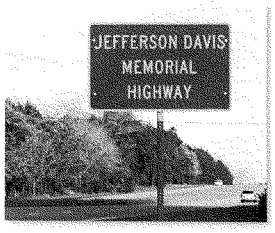
Specifically, today Georgia's Black population, 3 million people (30% of the state's total population), many of whom are the very descendents of once enslaved people, are forced, through state taxation, to fund assorted events, holidays, memorial sites, and other activities that glorify the Confederacy and Confederate leaders who wanted to preserve/expand slavery and who espoused the belief that White people were racially superior to Black people. Members of your subcommittee, like Senator Graham, are not only well aware of this practice among southern states but apparently endorse it given his silence on the matter in his home state of South Carolina.

With that in mind, in the state of Georgia, whose own "secession statement" references slavery 34 times in six pages and where the namesake of the U.S. Army's Fort Benning stated that the state's "main cause" for Georgia's secession from the United States was that "a separation from the North was the only thing that could prevent the abolition of her slavery" (Henry Benning, 1861), Black people live in a state where current day "lawmakers" think it is appropriate to use their tax dollars to glorify a government whose:

> ...cornerstone rests upon the great truth that the negro is not equal to the white man. That slavery subordination to the superior race—is his natural and moral condition. (Alexander Stephens, 1861)

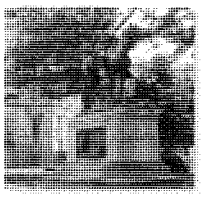
Noting that "cornerstone" and until these state sanctioned racist practices are challenged and ended, the Mary Turner Project contends that:

We should not be surprised when the civil rights of Black people are not upheld by institutions like the criminal justice system when they are expected to drive down roads named after people who held that White people "recognize the negro as God and God's Book and God's Laws, in nature, tell us to recognize him - our inferior, fitted expressly for servitude...[and] You cannot transform the negro into anything one-tenth as useful or as good as what slavery enables them to be" (Jefferson Davis, 1861).



We should not be surprised when the civil rights of Black people are not upheld by institutions like the criminal justice system when the state of Georgia uses the tax dollars of Black Georgians to pay state employees for the day off on "Confederate Memorial Day".

We should not be surprised when the civil rights of Black people are not upheld by institutions like the criminal justice system when the state of Georgia uses Black people's tax dollars to pay for state employees' wages for "Robert E. Lee Day," a man who thought that the enslavement of Black people "was necessary for their instruction as a race" and that it would "prepare and lead them to better things" (Robert E. Lee, 1861).



We should not be surprised when the civil rights of Black people are not upheld by institutions like the criminal justice system when Black people live in a state where a statue of a Ku Klux Klan leader, who thought that slavery was "morally, socially, and politically right" and a "heaven blessed institution" is on the Georgia State Capital lawn (Gen. John Brown Gordon, 1860).

We should not be surprised when the civil rights of Black people are not upheld by institutions like the criminal justice system when Black people in Georgia are expected to pay for the maintenance of the home of a man who held that "The negro is inferior to the white man"..."and all attempts to make the inferior equal to the superior is but an effort to reverse the decrees of the Creator" (Alexander Stephens, 1856).

We should not be surprised when the civil rights of Black people are not upheld by institutions like the criminal justice system when Black people in Georgia are expected to pay for the salaries of hundreds of state personal who manage and help carry out numerous Civil War "reenactments" and other annual events that glorify the Confederacy and White supremacist Confederate leaders.

We should not be surprised when the civil rights of Black people are not upheld by institutions like the criminal justice system when Black children and children of other races are taught a distorted history and celebrate "Confederate History Month" (this legislation was passed in 2009).

In sum, we should not be surprised when the civil rights of Black people are not upheld by institutions like the criminal justice system when "lawmakers" in assorted southern states think it is appropriate to use Black people's tax dollars for activities that celebrate and glorify men who thought that Black people were subhuman and worthy only of enslavement.

This is the reality in Georgia. Similar racist practices are also carried out in Sen. Graham's state of South Carolina as well as in Florida, North Carolina, Tennessee, Virginia, Alabama, Louisiana, Mississippi, Texas, and Arkansas. In addition to being dehumanizing and demoralizing, these practices also raise serious questions about current lawmakers' capacity to represent the interests and rights of all people.

Given this everyday backdrop for millions of African Americans in the Deep South, one that is accepted as "normal" and rarely questioned, just as segregated schools were one considered "normal" and not challenged, are we as a nation really surprised about recent events? Are we

really surprised that people have taken to the streets to once again shout that "Black lives do matter"?

Please know that in June of this year our organization sent an open letter to Georgia Gov. Nathan Deal and every member of the Georgia General Assembly highlighting the racist nature of these activities and requesting that they cease. To see the full text of that letter and our request (as well as relevant supporting documents), please visit this link.

https://www.scribd.com/doc/233692610/Open-Letter-To-The-State-About-Glorifying-Confederate-History

In addition to providing an evidence-based rationale for our request, drawn from academically credentialed Civil War scholars, our letter provides historical data to lawmakers that a) demonstrates that Georgia joined the Confederacy in order to preserve and expand the institution of slavery and b) that Confederate leaders (now being celebrated by the state) were overt White supremacists. To date, we have not received a single response to that message, one sent to over 400 lawmakers.

Please know that we are well aware that some lawmakers and assorted Confederate "heritage" groups often argue that these activities are a matter of "heritage not hate". However, if one actually takes the time to look at the historical record or talk to an academically credentialed Civil War scholar, one finds the opposite is in fact true. What one discovers is that Confederate leaders repeatedly articulated their deep love of slavery and their deep conviction that Black people were savages, subhuman, and worthy only of enslavement (again, please see our open letter to Gov. Deal and the General Assembly for examples of this reality – linked above).

Please also know that while critical of these individuals and groups, the Mary Turner Project respects their right to free speech. We also respect their right to adhere to any distorted, romanticized, and historically inaccurate version of American history they desire. However, we contend that the State of Georgia, and other southern states, should not be a part of that distortion nor should it be in the business of glorifying a government, and men, who wanted to keep Black people enslaved and who thought Blacks were subhuman and savages. Furthermore, we do not think the State of Georgia and other southern states should be using the tax revenue of its citizens to actively distort history and glorify White supremacist Confederate leaders. As one of the Mary Turner Project members described it, "today the state of Georgia essentially taxes its citizens, many of whom are the very descendants of once enslaved people, to celebrate men and a government who thought that Blacks were savages and were lucky to be enslaved." Or as another member put it, "it is not right to ask the descendants of slaves to help fund holidays and memorial sites that celebrate people who wanted to keep us enslaved."

With this situation in mind, and given Georgia Gov. Deal's and the Georgia General Assembly's refusal to respond to our requests, we contend that Georgia lawmakers are actively violating the civil rights of a large portion of Georgia's population with said activities, particularly the right to equal protection against the deprivation of life and liberty as articulated in Section 1 of the 14th Amendment of the U.S. Constitution. This again raises serious questions about their capacity to honor civil rights and to represent the interest of all peoples.

In closing and in the spirit of Mary Turner, we hold that it is time the State of Georgia and other southern states to move into the 21st century, to be honest about their history, and work to truly represent the interests of all of its citizens. It is also time for the State of Georgia and other southern states to stop glorifying a failed White supremacist government and leaders who thought that Blacks were both "brutal savages" (Jefferson Davis, 1861) and "not equal to the white man. " (Alexander Stephens, 1856). That is, it is time for a new "normal" in Georgia, and other southern states, where lawmakers stop participating in the distortion of American history and begin to honor and protect the civil rights of all Americans. It is time to change the cultural context that encourages the dehumanization of Black lives and regularly sends the message that "Black lives don't matter." Until this happens, we should expect further racial strife and the further failure of American institutions, like the criminal justice system.

Thank you for your time and consideration,

Mark Patrick George, Ph.D.
Mary Turner Project Coordinator
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Valdosta, GA 31603
229-234-2856

SCHAGHTICOKE FIRST NATIONS

Sachem Hawk Storm

December 8, 2014

Honorable United States Senator Dick Durbin,
Chairman of the Senate Judiciary Subcommittee on the Constitution,
Civil Rights, and Human Rights
Washington, D.C.
Houorable Senator Durbin:

I am Sachem Hawk Storm of the Schaghticoke Indians in Kent Counecticut. I am writiug you on behalf of our people and the atrocities that have been and are currently happening to our land and our people. First and for most I would thank you for this opportunity to address these issues, we are extremely grateful.

There are four key issues I would like to bring forward to you at this time;

1) Laud being takeu without any prior and informed cousent. As well as uo compensation as if to say we do not exist. Kent school is a very large rich school and has taken hundreds and huudreds of acres from us and are still moving farther into our land every day.

2) Our water has been taken from us to the poiut where we canuot build houses. If we do build houses we canuot build wells or septie because of the way they have made our reservation basically "owned" by the inland wetlands eomition. This was ratified iu a recent court case were a man was suecessfully removed form living on the reservation for squatting on Kent property. This man was a mile into the reservation, past all our old foundations such as, the old Moravian mission church erected in 1743.

3) We had a 99 year lease agreement with Connecticut Light and Power who put up a dam and a power plant on the land. When they built the dam, they flooded out our sacred burial grounds were our ancestors have been buried kneeling facing east for hundreds of years. They moved many of our remains to a different location, away from our sacred ceremonial lands, mostly unmarked graves with many of our ancestors lost down river or in the river bed. The lease ended in 2008 without any compensation for the tribe in all this time, and after it ended they filed a quick claim deed on the property.

SCHAGHTICOKE FIRST NATIONS

Sachem Hawk Storm

The town of Kent has put their sewage treatment plant on the north end of onr reservation. There we watch for years as they pump out their sewage pits and grade it into the adjacent field that is attached to the river. We watch as the field floods from the swamp at the south end and meets the river.

These and more issues have nearly destroyed us as a people. And this is definitely not exclusive to our people, it is happening all over the country.

Sachem Hawk Storm

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N'COBRA's Testimony at
The State of Civil and Human Rights in the United States

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

Submitted by Kamm Howard, Legislative Commission Chair, National Coalition of Blacks for Reparations In America (N'COBRA) ncobrachicago@gmail.com

N'COBRA's contribution to the forum will focus on the use of international human rights instruments in furtherance of our goals to be repaired from the centuries-long injuries of enslavement, Jim Crow segregation (apartheid) and the continued injurious effects of crimes against our humanity.

Before identifying the instruments that mandate the State to initiate and sustain reparative measures, N'COBRA offers our definition of reparations.[1]

> Reparations is the process of repairing, healing and restoring a people who were injured, due to their group identity, in violation of their fundamental human rights, by a government, corporation, institution or individual.[2]

This definition is one that focuses on initiating and engaging process that get this community to wholeness not solely on compensation, although compensation is one aspect of full reparations, as will be detailed below.

There are several international instruments that mandate and empower the Senate to legislate the repair of the African descendant community. The Durban Declaration and Program of Action (DDPA), the outcome document of the United Nations World Conference Against Racism (WCAR)[3] sits at the top of the list.

The DDPA

The relevant portions of this document are those paragraphs that settle the issue of 1) were the actions of enslavement, the Slave trade, colonialism and apartheid international crimes against humanity, 2) were there injuries resulting from those actions, 3) do those injuries remain among the descendants of those affected, and 4) is there an obligation on the part of the injuring parties (states, corporations and institutions) to repair the injuries. In each of these areas, the answer was yes.

In specific regards to the criminal status of the actions of slavery, apartheid (Jim Crow segregation) and colonialism* the DDPA, declares:

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[1] This definition was adopted, by the African world in October 2002 in Bridgetown, Barbados .at the African-African Descendant Caucus (AADC) Follow-Up of the United Nations Duran World Conference Against Racism.

[2] www.nocobra.org

[3] The 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), also known as Durban I, was held in Durban, South Africa, , from 31 August to 8 September 2001.

> 13. We acknowledge that slavery and the slave trade, including the transatlantic slave trade, were appalling tragedies in the history of humanity not only because of their abhorrent barbarism but also in terms of their magnitude, organized nature and especially their negation of the essence of the victims, and further acknowledge that slavery and the slave trade are a crime against humanity and should always have been so....[4]
> 15. We recognize that apartheid and genocide in terms of international law constitute crimes against humanity...[5]

Pertaining to the continued and persistent negative effects and legacy of the crimes,

> 14. We recognize that colonialism has led to racism, racial discrimination, xenophobia and related intolerance, and that Africans and people of African descent, and people of Asian descent and indigenous peoples were victims of colonialism and continue to be victims of its consequences. We acknowledge the suffering caused by colonialism and affirm that, wherever and whenever it occurred, it must be condemned and its reoccurrence prevented. We further regret that the effects and persistence of these structures and practices have been among the factors contributing to lasting social and economic inequalities in many parts of the world today;[6]

Finally, on the obligation on the part of the States to engage reparative justice:

> 101. With a view to closing those dark chapters in history and as a means of reconciliation and healing, we invite the international community and its members to honor the memory of the victims of these tragedies. We further note that some have taken the initiative of regretting or expressing remorse or presenting apologies and call on all those who have not yet contributed to restoring the dignity of the victims to find appropriate ways to do so ….;
> 102. We are aware of the moral obligation on the part of all concerned States and call upon these States to take appropriate and effective measures to halt and reverse the lasting consequences of those practices;

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[4] Durban Declaration and Program of Action, (DDPA) par. 13 http://www.un.org/WCAR/durban.pdf Some have said that the clause "should have always been" removes any culpability on existing entities because the activities of slavery and slave trade were legal at the time. (Biondi, 2007; Wittmann, 2013) Again, Nora Wittmann dismisses this fallacy. In doing so, she meticulously details that prevailing international law at the time did not see these actions as legal but also as criminal. And, she sums up her findings by saying: "When one contends that "slavery" was "legal", it needs to be asked by whose standards it is supposed to have been legal. The allegation of legality is based solely on the colonial laws that European enslaver states passed after they had been the driving force in transatlantic slavery for already more than a century. However transatlantic slavery was not legal by the laws of affected Africans, nor was it compliant with international law standards of the time. It was not even "legal" by the laws of European enslaver states… " (Wittmann, 2013 Wittmann, N. (2013). Slavery Reparations Time Is Now. Vienna: Power of the Trinity Publishers)

[5] DDPA par 15

[6] DDPA par 14

> 104. We also strongly reaffirm as a pressing requirement of justice that victims of human rights violations resulting from racism, racial discrimination, xenophobia and related intolerance, especially in the light of their vulnerable situation socially, culturally and economically, should be assured of having access to justice, including legal assistance where appropriate, and effective and appropriate protection and remedies, including the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, ...[7]

The International Covenant for Civil and Political Rights (ICCPR), the United Nations Minority Declaration, and the International Covenant for the Elimination of Racism (ICERD) are the next relevant instruments.

ICCPR

The ICCPR's article 27 spells out a special relationship of the state to its national minorities – differentiating from immigrant minorities and subgroup minorities.

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

National minorities also have a unique characteristic in that they were within the national boundaries at the time a nation was formed and that they had a significant role in the formation of the nation. In addition to Native Americans, Afrikans in American, and those Hispanics who self-define as Chicano's share this status. In 1776 there were 500,000 Africans in America and accounted for 20% of the population.[8] As such, this government has a special and legal obligation to positively legislate policy effecting people of Afrikan descent distinctively separate from sub-group minorities and immigrant minorities in America.

UN Declaration on Minorities

The United Nations Declaration on Minorities, particularly spells out the separate special rights of national minorities. The standards of concern and scope of national minority rights are:

A. Survival and Existence - any action for the protection of minorities should focus primarily on the protection of the physical existence of persons belonging to minorities, including protecting them from genocide and crimes against humanity
B. Promotion and Protection of Identity - Central to the rights of minorities are the promotion and protection of their identity. Promoting and protecting their identity prevent forced assimilation and the loss of cultures, religions and languages.

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[7] DDPA par 101-102,104

[8] http://norberthaupt.com/2011/01/16/u-s-population-in-1776-and-1790/

C. Equality and Non-Discrimination - Non-discrimination and equality before the law are two of the basic principles of international human rights law. The principle of nondiscrimination prohibits any distinction, exclusion, restriction or preference which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. There is no requirement to demonstrate discriminatory intent. The phrase "purpose or effect" refers to legislation and/or policies which may be textually neutral but are interpreted in a manner that results in discrimination. International human rights law prohibits both direct and indirect discrimination.

D. Effective and Meaningful Participation - The participation of persons belonging to minorities in public affairs and in all aspects of the political, economic, social and cultural life of the country where they live is in fact essential to preserving their identity and combating social exclusion. ... Participation must be meaningful and not merely symbolic, ... Participation must be effective....For the participation of persons belonging to minorities to be effective, ...States must also ensure that the participation of representatives of minorities has a substantial influence on the decisions which are taken, so that there is, as far as possible, shared ownership of these decisions. [9]

Afrikans in America were brought to this country forcibly. In that process, nearly every human right recognized at the time and since were violated. Their national minority status, the singularly distinct racialized history and current unequal treatment in America, requires that all legislation that effects this group be constructed through the particular lens and scope of international minority rights. This will require and ensure reparative policy to be included within all future legislation of this nation.

ICERD

The International Covenant for the Elimination of Racism[10] is particularly important to the issue of repair and healing of the Afrikan descendant community in America, especially when we view several of the Commission's General Recommendations.

In General Recommendation 28 (CERD GC28), the Committee incorporated the Durban Declaration and Program of Action into the ICERD covenant. This is very important, because although, the US delegation walked out of Durban, having signed and ratified ICERD, it is of an obligation to bring its ICERD compliance in alignment with the DDPA. CERD GC28 recommends to States ...

1. f) To take into account the relevant parts of the Durban Declaration and Program of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention;

And

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[9] Minority Rights: International Standards and Guidance for Implementation http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf

[10] The International Covenant for the Elimination of All Forms of Racism, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

> **2.** (d) To take into consideration all aspects of the Durban Declaration and Program of Action concerning the fulfilment of its mandate.[11]

This was reiterated, by CERD, in paragraph 30 of their concluding observations to America's ICERD Periodic Review held in August 2014.[12]

In CERD GC 34, the Committee particularly spells out a focused emphasis on People of Afrikan descent existing in States and calls for special attention and special measures by the State.

> 5. The Committee understands that racism and racial discrimination against people of African descent are expressed in many forms, notably structural and cultural.
>
> 6. Racism and structural discrimination against people of African descent, rooted in the infamous regime of slavery, are evident in the situations of inequality affecting them and reflected, inter alia, in the following domains: their grouping, together with indigenous peoples, among the poorest of the poor; their low rate of participation and representation in political and institutional decision-making processes; additional difficulties they face in access to and completion and quality of education, which results in the transmission of poverty from generation to generation; inequality in access to the labor market; limited social recognition and valuation of their ethnic and cultural diversity; and a disproportionate presence in prison populations.
>
> 7. The Committee observes that overcoming the structural discrimination that affects people of African descent calls for the urgent adoption of special measures … The need for special measures [for People of African descent] has been the subject of reiterated observations and recommendations made to the State parties under the Convention, [13]

CERD GC 32 defines and lays forth the scope of special measures that are to be directed toward the elimination of racism.

> 13. **"Measures" include the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programs and preferential regimes in areas such as employment, housing, education, culture and participation in public life for disfavored groups, devised and implemented on the basis of such instruments**. States parties should include, as required in order to fulfil their obligations under the Convention, provisions on special measures in their legal systems, whether through general legislation or legislation directed to specific sectors in the light of the range of human rights referred to in article 5 of the

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[11] General Recommendation No. 28: The follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. 03/19/2002

[12] Concluding Observations on the Combined Seventh to Ninth Periodic Reports of United States of America (CERD/C/USA/7-9), held on 13 and 14 August 2014.

[13] General recommendation No. 34 adopted by the Committee Racial discrimination against people of African descent 8 August–2 September 2011

> Convention, and through plans, programs and other policy initiatives referred to above at national, regional and local levels[14]

CERD Early Warning and Urgent Procedures are required when the nature of the human rights violations have reached "alarming levels", CERD provides additional standards and guidelines.

> The Committee has in fact adopted both early warning measures and urgent procedures to prevent as well as to respond more effectively to violations of the Convention. Criteria for early warning measures could apply when the following indicators are present:
> • A significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;
> • A pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other State officials;
> • Adoption of new discriminatory legislation;
> • Segregation policies or de facto exclusion of members of a group from political, economic, social and cultural life;
> • Lack of an adequate legislative framework defining and criminalizing all forms of racial discrimination or lack of effective mechanisms, including lack of recourse procedures;
> • Policies or practice of impunity regarding: (i) violence targeting members of a group identified on the basis of race, color, descent or national or ethnic origin by State officials or private actors; (ii) grave statements by political leaders/prominent people that condone or justify violence against a group identified on the ground of race, color, descent, national or ethnic origin; (iii) development and organization of militia groups and/or extreme political groups based on a racist platform; ...[15]

The Afrikan descendant community has cited numerous examples of the above type violations existing toward this community that meet the criteria of "alarming levels," that require 'urgent procedures" as defined and understood by international norms, standards and laws. Police violence is just one such area, although a very significant area as well as mass incarceration.

International Law and Reparations

Finally, in observing and creating human rights legislation that's reparative and healing of injuries to the humanity of people of Afrikan descent, Congress must look at how international law both defines reparations and determines what meets the criteria of reparations.

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[14] General recommendation No. 32 The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination 28 August 2009; this too, was reiterated, with emphasis, in the August 2014 CERD Concluding Observations – para 7.
[15] Minority Rights: International Standards and Guidance for Implementation. Pg 20. http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf

The Permanent Court of International Justice (ICJ). The ICJ lays out the "general and foundational rule for reparations in the Chorzow Factory case of 1928. Here, it held that reparations must, as far as possible, wipe out **all consequences** of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. [16]

The International Law Commission (ILC) In their *Draft Articles on Responsibility of States for International Wrongful Act*, the ILC fleshes out "all consequences" as **full reparations**.[17] Full reparations include:

1. Cessation, Assurances and Guarantee of Non-Repetition –a state responsible for wrongfully injuring a people "is under an obligation to a) "cease the act if it is continuing, b) offer appropriate assurances and guarantees of non-repetition..." Many current discriminatory actions, like police violence, had their origins in slavery and Jim Crow apartheid and thus is a continued practice of injury. Cessation falls in line with the "halt" clause of the DDPA.)[18]
2. Restitution – re-establish the situation which existed before the wrongful act was committed. To restore the victim to the original situation before gross violations of international law occurred. How includes restoration of freedom, recognition of humanity, identity, culture, repatriation, livelihood and wealth.[19]
3. Compensation – The injuring State is obligated to compensate for the damage, if damage is not made good by restitution. Compensation is "any financially assessable damage suffered..." Proper compensation is such that is "appropriate and proportional to the gravity of the violation and circumstances.[20]
4. Satisfaction – Provides a "means" of reparations for moral damage, such as emotional injury, mental suffering, and injury to reputation." Apology falls under the reparative category of satisfaction. Apologies under international law have certain characteristics: acknowledgement that a legitimate rule was violated, full admission of fault and responsibility, expression of genuine regret and remorse, acknowledgement that there was/is no excuse/justification of the violation, a guarantee of non-repetition, and a willingness to do whatever it takes to repair the wrong/injury. (This last aspect of an apology identifies where the 2008 Senate apology fell short).[21]
5. Rehabilitation – to correct the heart, mind and spirit damage of the people. Here attention is paid to the lasting and generational effects of the trauma of enslavement and segregation and current acts of police induced terror.[22]

Moving Forward

What does a focus on these instruments mean going forward? First, America will begin to own its criminal racial heritage. This will remove this nation from the massive state of denial. It will begin the healing process for all people in this country. When a nation exist in denial, it will continue its injurious acts upon others indefinitely. Denial is a pathology.

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[16] Wittmann, N. (2013). Slavery Reparations Time Is Now. Vienna: Power of the Trinity Publishers.
[17] Wittmann
[18] Wittmann
[19] Wittmann
[20] Wittmann
[21] Wittmann
[22] Wittmann

This focus will lessen the evasive impetus to deny, shun, obfuscate, ignore or bury evidence that proves all Americans receive benefit today from those past injurious acts regardless of when they or their ancestor came to this country.

This focus will readily illuminate the facts and conditions that the degree of accumulated Afrikan injury prohibits Afrikans from benefiting at the same rate as others, but in many cases have a counter effect of intensifying the injury – thus the necessity of specialized policy.

This focus, will start the national dialogue on agreed upon global standards as opposed to standards imposed by a history of unjust acts and ill will toward people of Afrikan descent.

This focus will begin the conversation of reparations from the position that there are numerous actions and measures that can be taken that begin the process of repair that do not entail compensation to every Afrikan in America (or that will "bankrupt America because the debt is too huge.")

This focus will affirm that Afrikan people have the human right to be repaired from past and ongoing crimes against our humanity; and that civilized states accept their obligation to restore justice to a people that the State has, in fact, grossly harmed.

This focus will assert the equality of humanity. And will empower progressive leaders to put forth reparative justice legislation, allowing US legislators to align themselves with global legislators that have already proactively and willingly began reparative, healing and restorative processes targeted toward their Afrikan descendant populations.

This focus will position America to stand in step with the global community in recognizing 2015 through 2024 as the International Decade of People of African Descent, under the theme, "Recognition, Justice, and Development."[23]

Conclusion

In August, America took an extreme beating in Geneva, Switzerland by the CERD Commission when delivering the ICERD periodic report. The High Commissioner of Human Rights, a native of South Africa, stated that apartheid is "flourishing" in America. Other comments summarizing the ICERD review in Geneva were 'UN Condemns US ….," "UN Experts Blast US…, US Slammed …," and " UN Experts Grill US…" [24]In addition, the experts got a very telling eyewitness account of the racial

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[23] United Nations Resolution 68/237. Proclamation of the International Decade for People of African Descent 23 December 2013 A/RES/68/237
www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/237

[24] Various national and international media headlines following the August 2014 United States ICERD periodic review recommendations by the CERD committee. The same headlines have been issued following the US periodic review of the Convention Against Toward held November 2014.

discrimination during the Ferguson uprising.

The ACLU rightfully calls this climate produced by the international exposure to America's violations of the human rights of people of Afrikan descent, "a singular opportunity to hold Washington accountable." [25]

The Senate has an opportunity to hold itself and America accountable for its centuries of wrongs.

If the Senate wants to move this Nation forward in human rights observance and enforcement, reparative justice targeted toward the Afrikan descendant community has to be at the forefront your actions. This will naturally require that a focused effort to broadening this Nation's understanding of both reparations and human rights and use of human rights instruments. International instrument gives Congress a legal (constitutional) ground and solid base to initiate a 21st century surge to right the horrific wrongs of this Nation's past.

[25] In Geneva, A Bid To Shame US Over the Killings of Young Black Men
www.america.aljazeera.com/articles/.../ferguson-shootinggeneva.htm

TESTIMONY OF

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

SUBMITTED TO:
THE U.S. SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND HUMAN RIGHTS

"The State of Civil and Human Rights in the United States"

On

December 9th, 2014

Testimony of the Lawyers' Committee for Civil Rights Under Law
Submitted by Tanya Clay House, Director of Public Policy

Before the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

December 9th, 2014

Introduction

Senator Durbin and all the members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights in attendance today, thank you for holding this critical hearing to examine the state of civil and human rights in our nation, progress that has been made in these areas over the past several years, and what Congress and the Executive Branch can do to further address these pressing issues. We appreciate this opportunity to express our deep concern for ongoing civil rights violations occurring in the areas of voting rights, criminal justice and human rights.

The Lawyers' Committee for Civil Rights Under Law was established in 1963 as a nonpartisan, nonprofit organization at the behest of President John F. Kennedy. Our mission is to involve the private bar in providing legal services to address racial discrimination and to secure, through the rule of law, equal justice under law. For 50 years, the Lawyers' Committee has advanced racial equality in areas such as educational opportunities, fair employment and business opportunities, community development, fair housing, voting rights, environmental justice, and criminal justice. Through this work, we have learned a great deal about the challenges confronting our nation as it continues to tackle issues of race and equality of opportunity for all.

For four decades, the Lawyers' Committee has been at the forefront of the legal struggle to achieve equality and protect advances in voting rights for racial and ethnic minorities and other traditionally disenfranchised groups. In addition, the organization is committed to ending the over-criminalization, discriminatory policing and over-incarceration of American citizens, especially citizens of color. Today's hearing called by the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights is of particular importance to the Lawyers' Committee's work, especially in these important areas. This statement will provide this Subcommittee with an overview of the many challenges still confronting this nation and some of the ways the Lawyers' Committee is tackling these critical issues.

I. America's Criminal Justice System in Crisis

America's criminal justice system is best characterized as one of mass incarceration. Our nation has the highest incarceration rate in the world. In practice, the justice system exacerbates the very crime problems it is supposed to address, unnecessarily devastates millions of people, families, and communities, wastes tens of billions of dollars each year, and creates deplorable social and economic conditions in American cities like Honolulu, Springfield, Illinois, Houston, Texas, Wilmington, Delaware and New Hartford, Iowa.

Mass incarceration cannot be separated from its most distinguishing characteristic: the extraordinarily disproportionate targeting of lower-class African-American and Hispanic inhabitants of degraded urban spaces. Over the past two weeks, we have witnessed outpourings of grief and anger across the nation at the failure of grand juries to indict Officer Darren Wilson for the killing of unarmed black teenager Michael Brown in Ferguson, Missouri, and Officer Daniel Pantaleo for killing an African American father and husband, Eric Garner, in Staten Island. Americans of all color are, at this moment, demonstrating, protesting, petitioning, and tweeting #BlackLivesMatter, outraged at a system that treats

their young men and women, girls and boys, differently based on the color of their skin. These police killings are only the most recent and obvious symptom of the effect criminal *injustice* has on communities and individuals.

The killing of Michael Brown by Darren Wilson is emblematic of the targeting of young black men by police forces in jurisdictions throughout the United States. Statistics consistently show that blacks and Hispanics are imprisoned at a disproportionately higher rate than whites in both the federal and state systems, in all age groups, and for both male and female inmates. Overall, Black men are six times more likely than white men to be incarcerated, and 2.5 times more likely than Hispanic men.[1] In 2011, Between 6.6 percent and 7.5 percent of all black males ages 25 to 39 were imprisoned – the highest imprisonment rates among the measured sex, race, Hispanic origin, and age groups.[2] In 2012, black males had imprisonment rates at least four times those of white males in all age groups, and the rates for black males age thirty-nine or younger were six times greater than those for white males of the same age.[3] In particular, males ages 18 to 19 displayed the largest disparity in imprisonment rates – black males were almost 9.5 times more likely than white males to be imprisoned. Racial disparities also exist for black females, who are imprisoned at about three times the rate of white females. [4]

The dysfunction that underlies mass incarceration – criminalization of low-level offenses, overly aggressive law enforcement policies and practices such as the "broken windows" policy which encourages police to aggressively target low-level crimes under the guise of ultimately preventing higher lever criminal activity, the use and abuse of prosecutorial discretion, extraordinarily high sentences for crimes, especially drug offenses, prison conditions, and the tangled web of collateral consequences after release from prison – is primarily the result of aggregate policy decisions by Congress and state legislatures, not necessarily poor personal decisions or increases in overall levels of crime.[5]

If Congress is to live up to its responsibility of being the voice of all Americans, not just those with the biggest paycheck or those in particular communities, it is imperative that Congress effectively address these issues during the 114th session. Below details a few of these issues which are particularly of interest to the Lawyers' Committee's civil rights mission.

a. Federal and State Law Enforcement Policies and Practices

The recent killings of Michael Brown and Eric Garner amplified what African American communities in the United States have long decried: that America's experience with law enforcement is deeply divided along racial lines. The targeting of minority neighborhoods, homes, and individuals by police are not efforts to "protect and serve," evidenced in the complete detachment between the police and the community and the conspicuous absence of black police officers in the police forces which patrol those areas. Instead, law enforcement, in many communities of color, has become a mechanism of control and oppression. Facially race-neutral crime policies, such as the "war on drugs" and "broken windows policing," by which law enforcement aggressively maintain and monitor urban environments on the theory that such heightened policing of relatively "minor" violations stops further vandalism and escalation into more serious crime, have been deployed predominantly against communities of color. These tactics have resulted in the systematic criminalization of communities of color with young black men, in particular, comprising the lion's share of those entering the criminal justice system in the United States.

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[1] The Sentencing Project, *Fact Sheet: Trends in U.S. Corrections*, 5, available at http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf.

[2] E. Ann Carson, William J, Sabol, *Prisoners in 2011*, 8, Washington, DC: US Dept. of Justice Bureau of Justice Statistics, December 2012. http://www.bjs.gov/content/pub/pdf/p11.pdf

[3] Prisoners in 2012, *supra* note 11 at 25.

[4] Carson & Golinelli, *supra* note 28.

[5] National Academy of Sciences

Confirming empirically what black communities have long held about law enforcement is extremely difficult because there is a disturbing lack of information on police brutality – and on the killing of civilians by the police in particular. There is no national database to which police departments are required to submit a record when they complete an investigation or after a police officer shoots a civilian. The Federal Bureau of Investigation does collect some data, but this database has tremendous limitations, including the fact that it only collects approximately 25% of the data and fails to include addressees and offense and incident level data. Thus, there is an inability to do a full neighborhood analysis of incidents. Given the almost 18,000 law enforcement agencies across the United States, collecting data separate from a centralized reporting system is a practical impossibility.[6]

Congress should take immediate steps during the next legislative session to pass legislation that requires reporting of federal, state and local law enforcement agencies, including arrest and use of force reports, demographic information, such as the race, ethnicity, and gender of all those subject to police action.

In addition, Congress should conduct a comprehensive federal review and reporting of all police killings, and recommend immediate action, including federal investigation by the Department of Justice, to address the unjustified use of lethal and excessive force by police officers in jurisdictions throughout this country against unarmed people of color.

For their part, federal and local law enforcement policies and practices should be reviewed and reforms implemented. We applaud recently announced efforts by New York Mayor DeBlasio to require the re-training of all New York police officers and we hope that this includes necessary racial and implicit bias training such as that offered by the Department of Justices' COPS program.

Sadly, abuses by the U.S. Customs and Border Protection (USCBP), the largest federal law enforcement workforce, have recently come to light: from 2010 to 2013, at least 22 people have been killed by Border Patrol agents, most along the southwest border, and hundreds have filed formal complaints of official misconduct, including beatings, sexual abuse, and other assaults. Reports indicate USCBP failed to properly investigate these claims, refused to tell families of those injured or killed by border agents if the agency had determined that the agent had acted improperly or had been disciplined. The failure to collect data across law enforcement agencies is unacceptable and perpetuates the continuation of such abuses in the system such as those recently exposed at USCBP.

Recommendations

1. During the 114th legislative session, Congress should immediately pass measures aimed at ending racial profiling in America. First among these is the End Racial Profiling Act, which would prohibit racial profiling by all federal, state and local law enforcement agencies.[7] Congress should also conduct a comprehensive federal review and reporting of racially disproportionate policing, examining rates of stops, frisks, searches, and arrests by race, including a federal review of police departments' data collection practices and capabilities, training and policies on racially bias practices and implicit racism.
2. Congress should provide ample funding for programs within the Department of Justice and the White House which provide state and local law enforcement agencies with grants for body cameras or police vehicle dashboard cameras, implicit racial bias training, and other programs to reduce prejudice. As part of this process, Congress should reexamine and institute better and effective accountability measures in authorized grant programs such as the Byrne Justice Assistance Grant program (Byrne Jag) and others. Accountability measures should include required racial bias and implicit bias training,

[6] Bureau of Justice Statistics, *Census of State and Local Law Enforcement Agencies, 2008*, 2, http://www.bjs.gov/content/pub/pdf/csllea08.pdf.
[7] End Racial Profiling Act, S.1038, 113th Cong. (2013).

racial profiling and more. Finally, Congress should examine the creation of an independent commission to review police policies and practices and hear citizen complaints in order to hold federal and state law enforcement officials accountable.[8]

b. Federal Sentencing Reform

The scale of incarceration in the United States is historically and comparatively unprecedented.[9] The United States has the highest incarceration rate in the world: an estimated 2.2 million people are incarcerated in federal and state prisons and local jails.[10] The federal government imprisons about 10 percent of incarcerated population in the United States.[11] The federal prison population has grown almost 900 percent since 1980.[12] About half of federal prisoners are serving time for drug offenses.

The dramatic increase in levels of American incarceration in the last four decades has not been shown to have caused the precipitous reduction in crime rates over the same period.[13] There is now widespread scholarly consensus that high levels of incarceration are principally the product of a specific set of policy choices made by federal legislatures that collectively have functioned to increase the use, certainty of imposition and severity of prison sentences.[14] The primary culprits are mandatory minimum and enhanced sentences and greater prosecution for minor drug crimes.[15] There is a consensus that the federal government's "war on drugs," perpetrated primarily against low-income and minority communities, was the primary driver of these policies.

In 1986, Congress passed the Anti-Drug Abuse Act, which instituted harsh mandatory minimum penalties for crack cocaine that far exceeded penalties for offenses involving powder cocaine traffickers. The five-year penalty for possessing five grams of crack cocaine was the same for an offender selling 500 grams of powder cocaine. This created what became known as the 100:1 weight disparity between crack and powder cocaine. Over the next 25 years, the vast majority of federal crack cocaine prosecutions were brought against African Americans, resulting in a regime that is widely acknowledged to have been racially discriminatory.[16]

The Lawyers' Committee praises Congress for passing the Fair Sentencing Act in 2010, in response to the blatant racial disparities in federal crack cocaine laws and enforcement, which amended the quantity of crack cocaine needed to trigger the five- and 10-year mandatory minimum prison sentences, reducing the crack/cocaine weight disparity to a 1:18 ratio. Even with this partial legislative fix, the sentence lengths in crack cocaine cases remains greater than in any other drug offense. Evidence

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[8] The Unifed Statement of Action to Promote Reform and Stop Police Abuse, signed by 14 civil rights organizations put forth 14 recommendations which can be viewed at http://signup.lawyerscommittee.org/p/dia/action3/common/public/?action_KEY=10281

[9] *See*, e.g., Bruce Western and Christopher Muller, *Mass Incarceration, Macrosociology, and the Poor*, Annals of the American Academy of Political and Social Science, Vol. 647, Reconsidering the Urban Disadvantaged: The Role of Systems, Institutions, and Organizations (May, 2013) at 168.

[10] R. Walmsley, *World Population List, 10th Ed.* Essex: International Centre for Prison Studies (2013), available at http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf

[11] National Research Council, *supra* note 5 at 55.

[12] *See*, http://www.bop.gov/about/statistics/population_statistics.jsp

[13] Since crime rates have varied significantly between 1972 and the present day (with the most notable trend since the 1990s being one of significant decline), all while incarceration rates largely maintained course on a consistently upward trend, high levels of incarceration cannot be mechanically explained by high levels of crime. National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, Washington, DC: The National Academies Press (2014) at 47.

[14] National Research Council, *supra* note 5 at 70.

[15] *Id* at 71.

[16] See e.g., *US v. Blewett*, 719 F. 3d 482 (6th Cir. 2013) ("The old 100-to-1 crack cocaine ratio has led to the mass incarceration of thousands of nonviolent prisoners under a law widely acknowledged as racially discriminatory.").

of this is found in the fact that average sentences for crack cocaine offenses (97 months) remain the longest of any drug.[17] Congress should immediately address this ongoing racially imbalanced sentencing scheme by equalizing the federal sentences for crack and powder cocaine, which are pharmacologically identical.

Despite the progress initiated by the Fair Sentencing Act, this has not changed the racial disparities in federal prosecution of crack cocaine offenses. For instance, in 2012, Blacks still constituted 82.6 percent of those convicted of crack cocaine offenses. While the Fair Sentencing Act was a step in the right direction, the bill did not apply the reduction in sentences retroactively to defendants sentenced under the unfair and racially-tainted law.

Recommendation

For these reasons and more, we urge Congress to immediately pass the Smarter Sentencing Act as an important step to reducing unfair and excessively long sentences for federal drug offenses. The bill in its current form would reduce mandatory minimum sentences for drug trafficking crimes, of which blacks are disproportionately prosecuted and convicted; expand the "safety valve" to cover defendants with more criminal history points, which blacks are more likely to carry; and makes retroactive the Fair Sentencing Act, making as many as 8,800 black federal prisoners eligible to petition for sentencing reductions. The bill passed the Senate Judiciary Committee on January 30, 2014, currently has 31 bipartisan cosponsors.

II. Voting Rights

For four decades, the Lawyers' Committee has been at the forefront of the legal struggle to achieve equality and protect advances in voting rights for racial and ethnic minorities and other traditionally disenfranchised groups. As the world's leading democracy, America's voting system should be free, fair, and accessible to all eligible Americans, and regardless of which political party holds more seats in Congress when all of the votes are counted, state and federal legislators should come together in a bipartisan fashion to solve the real problems with our election infrastructure, including cumbersome and antiquated voter registration systems, aging voting machines, and voting practices that discourage, rather than encourage, voter participation. Congress has the opportunity to address systemic threats to voting rights in the 114th legislative session including widespread disenfranchisement of African American and Latino voters due to criminal disenfranchisement laws, and a legislative fix for the Voting Rights Act.

a. Criminal Disenfranchisement

Studies show that an estimated 5.85 million citizens cannot vote as a result of criminal convictions, including over 4 million of those who have been released from prison and are living and working in the community.[18] Moreover, these state criminal disenfranchisement laws have a disparate impact on African Americans and other minority groups. Studies show that one out of 13 adult African Americans is disenfranchised and in three states three states, at least one out of every five African-American adults is disenfranchised: Florida (23%), Kentucky (22%), and Virginia (20%).[19] Similarly,

[17] USSC, "Overview of Federal Criminal Cases: Fiscal Year 2012," 7-8.
[18] CHRISTOPHER UGGEN, SARAH SHANNON & JEFF MANZA, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010* (July 2012), THE SENTENCING PROJECT, http://www.sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf.
[19] JEAN CHUNG, THE SENTENCING PROJECT, FELONY DISENFRANCHISEMENT: A PRIMER, 2 (JUNE 2014), *available at* http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf.

Latinos are incarcerated in state and federal prisons at higher rates than non-Hispanics: about 2.4 times greater for Hispanic men and 1.5 times for Hispanic women.[20]

The United States has a legal obligation to address the disproportionate impact of these laws. It has ratified two treaties which require that the United States address the disparate impact of criminal disfranchisement laws: the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination on All Forms of Racial Discrimination (ICERD). International law imposes an obligation on nations to discharge their duties under treaties that they have ratified, regardless of any difficulties posed by their federal structure.[21] Following the review of United States compliance of the ICCPR in March 2014, the UN Human Rights Committee "reiterate[d] its concern about the persistence of state-level disenfranchisement laws, its disproportionate impact on minorities and the lengthy and cumbersome voting restoration procedures in states."[22] It also called for the restoration of voting rights for those who have fully served their sentence, provided information on restoration options and streamlined voting restoration procedures.[23] Also in 2014, the United States was reviewed by the Committee on the Elimination of Racial Discrimination. The CERD Committee issued similar recommendations.[24]

Recommendation

Congress already has the vehicle to act on these recommendations, the Democracy Restoration Act of 2014 which would restore voting rights for those no longer in prison and notify those leaving prison of their right to vote as they are being released.[25] The Lawyers' Committee supports the restoration of voting rights to those with criminal convictions who are no longer in prison.

It should be noted that the treaty obligations apply not only to felony disfranchisement laws but to all the rights enshrined in the treaties. Specifically, the CERD treaty prohibits policies that have a discriminatory impact on people of color even if those laws have no intent to discriminate. The CERD committee recommended both that: 1) the United States adopt a National Plan of Action to combat structural racial discrimination, and, 2) create an independent national human rights institution to ensure effective implementation of the treaty.[26] The Lawyers' Committee supports both recommendations.

b. Lawyers' Committee Litigation Demonstrates Imminent Threats to Voting Rights

There are many lawsuits initiated by allied organizations and the Lawyers' Committee has litigated several of these significant voting rights cases subsequent to the Supreme Court's decision in *Shelby County v. Holder* in June 2013. This includes a (thus far) successful challenge to Texas' photo

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[20] PAUL GUERINO et al., *Prisoners in 2010*, BUREAU OF JUSTICE STATISTICS, 27 (Feb. 9, 2012), http://www.bjs.gov/content/pub/pdf/p10.pdf.

[21] **Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331,** (*entered into force* **Jan. 27, 1980).** Although the United States is not a party to the VCLT, according to the Department of State the United States considers itself bound by many of its provisions as a matter of customary international law. *See* U.S. Dept. of State, *Vienna Convention on the Law of Treaties, available at* http://www.state.gov/s/l/treaty/faqs/70139.htm (last visited Jul. 2, 2014).

[22] Concluding Observations of the Human Rights Committee, U.N. Doc. CCPR/C/USA/CO/7-9 at 24 (April 24, 2014) (hereafter, CCPR/C/USA).

[23] *Id.*

[24] Concluding Observations of the Committee for the Elimination of Racial Discrimination, U.N. Doc. CERD/C/USA/CO/7-9 at 11 (August 29, 2014)

[25] Democracy Restoration Act of 2014, H.R. 4459, S. 2235, 113th Cong. (2014).

[26] CERD/C/USA at ¶¶

identification law enacted in 2011, an unsuccessful state court suit that sought to remedy the failure of Georgia election officials to process thousands of new voter registration applications prior to the 2014 general election, and an ongoing suit against a South Dakota county regarding its failure to establish an early voting site in the portion of the county located on the Pine Ridge Reservation.

The Texas lawsuit is one of four pending voting rights cases that potentially have national significance. The other three are the challenge to Wisconsin's photo ID law, won by plaintiffs in the district court but lost in the Seventh Circuit Court of Appeals; the challenge to North Carolina's omnibus 2013 election law, in discovery in the district court following plaintiffs' unsuccessful effort to obtain preliminary relief for the 2014 general election; and the challenge to Ohio's cutback in early voting hours, also in discovery following an unsuccessful effort to obtain preliminary relief for this November's election.

The effort to stop Texas from implementing what courts have termed the strictest photo ID law in the country is particularly illustrative of the breakdown in federal protections against voting discrimination resulting from the *Shelby County* decision. Pursuant to Congress' 2006 reauthorization of Section 5 of the Voting Rights Act, Texas remained subject to the Act's preclearance requirements, and thus could not implement its new photo ID requirement unless and until it was determined that the law neither is discriminatory in purpose nor effect. Texas initially sought preclearance from the Justice Department, which was denied in March 2012, and then from the U.S. District Court for the District of Columbia, which likewise denied preclearance in July 2012. *Texas v. Holder*, 888 F. Supp. 2d 113. Accordingly, the photo ID requirement was not implemented for elections in 2012. But with Section 5 disabled by the Supreme Court's ruling in *Shelby County*, Texas began implementation of the requirement in June 2013, and elections in 2013 and 2014 in the state have been conducted using this discriminatory law.

Following the *Shelby County* decision, the Lawyers' Committee and its pro bono partners filed suit in Texas to enjoin the Texas law, representing the Texas Conference of NAACP Chapters and the Mexican American Legislative Caucus of the Texas House of Representatives. The United States and several other groups also filed suit, and the several suits were consolidated. Trial was held in September 2014 and, on October 9, 2014, the district court issued a sweeping 147-page decision finding that the law was enacted with a discriminatory purpose, has a discriminatory result in violation of Section 2 of the Voting Rights Act, unconstitutionally burdens the right to vote, and functions as an unconstitutional poll tax. *Veasey v. Perry*, 2014 WL 5090258 (S.D. Tex). The district court immediately enjoined any further implementation of the law. Nonetheless, Texas was able to implement it in the November election when it obtained a stay of the injunction from the Fifth Circuit and the Supreme Court declined to lift the stay. Briefing will now soon begin in the Fifth Circuit on the merits of Texas' appeal.

The Lawyers' Committee and pro bono partners filed the Georgia case on behalf of Third Sector Development, Inc., the Georgia State Conference of the NAACP, and the national NAACP after more than 50,000 voter registration applications these groups submitted to Georgia election officials in 2014 were neither included on the registration rolls nor included in the official "pending" list of registration applications. After filing, two of the three counties at issue settled (DeKalb and Chatham), but Fulton County did not. The state court judge then ruled for the County, stating that the county needed to only substantially comply with the state's voter registration law and asserting that plaintiffs' claim was premature since county officials were continuing to review registration applications, although early voting and absentee voting already had begun. Subsequently, a post-election review indicated that a significant number of these applicants still had not been added to the registration rolls. The Lawyers' Committee is evaluating what additional steps may be taken to remedy this violation.

In recent years, several South Dakota counties have resisted requests from Native American residents to make early voting available in the portions of the counties located on reservations. In 2014, Jackson County denied such a request claiming that it lacked the necessary funding, notwithstanding that the state's HAVA plan specifically indicated that state HAVA funds could be used by Jackson County to open an additional early voting site and County officials had been told about this funding. After suit was filed, the County agreed to create the additional site for the November 2014 election, but has refused to agree to maintain this site for future elections and so the litigation is continuing.

The Lawyers' Committee recently completed a jury trial in the case *Hall v. Louisiana*, No. 3:12-cv-00657 (M.D. La.). This lawsuit alleges that the method of electing judges to the Baton Rouge City Court discriminates against the City's African-American voters who comprise a majority of the City's total population. We finished the final three days of trial from November 17-19 and will file our Proposed Findings of Fact and Conclusions of Law by December 10, 2014. Judge Jackson indicated that he plans to rule as soon as possible but did not set a target date.

c. Election Protection

Even as the Lawyers' Committee ligates in the court room, we know that one of the most effective methods of protecting the right to vote is through education and outreach to the public about their voting rights. For this reason, the Lawyers' Committee has led, for over a decade, the Election Protection coalition, which is the nation's largest nonpartisan voter protection coalition. Through its 1-866-OUR-VOTE hotline (1-866-687-8683), smartphone application, www.866OurVote.org website, and dedicated team of legal experts and trained volunteers, Election Protection helps all American voters, including traditionally disenfranchised groups, gain access to the polls and overcome obstacles to voting, offering direct assistance. The coalition has more than 100 partners - including the NAACP, National Bar Association, Native Vote, Asian-American Justice Center, NAACP LDF, National Association of Latino Elected and Appointed Officials Educational Fund (NALEO), New Organizing Institute, Rock the Vote, the Hip Hop Caucus, Verified Voting Foundation, Advancement Project, American Federation of Teachers, National Education Association and the Brennan Center for Justice - at the national, state and local level and is providing voter protection services nationwide.

On Election Day 2014, the 866-OUR-VOTE hotline operated by the Election Protection Coalition and staffed by more than 2,000 legal and grassroots volunteers on the ground offering direct assistance to voters in states nationwide received more than 18,000 calls, a nearly 40 percent increase from 13,000 calls received in 2010. That's a discouraging, but no a surprising increase because the November 4th election marked the first national Election Day in 50 years where voters went to the polls without some of the important protections provided by the Voting Rights Act of 1965.

The VRA's critical Section 5 provision was gutted by the Supreme Court in the regrettable 2013 *Shelby v. Holder* decision. It is critical for our elected officials to make a priority of passing reforms to address enduring problems, including overly restrictive and discriminatory voter ID laws, voting machines breaking down, poll worker confusion, problems with identification of or access to polling places, and registered voters not appearing on voting rolls.

2014 Election Protection National Program Numbers At-a-Glance:

Numbers last updated on November 6, 2014:

Call volume comparison to 2010 by hotline:

Top five states by call volume (these figures include all hotlines):

Hotline	Total calls on Election Day 2010	Total calls on Election Day 2014	% increase from 2010 to 2014
866-OUR-VOTE Total	12927	18784	45.31%
888-API-VOTE Total	NA	341	NA
888-VE-Y-VOTA Total	7589	3015	-60.27%

California	6,308
Texas	3,379
Florida	2,060
Georgia	1,904
New York	1,830

- Election Protection hosted **24** call centers across the country on Election Day
  - 1-866-OUR-VOTE (15 call centers), 1-888-VE-Y-VOTA (8 call centers) and 1-888-API-VOTE (1 call center)
  - Voters were able to receive assistance in 10 languages: English, Spanish, Bengali, Hindi, Korean, Mandarin, Tagalog, Urdu and Vietnamese.
- More than **2,000** trained legal volunteers in **22** states and over **50** voting jurisdictions
  - New Election Protection Programs were initiated in Arkansas, Montana and Nebraska.

The OVL data shows that in 2014, more citizens called the Hotlines to ask questions about voting than to report problems. 17,886 tickets from Our Vote Live data have a value for 'inquiry'. Of those 17,886 inquiries, 66% inquired about polling place and approximately 21.9% inquired about registration. 2,732 tickets from OVL data have a value for 'problem'. Of those 2,732 problems, 26.9% had a problem related to polling place, approximately 23.5% had a problem related to registration and approximately 7.6% had a problem related to voter ID. In some cases, especially relating to voter ID and registration, the answers to voters' questions implied that they would go on face problems when attempting to cast their ballot. For example, one voter called to ask if he had a proper ID to vote in Texas. He had an Ohio ID. An Election Protection volunteer told him that his Ohio ID would not be acceptable and after listing the acceptable forms of photo ID to vote in Texas, the caller realized that he possessed none of them. From the inquiries, problems and overlapping issues like in the report above, we found that the recurrent and systemic problems that emerged in Election 2014 included:

- Polling place problems e.g. last-minute location changes, lack of signage, faulty voting equipment, late openings and accessibility difficulties
- Undertrained poll workers misapplying rules or not following proper procedures
- Uncertainty about voter ID, lack of requisite ID or poll workers improperly asking for ID
- Voter registration errors, like names mistakenly missing from the rolls and confusion about change of address rules, and

- Polling places running out of ballots or absentee ballots that were requested but never received by voters.

d. Voting Rights Amendment Act

In order to address these ongoing and widespread threats to voting rights, the Lawyers' Committee urges Congress to immediately fix the Voting Rights Act and pass legislation that would once again allow for the effective protection of minority rights across the country. During this legislative session, the Lawyers' Committee worked with this Committee to move for the passage of the Voting Rights Amendment Act (VRAA) (H.R. 3899/S. 1945). Introduced with bipartisan support in January 2014, the VRAA which is a direct response to the Court's opinion in *Shelby County*. It is a flexible, modern, nationwide solution to the problem of discrimination in voting. While not a perfect bill, the VRAA would help ensure jurisdictions covered by Section 5 preclearance be identified based on current problems and recent events. The bill responds directly to the Shelby ruling by providing for a new, dynamic approach to Section 5 coverage. The VRAA also improves the standards used to assign federal observers and for federal courts to order preclearance under Section 3(c) of the Voting Rights Act, and requires all jurisdictions to give public notice of certain voting changes no later than thirty days after the change is enacted. This does not interfere with the ability to change laws, only that the public get notice of such changes before voting. Lastly, the VRAA expands the VRA's delegation of authority to courts to allow federal observers to not only go to counties were racially discriminatory voting practices are suspected, but also to go to counties that are suspected of failing to meet the requirement to provide election materials in more than one language.

The VRAA offers much needed restoration to the Voting Rights Act of 1965. At this late juncture of the Congressional session, we urge Congress to affirm it's commitment toward restoring the Voting Rights Act, either through a re-introduction and passage of the VRAA or another vehicle that appropriately provides the necessary updates. The Lawyers' Committee looks forward to working with Members of Congress to update the Voting Rights Act in this and the next Congressional session.

Conclusion

Since its inception, the Lawyers' Committee has stood against discrimination based on race, national origin, and religion and supports the national and international movement to finally bring an end to racial discrimination in the United States. Laws which impose burdens on other fundamental and civil rights have no place in a democratic society, especially those which disproportionately burden individuals and communities of color. A fair criminal justice system – one which respects the human rights of all individuals and treats all under it equally, irrespective of race – is impossible without an overhaul of the systemic racially-biased policing, harsh sentencing policies, and the patchwork of criminal disenfranchisement laws, as they exist in the United States today. The foundation of our democracy is weak without the restoration of voting rights to individuals of color. It is the Lawyers' Committee for Civil Rights Under Law's expectation that Congress will take up these vital civil rights issues and more in the 114th legislative session and we look forward to working together to achieve pass critical legislation for the protection of all Americans. Thank you.

Written Testimony of the

National Council of the Churches of Christ in the USA

Submitted to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

The State of Civil and Human Rights in the United States
Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

December 8, 2014

We would like to express our thanks to Chairman Durbin, Ranking Member Cruz, and the members of the subcommittee for convening this important hearing examining the state of civil and human rights in this country and for the opportunity to submit written testimony expressing the position of the National Council of the Churches of Christ in the USA (NCC).

For more than 63 years the NCC has been the foremost expression of Christian unity in the United States. The NCC speaks with the voice of its 37 member denominations from Protestant, Anglican, Orthodox, Evangelical, historically African American, and Living Peace Church traditions that represent 45 million Christians in over 100,000 congregations. We seek to model unity and work together to promote God's justice, peace, and healing for the world.

Throughout its history, both on its own and with important coalitions such as the Interfaith Criminal Justice Reform Coalition, the NCC has spoken out against the injustices apparent in the criminal justice system and sought to promote a vision of the peaceable kingdom and restorative rather than retributive justice. In November 1979 the NCC issued a statement entitled "Challenges to the Injustices of the Criminal Justice System." In this statement the NCC called on "...Christians to seek greater justice where the criminal justice system affects persons accused or convicted of unlawful conduct and to promote and protect a state of justice in society." Additionally, it stated that "(i)nequitable laws and arbitrary applications of law produce gross violations of human rights. Social injustice may be continued or increased by the policy and administration of criminal justice." Sadly, these words remain relevant today as gross injustices such as the killings of Michael Brown and Eric Garner continue to plague us.

Following the killing of Eric Garner by the NYPD, NCC criticized the grand jury process and "call(ed) upon prosecutors and police forces, juries and judges, to hold police officers accountable when they kill. The appropriate place to judge innocence or guilt is not in the grand jury but in a trial setting where defense and prosecution come together to carefully present the facts of a case." The time is now for fresh examination of how situations of police involved killings are adjudicated and to find a way forward that restores trust in the judicial process. One step in this process would be to pass the Death in Custody Reporting Act (S. 2807/H.R. 1447).

This act, which has strong bi-partisan support, would enable the Department of Justice to monitor trends in deaths that occur in incarceration or in the process of apprehension and to respond in ways that can help reduce deaths.

As mentioned, the recent tragedies in Ferguson and Staten Island are but the most recent examples of a criminal justice system that is based on fear rather than keeping the peace. For decades communities of color have been devastated by draconian mandatory minimums that result in the wholesale subjugation of the powerless. In Ferguson the world witnessed tragic mob violence stoked by a police response that was more military than civil. Throughout the country, police departments large and small, including some college and university as well as school district police, are "gearing up". They are taking advantage of the DoD 1033 program to obtain military grade weaponry to use on their own civilian populations. A review of this program is currently underway and Congress should suspend funding of the 1033 program until the review is complete and any changes are carried out. We cannot arm our way out of this problem. Rather than focusing on militarizing, police departments must refocus their efforts on community policing that reflects the needs of the people they are supposed to be serving.

Recent bi-partisan efforts in Congress have begun to try to restore balance to the criminal justice system and rehabilitate communities. Legislation including the Smarter Sentencing Act, the REDEEM Act, the RESET Act, the Second Chance Reauthorization Act, and the Recidivism Reduction and Public Safety Act all have strong bi-partisan support and should be passed immediately to begin to remedy some of the problems. These pieces of legislation not only reform a vicious criminal justice system but also enable returning citizens to integrate back into their home communities after serving their sentences. This should also include the full restoration of voting rights, a right that is basic to our democracy.

Denial of civil rights does not only occur within the justice system but extends as well to our security policy. Racial profiling by law enforcement and security forces of Americans who profess to be Muslim or even those who "appear" to be Muslim is widely accepted. This profiling creates an atmosphere that only stokes the fires of racism and violence against "other-Americans", that is non-whites. The Obama Administration recently announced new guidelines banning racial profiling. But it endorsed the practice at airports and at the border. This half measure does not go far enough in protecting Americans whose only "crime" is being of a particular ethnic group. Race or ethnicity is not probable cause and should not allow law enforcement or security forces to harass innocent Americans.

We are saddened, but not surprised, that injustice and racism still pervades our power structures. We recognize as well that this will be a long struggle, with many steps. But steps must be taken now to begin our journey toward justice. The arc of history may bend toward justice, but all arcs are uphill at the beginning. We must honestly search ourselves and our venerated institutions and root out evil where it is found. In time, we hope soon to be at the top of the arc, looking down upon that land of milk and honey where justice and freedom reign.

Thank you again for this opportunity. May the peace of God be present to each of you during this holiday season and to those who yearn for justice.

Southeast Indigenous Peoples' Center

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Eatonton, Georgia, 31024
706.461.6244
SoutheastPeoples.org

December 9, 2014

Dear Senator Durbin and colleagues:

We received and respond to the following notice:

The State of Civil and Human Rights in the United States

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

Date: **December 9, 2014**
Time: **2:30 p.m.**
Location: **Dirksen Senate Office Building Room 226 (room location is tentative; check Senate Judiciary Committee website to confirm –** http://www.judiciary.senate.gov)

Southeast Indigenous Peoples' Center provides background information for this important human rights hearing and is not lobbying the US or any part of its government. SIPC reports to the United Nations Universal Periodic Review and facilitates Indigenous Peoples' reporting to other United Nations human rights instruments, including the Permanent Forum on Indigenous Issues. Please see attached.

We identify the need for practically effective protocols for communication between Indigenous Peoples and colonial powers seeking to manage the newcomer populations living with indigenous lands. SIPC identifies a disconnect between the US statements made internationally and the local implementation of HR instruments regarding Indigenous Peoples in the Southeast. Dialogue between Indigenous Peoples and colonial powers would be a logical method for remedying the dissonance between local and federal, federal and international, resulting in US inability to address local indigenous issues in compliance with international HR instruments, including the UDHR as interpreted by DRIP, CAT, CERD, CEDAW, ILO 169, CBD, and other international HR instruments.

The US could stop perpetrating hate crimes, police crimes, war crimes, and taking indigenous American political prisoners by communicating with Indigenous Peoples about these issues. Each Indigenous People has a unique national history and international relations with US. US apartheid 'Indian Law' impedes the reconciliation of US with each IP as US apartheid 'Indian Law' is based on ancestry and promotes the continued stereotypes, hatred, and violence against IPs that denies our national traditions, languages, governments, and cultures. The US refusal to comply with its own constitution and negotiate with IPs as nations propels development-related conflict and violence against IPs. The use of Natives as Mascots is a form of US-sponsored hate speech used in US federally subsidized schools, impacting children as soon as age 4. This mascot hate speech reinforces US apartheid 'Indian Law' as it imposes the US myth of 'race' on IPs and the nations representing them. Studies show negative impact to all children of these stereotypes, especially indigenous American children who are bullied by this hate speech coming directly from the US federal government. Children and adults are then bullied and attacked by related violent acts tacitly approved of by the US and promoted by local US agencies. This includes US law enforcement in the Southeast violently using force to stop, discredit, and silence IPs asserting rights to protect ecosystems, ancestors' burials, Peoples, cultures, artifacts and languages.

Jurisdictional issues greatly contribute to oppression, torture, and murder of indigenous Americans. Whether the Indigenous People considers themself as a dependent nation or considers the US a dependent nation upon their own original nation, the continued US occupation of the Southeast without agreements for land and resource use leads to conflict. Because US apartheid 'Indian Law' classes indigenous Americans as property, developers are free to appropriate the identity of entire Indigenous Peoples and individual indigenous Americans and claim benefits on their behalf through US agencies, including the USBIA. This has violent development strategy of the US has directly caused the systematic rape, assault, torture, enslavement, imprisonment, and murder of indigenous Americans and the destruction of the language, culture, ecosystem, and government of Indigenous Peoples. The US policy of enslaving Indigenous Peoples

to casinos is one such example of this development-related conflict manifested in hate crimes, police crimes, torture, war crimes, the taking of indigenous political prisoners, and murder of indigenous Americans..

Dialogue can identify problems and solutions and lead to reconciliation. Many southeast Natives are also descendants/close relatives of those enslaved by colonial powers during the holocaust. Many who identify as descendants of enslaved Africans are also descendants of enslaved indigenous Americans and descendants of Africans in general have problems in the Southeast inextricably linked to continuing and historical colonization. The US policy of apartheid 'Indian Law' enables descendants of those enslaved by the US in the Southeast to be exploited by opportunists in the gaming industry, causing more violence.

The US policy of segregating those of indigenous American descent and applying a different law to them under US domestic law based on their ancestry is apartheid resulting in brutal generational violence. Truth and reconciliation about the military exchanges, misrepresentation and fraud by US at peace negotiations, systematic rape and kidnapping of women and children, forced removal of Indigenous Peoples and African Peoples by US BIA and European supremacy hate groups described as local 'militia' could lead to peace in southeast today. An end to violence will come when we are in community with each other. While the US ignores the legacy of colonial oppression and continued crimes against humanity obvious in separate legal systems for those of distinct ancestries, we remain in separate communities. The European community continues to colonize, rob of resources, perpetrate violence against and exploit the non-european community as long as the myths of European supremacy and the local militia hate groups acting on these supremacy myths continue to enjoy the economic and political immunity that we see today. Truth and reconciliation can bring us all into one community with one law, the same for all regardless of ancestry.

Slavery continues today legalized by US apartheid 'Indian Law' imposed unilaterally by the US on those of indigenous American ancestry without the consent of those thus labeled or those the US claims to govern. As long as the US supports international organized crime systematically appropriating the identities of those descended or thought to be descended from indigenous Americans, without the knowledge, consent, or opportunity for notification or redress for those owning their own identity, the systematic violence against those the US deems covered by 'Indian Law' continues and the US continues to promote its myth of European supremacy and the accompanying violent acts. The US could respect human rights of Indigenous Peoples by complying with the UNDRIP and its own constitution that calls for negotiation with 'Indian nations,' rather than classifying all of a particular ancestry into a class of those who can be enslaved by international crime organizations and the lawyers claiming to represent Natives supposedly benefiting from casinos. Responsible governments pursuing peace will work to enable those claimed as 'Indian' for benefits to have recourse to be notified and remedy for dispute when any entity is claiming or seeking to claim them as beneficiaries. Currently US apartheid 'Indian Law' does not allow those claimed as 'Indian' to be notified or to be allowed to stop the illegal appropriation of identity. This causes slavery of indigenous Americans and entire Indigenous Peoples in the Southeast today enforced by US local and federal law enforcement and paramilitary groups.

Peace, truth, and reconciliation can come when we are honest about the US slavery of the past and present in the Southeast. With truth and reconciliation we can be in community with each other and peacefully respect each other's human rights.

Sincerely,

Lori Johnston, Chair

Submission to the United Nations Universal Periodic Review of
United States of America
Second Cycle
Twenty Second Session of the UPR
Human Rights Council
April - May 2015
Submitted by: Southeast Indigenous Peoples' Center
Contact Phone/Email 706.461.6244; office@southeastpeoples.org
Organization website: southeastpeoples.org
Southeast Indigenous Peoples' Center (SIPC) researches, monitors, and reports on food, housing, health, and education solutions while advocating for Southeast community strengthening, environmental, educational, health, and cultural centers. SIPC has participated in the UN PFII and other UN mechanisms since 2009.

Southeast Indigenous Peoples' Center Explores Need for Agreements for Use and Access to Blessings Protected by Southeast Indigenous Peoples

Southeast Indigenous Peoples' Center has contacted more than 40 southeast Indigenous Peoples surviving the latest colonial ruler in our lands. All Southeast Indigenous Peoples we have contacted or heard about from other Indigenous Peoples continue to seek a realistic, practical, peaceful, and productive agreement with the US to end the US' access and use of natural blessings we protect, without a valid agreement. Southeast Indigenous Peoples universally seek dialogue, negotiation, and resolution to the disputed jurisdiction and associated violence over human interaction with our ecosystems, upon which we depend for food, housing, healthcare, and education. The US refuses to dialogue with southeast Indigenous Peoples on this matter and has not responded to this same southeast Indigenous Peoples' request to the UPR in 2010.

The peace process is not a "recognition" process. The peace process cannot involve the USBIA, with its long history and current policy of allotting indigenous rights, obligations, and blessings back to Indigenous Peoples in monetary forms, which are quickly transferred away from Indigenous Peoples. The US has a long history and ongoing policy of not treating Indigenous Peoples as full citizens under US law. The US has a current policy of continuing to wage wars of aggression against Indigenous Peoples to acquire our blessings and monetize them as US resources that generate revenue for the US by selling them to corporations.

II. LEGAL FRAMEWORK

The US today has no coherent indigenous policy, agency, diplomatic office or measures to relate with Indigenous Peoples on any threats facing nations today, especially the threat of climate change because of the US disregard for the constitutions of Original Nations and of the newcomer US as well as disregard of modern international human rights instruments. The US determination to rename Original Nations governed by Indigenous Peoples as "Indians" dependent on the US and thus under the domestic supervision of the US Bureau of Indian Affairs is grounded in racial, political, religious, cultural, and economic prejudice in favor of European individualism and hierarchy and against indigenous collectivism and traditional structures

governing our lands where the US has set up shop and declared itself open for business outside of indigenous laws.

The US is governed by an international framework that prohibits it from unilaterally waging its war of aggression against Indigenous Peoples in the southeast because the US presumes us to be inherently inferior to the European powers who founded the UN and who told the US that we were the property of the US[i] when Europe created the US with the Treaty of Paris (1783) and thus created the US Bureau of Indian Affairs (BIA) to remove us from our homelands, which the UN founders and the US considered to be European lands ceded to the US. The US BIA evolved (1798) from the European practice of "allotting" Indigenous Peoples' collectively held land to individual households organized in a European manner. The US BIA, modeled on the UK's British Indian Department, was created as part of the US War Department in 1789 in Washington DC, focusing on "Indian Trade," US expansion (1806-13) and was then formalized 1824-32 in the lands of the Original Nations of the Southeast for the signal purpose of removing[ii] or exterminating southeast Indigenous Peoples. The US creation of the USBIA and its removal of Indigenous Peoples from our lands, was a violation of the constitutions of Original Nations and of the newcomer US[iii]. In 1871[iv] the US unilaterally outlawed US treaties with Indigenous Peoples ["Indian Nations"], declaring the era of "Assimilation" which grew into US Termination Policies[v] and continues to this day interpreted by many Indigenous Peoples as the Era of Extermination.

Today the USBIA violates all international human rights instruments as it is designed to destroy the collective rights and identity of Indigenous Peoples. The US will not negotiate with original nations for use or access to our blessings and will not even dialogue with Indigenous Peoples who are not organized according to USBIA regulations and who do not interfere with the US myth of "dependent" original nation status subordinate to the newcomer US. Thus the US violates ICESCR, ICCPR, ICERD, CAT, CEDAW, CRC, CRPD, ICRMW and other HR instruments by preventing the political participation of Indigenous Peoples in accordance with our own culture and traditions.

The USBIA violates HR instruments by forcing Indigenous Peoples into a corrupt hard currency system that monetizes our natural blessings and allots the benefits of these blessings, against our wishes, to newcomers who privatize the "resources," thus impoverishing Indigenous Peoples and newcomer Peoples. The USBIA casino racket forces Indigenous Peoples to allow the US to allot our blessings to these international crime organizations, with or without our knowledge, through lawyers, lobbyists, and US "congress members[vi]" who promise to give our People access to our own ecosystems providing food, housing healthcare (including spiritual), and education in exchange for development schemes leaving us with more debt than equity in the European hard currency system. This recalls the Jacksonian genocidal legislation of 1828 that made it illegal for Indigenous Peoples to meet unless discussing the cession of land to European powers[vii]. The US prevents Indigenous Peoples' political participation outside of the USBIA allotment system that promotes the cession of land through confusing technicalities and fraud rackets to newcomers. The rise in systematic violence against indigenous women and children associated with the Jacksonian genocide[viii] and the dawn of the assimilation era[ix] is also associated with the casino era[x]. The US declaration that Indigenous Peoples do not exist outside of their USBIA extermination agency violates our rights to political participation and safety from violence.

The US must enter into peace negotiations with Indigenous Peoples and original nations irrespective of its congressional mandates because US congress cannot presume to pass laws regarding foreign nations, nor can it approve or modify agreements not yet pursued or made by any party. Indigenous Peoples can survive through practice of our own indigenous economy with the protection of our own indigenous legal cannon and prayers.

III. U.S. COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The US has done nothing SIPC knows of to enter into dialogue with southeast Indigenous Peoples, beyond referring us to the BIA in attached letters. To the contrary, the US has engaged in its old practice of creating conflict among Indigenous Peoples to call the Indigenous Peoples receiving some services through the USBIA to attack those Indigenous Peoples receiving no services. The US tells the Indigenous Peoples receiving USBIA services that they will receive fewer services if more Indigenous Peoples are served by the USBIA. Thus the US has increased violence against Indigenous Peoples. This practice of the US paying Indigenous Peoples and Indigenous Peoples' Organizations, such as the National Congress of American Indians and other "NGOs" to promote the US agenda of eliminating Indigenous Peoples has increased the suffering and reduced the political participation of all Indigenous Peoples worldwide.

Southeast Indigenous Peoples today suffer from lack of safe food, housing, healthcare (including spiritual), and education. Some Southeast Natives are physically attacked by US chauvinistic forces. Most Southeast Natives are hindered from cultural practices and are persecuted when identified as indigenous at the same moment the US merchandises our culture (see attachment on mascot hate speech).

III. CONCLUSION

The US must recognize that it does not have the right, in accordance with international law, to presume that Indigenous Peoples have ceded any rights or responsibilities to peacefully protect our Peoples and the ecosystems we are part of. While the US is coming to this recognition of the limitation of its powers, it must pursue peace with Indigenous Peoples, wholly independent and apart from land claims, or any "recognition" process or other domestication scheme. This US corrupt practice of paying Indigenous leaders and organizations to attack Indigenous Peoples who are not yet classed by the USBIA as "dependent" on the US must end. The US must allow southeast and other Indigenous Peoples to access and protect the benefits of our land for future generations of our Peoples with collective identity (or 'title' in European) and negotiate this access in accordance with the government and traditions of each Indigenous People.

We ask the US to work toward the empowerment and not the elimination of indigenous Peoples in the Southeast. In order to comply with the constitutions of Original Nations and of the newcomer US as well as the UN UDHR, Charter, DRIP, CERD, CRC, DHRD CEDAW, Kyoto Protocol, Vienna Convention, Geneva Conventions, Law of the Sea, Convention against Transnational Organized Crime, Convention against Corruption, Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Counter-Terrorism Convention, and a host of other international agreements, the US must enter into dialogue and multilateral negotiations to come to agreement with the original 'title'-holders and Indigenous Peoples of the land the US occupies, accesses, and uses without agreement. Because of the prejudiced

involvement of European powers, which facilitated the invention of the US in the Southeast, Original Nations' rights have not been recognized by the United Nations and its members, especially the US. We call on the UN to overcome its past prejudices, consider the benefits of incorporating indigenous jurisprudence, knowledge, responsible stewardship, and rule of law in the UN and work multilaterally to end the continued violent aggression by the US seeking to appropriate by force our lands, Peoples, and other natural blessings.

The US can end development-related conflict with work toward peace and reconciliation with stakeholders and surviving descendants of the illegally trafficked, imprisoned, and enslaved Peoples; work with Indigenous Peoples, Original Nations, and newcomer Peoples to: increase the progressive nature of all tax systems where the US seeks to govern, reform the US penal system to conform to modern HR instruments, end violence against women and children, develop energy plans and targets to expand access to modern energy services including through renewable energy and collectively held and stewarded access to natural blessings, end monopolies by private companies, especially those involving themselves with collectively managed and stewarded natural blessings.

The UPR should recommend that the US end its war of aggression against Indigenous Peoples by immediately ending the relationship between the USBIA extermination agency and US negotiation with Indigenous Peoples for access to our ecosystems providing food, housing, healthcare (including spiritual), and education. It violates all international standards to coerce Indigenous Peoples into forfeiting our independence in order to get food, safety, shelter, and community for our Peoples. A reformed non-violent USBIA could remain an option for those interested, but forcing Indigenous Peoples to involve themselves with this corrupt agency and the corrupt US Congress that controls it forces Indigenous Peoples to mortgage their Peoples and ecosystems for bribes to work toward a proposed affiliation with this USBIA that provides inferior services to Indigenous Peoples.

SIPC also call on the US to share in the benefits of developments made on our lands. We need access to health care (including spiritual), housing, and education in order to survive in the world the US built around us without our free and prior informed consent. We call on the US to restore our rights to our indigenous economy and to provide us with food until we can live on the fruits and fish of a healthy land. We demand the means of cultural and physical survival that are already available to most newcomers, irrespective to our orientation to the US Bureau of Indian Affairs, which excludes the vast majority of southeast Indigenous Peoples.

We ask the UPR committee to invite the US to work with Indigenous Peoples and Original Nations surviving US occupation to end development-related conflict, especially in the Southeast. The UPR can do this by holding the US to UNDP development guidelines[xi] when implementing HR standards, to end arbitrary detentions[xii], including the removal of indigenous children, to promote multilateral dialogue to enforce Original Nations' treaties, including the US as stakeholder.

We ask the UPR committee to recommend that the US engage in peace processes with southeast and other Indigenous Peoples to end the violence that prevents southeast Indigenous Peoples from accessing the blessings of our land that provide for our food, health, education, and shelter, among other things.

We refer again to our request to the UPR in 2010, which the US has refused to even discuss with Indigenous Peoples:
We ask the US to work with southeast indigenous Peoples on human rights issues by providing:

1. *Resources to implement climate change mitigation measures*
2. *Safe access to land, water, and education.*
3. *Safety from violence.*
4. *Legal instruments to assert our right to participate in environmental planning and economic development.*

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[i] The American Holocaust: Columbus and the Conquest of the New World (New York: Oxford University Press, 1992)
[ii] *Annual report of the commissioner of Indian affairs*, for the year 1891
[iii] The US Supreme Court interpreted the constitution of Original Nation's and the newcomer US as equally binding in Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).
[iv] U5 Indian Appropriation Act of 1871. March 3, 1871.
[v] Olivero, J. (2009). Indian self-determination act. In H. Greene, & S. Gabbidon (Eds.), *Encyclopedia of race and crime*. (pp. 383-385). Thousand Oaks, CA: SAGE Publications, Inc.
[vi] BIA latest recognition proposal is blow to CT tribes. By: Ana Radelat | May 22, 2014. Connecticut News Project, Inc. http://ctmirror.org/bia-latest-recognition-proposal-is-blow-to-ct-tribes/
Gabe Galanda: Jack Abramoff's playbook still being deployed. Monday, June 23, 2014. http://www.indianz.com/News/2014/014138.asp
[vii] "They Made Us Many Promises": The American Indian Experience 1524 to the Present, 2nd Edition. (2002)
[viii] The American Holocaust: Columbus and the Conquest of the New World (New York: Oxford University Press, 1992) p 121. "The same Andrew Jackson who—after his Presidency was over—still was recommending that American troops specifically seek out and systematically kill Indian women and children who were in hiding, in order to complete their extermination: to do otherwise, he wrote, was equivalent to pursuing "a wolf in the hammocks without knowing first where her den and whelps were."
[ix] American Indian Education: A History. Jon Allan Reyhner~Jeanne M. Oyawin Eder. Published by University of Oklahoma Press (2006)
[x] A-HRC-21-47-Add1_en, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya Addendum The situation of indigenous peoples in the United States of America: Report on need for US legislation to protect indigenous women did not even investigate or document the violence against southeast indigenous women reported to the SRIP, but focused exclusively on women labeled "Indian" by the USBIA extermination agency, a great number of whom were directly impacted by the USBIA casino racket, corruption schemes, and "tribal" debt scenarios.
[xi] "UNDP's Social and Environmental Standards" especially standard 6.
http://www.undp.org/content/dam/undp/library/corporate/Social-and-Environmental-Policies-and-Procedures/UNDPs-Social-and-Environmental-Standards-ENGLISH.pdf
[xii] "John Marshall has made his decision; now let him enforce it!" This derives from Jackson's consideration on the case in a letter to John Coffee, *"...the decision of the Supreme Court has fell still born, and they find that they cannot coerce Georgia to yield to its mandate,"* (that is, the Court's opinion because it had no power to enforce its edict)

Indigenous Mascots violate UDHR, DRIP, CRC, CERD

7% of US secondary schools use indigenous-based nicknames and 80% of these schools have majority European-descent students.[i] US sponsorship of indigenous mascots disadvantages[ii] all students by promoting the myth of European superiority and 'discovery' of the Americas. This US sponsorship of 'racial supremacy' mythology in schools handicaps all students who will have to work in an increasingly globalized society, which requires rejection of the myth of European superiority and 'discovery' in order to function effectively. Additionally, the use of indigenous mascots incites violence[iii] against indigenous Peoples and thus is a form of hate speech that the US should stop. While the US subsidizes school events[iv] promoting violent acts against "Indians" representing the opposing team, it also encourages all exposed to the image to see indigenous Peoples, heritages, lands, and cultures as something owned by the dominant non-indigenous culture, which has the right and authority to violently act on indigenous citizens, defined as threats to the US way of life. There is a disproportionately high rate of violence against indigenous citizens[v], but the US refuses to work with indigenous Peoples to see if eliminating the use of mascots might reduce this violence, including rape. US has failed all students by failing to follow through with recommendations to document the impact of indigenous mascots on non-indigenous students and CERD should recommend US follows through and studies impact on non-indigenous students as well.

Nevertheless, one study[vi] states that indigenous mascots may influence psychologists, other medical providers, and law-enforcement. This mascot-prejudice may be related to the high rates of incarceration and prejudice against indigenous spiritual and cultural constructs that Euro-centric psychologists deem 'inappropriate.' The involvement of such negatively influenced psychologists in removing indigenous children from homes and deeming indigenous extended family care systems 'inappropriate' could be mitigated if the US stopped sponsoring and subsidizing indigenous mascots. A recent case[vii] in point is that of a judge who adopted indigenous children out to non-indigenous based on the prejudice that is pervasive where he works, Tallahassee Florida.

Recently, this US Florida judge, in Tallahassee, home of Florida State University that degrades Osceola, a biological ancestor of many Yamasi, decided that indigenous culture is irrelevant to children's welfare. This judge who took the descendants of Osceola away from their culture and loving People, views the mascot-emblem, purportedly Osceola, several times a day in Tallahassee[viii]. This US-sponsored judge was acculturated and graduated (1983) from Florida State University, yet he does not seem to have ever attached positive value[ix] to the culture associated with the depiction of our ancestor used to represent his school. This prejudice is related to the US culture, subsidized and directly promoted by the US federal government, which pays Florida State University and thousands of other schools to degrade Indigenous Peoples and our past and future leaders. These prejudices encourage law enforcement officials and judges[x] to prevent the strengthening of future indigenous leaders.

Meanwhile the US promotes the abduction of indigenous children through its federal child services program which tells judges, such as this one, that Yamasi culture has no positive impact on Yamasi children because Yamasi do not accept the 'dependent' status that US assigns to Indigenous Peoples who are part of the USBIA system. This exclusion from US-identified HR instruments denies Yamasi access to education as Yamasi children from adult Yamasi, as well as access to education without prejudice. [xi]

Further, the use of Mascots in general, and specifically the use of a biological ancestor of many Yamasi has prejudiced the US legal community, which, in violation of international law, asserts its claim to authority to adjudicate Yamasi relations with our children. "The ultimate power is the ability to define reality for another group of people (Sue, 2005)[xii]". The US legal system, steeped as it is in state-sponsored images that degrade indigenous People and culture, are defining reality for Yamasi and other Indigenous Peoples by appropriating our ancestors' identity, renationalizing them, and then deciding that the descendants of the depicted mascots are better off not knowing about their own culture from their own

People. "Majority culture participants are defining the reality of [indigenous] by choosing to honor them on their terms, not on the terms of [indigenous]."[xiii]

The US use of indigenous mascots, especially in US-subsidized institutions advertised as 'higher learning,' are designed by the US with the intent and result of inhibiting the political participation of Indigenous Peoples. For example, the US deliberately appropriates the identity of a Yamasi biological ancestor, who was Muscogee (Osceola), renationalizes him as 'Seminole', and then tells Muskogean Peoples that we are Seminole because the US has decided that we cannot identify by our actual indigenous name but must accept the European word and label, 'Seminole.' Then the US pays Florida State University to use our ancestor as a mascot and claims his image is on the football players' buttocks and calls the team 'Seminoles.' The reduction of Indigenous Peoples to a group of bloodthirsty warriors further politically disenfranchises as it alienates the settler communities from indigenous loving culture, indigenous jurisprudence, and the successful history of original nations' governance.

Meanwhile, Yamasi cannot attend college because we lack: hard currency, the safety to learn about colonial society so that we are prepared for a colonial university, and the ability to remain with our Yamasi People. The US deprives us of decent education to promote the myth that it owns and controls Indigenous Peoples and our natural blessings. The US uses mascots as a psychological technique in its continued **war** of aggression to take through fraud and force the blessings of Indigenous Peoples, including our children, instead of negotiating for use and access to these blessings or encouraging us to choose to involve ourselves with the colonial world through peaceful and respectful interaction.

Sincerely, Yamasi People, eco@yamasi.org

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[i] Zeitler, EJ. (2008). Dissertation: *Geographies of Indigenous-based Team Name and Mascot Use in American Secondary Schools* University of Nebraska-Lincoln's Digital Commons: http://digitalcommons.unl.edu/geographythesis/7/.

[ii] "The evidence suggests that the effects of these mascots have negative implications not just for [indigenous], but for all consumers of the stereotype."(p 547) Kim-Prieto, C., Goldstein, L.A., Okazaki, S., & Kirschner, B. (2010). Effect of exposure to an American Indian mascot on the tendency to stereotype a different minority group. Journal of Applied Social Psychology, 40, 534-553.

[iii] Castillo, S. (2012). Native American mascots. *Report to the State Board of Education*. State of Oregon. Retrieved from http://www.ode.state.or.us/superintendent/priorities/native-american-mascot-report.pdf.

[iv] Landry, A., (November, 10, 2012). Offensive Banners Waved at Homecoming Game in New York. *Indian Country Today* Retrieved from http://indiancountrytodaymedianetwork.com/2012/11/10/offensive-banners-waved-homecoming-game-new-york-145126

[v] This report excludes data on almost 2 million Natives not affiliated with USBIA: Facts on Violence Against American Indian/Alaskan Native Women. (2011) *Futures without Violence.* http://www.futureswithoutviolence.org/userfiles/file/Violence%2520Against%2520AI%2520AN%2520Women%2520Fact%2520Sheet.pdf.

[vi] Steinfeldt, J.A., & Wong, Y. J. (2010). Multicultural training on American Indian issues: Testing the effectiveness of an intervention to attitudes toward Native-themed mascots. Cultural Diversity and Ethnic Minority Psychology, 16, 110-115.

[vii] Please email family@yamasi.org for case number and more details.

[viii] Fryberg, S. A., Markus, H. R., Oyserman, D. & Stone, J. M. (2008). Of warrior chiefs and Indian princesses: The psychological consequences of American Indian mascots. Basic and Applied Social Psychology, 30, 208-218.

[ix] Fryberg, S. A. (2003). Really? You don't look like an American Indian: Social representations and social group identities. Dissertation Abstracts International, 64(1549), 3B.

[x] Fryberg, S. A., & Markus, H. R. (2004, May). American Indian social representations: Do they honor or constrain American Indian identities? Paper presented at 50 Years after Brown v. Board of Education: Social Psychological Perspectives on the Problems of Racism and Discrimination, University of Kansas, KS. Retrieved July 2, 2014, from Wisconsin Indian Education Association: Indian Mascot and Logo Task Force.

[xi] See CERD 2014 shadow report: Original Nations' Laws Supersede US Law. http://www.yamasi.org/yamasi_icerd_shadow_report.pdf

[xii] Sue, D. W. (2005). Racism and the conspiracy of silence: Presidential address. The Counseling Psychologist, 33, 100–114.

[xiii] Steinfeldt, J. A., Foltz, B. D., Kaladow, J. K., Carlson, T., Pagano, L., Benton, E., & Steinfeldt, M. C. (2010). Racism in the electronic age: Role of online forums in expressing racial attitudes about American Indians. *Cultural Diversity and Ethnic Minority Psychology*, 2010, Vol. 16, No. 3, 362–371

The State of Civil and Human Rights in the United States

Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Neera Tanden
President
Center for American Progress
December 9, 2014

Thank you Chairman Durbin, Ranking Member Cruz, and members of the committee for holding this hearing today.

My name is Neera Tanden, and I am the President of the Center for American Progress. CAP is an independent, nonpartisan educational institute dedicated to improving the lives of all Americans through progressive ideas and action. At CAP, we believe in the right of every American to equal justice under the law. Unfortunately, for too many Americans, that ideal is far from their reality. To correct that inequity, we must examine our justice system from top to bottom.

Introduction

The grand juries' recent decisions in Ferguson, Missouri, and Staten Island, New York, have brought into sharp relief what many of us have known and experienced for years: that, for too many people in our nation, the place they call home is not the safe haven it should be; that the trust we rely on between neighbors and between police and the citizens they have sworn to protect is still broken in many communities. The events in Ferguson this year—from the shooting death of unarmed teenager Michael Brown, to the heavily militarized police response to the protests following that shooting, to the failure of grand juries to indict either Officer Darren Wilson for his role in Brown's death or Staten Island Officer Daniel Pantaleo for his role in Eric Garner's death—have brought renewed urgency to the need to take significant action to address the persistent inequities that remain in our society and to better ensure that the opportunity to prosper is not based on one's ZIP code and treatment by the criminal justice system is not determined by one's race.

Too many of our communities have been divided by our failure to ensure that all Americans are treated equally by our judicial and legal systems. As Americans, we all have a responsibility to build inclusive communities where families thrive and where compassion, not fear, is the core value.

Bipartisan consensus on need to reform the criminal justice system

Over the past few years, there has been growing bipartisan support for reforming aspects of the criminal justice system. In the face of unprecedented levels of incarceration and a growing body of research demonstrating the racially disparate impact of mandatory minimum drug sentences, there is a growing bipartisan movement to reform the criminal justice system, reduce mass incarceration, and address racial disparities in the justice system. Republican Sens. Rand Paul (KY) and Mike Lee (UT) have been leading voices on the need to reform sentencing for drug crimes and are in the unlikely company of Sens. Richard

Durbin (D-IL) and Cory Booker (D-NJ). A number of organizations, such as The Sentencing Project and Vera Institute of Justice, have been working on these issues for years and producing smart and thoughtful research. Conservative groups such as the American Legislative Exchange Council, or ALEC, and the Heritage Foundation are now weighing in on this issue as well, as are civil rights groups such as the American Civil Liberties Union, or ACLU, and the NAACP. The urgent need to address mass incarceration and the over-criminalization of nonviolent drug offenders has reached the highest level of the Obama administration, and Attorney General Eric Holder has made the issue a priority, most notably by issuing new guidance to federal prosecutors designed to reduce the number of people charged with mandatory minimum sentences in those cases.

This focus on reducing overreliance on incarceration of nonviolent, low-level offenders is a crucial step in shrinking our massive prison system and beginning to address the long-standing inequities in policing and prosecution that have resulted in a disproportionate number of individuals from minority communities being caught up in the criminal justice system for conduct that poses little risk to public safety. In addition, there are a number of other aspects of the criminal justice system we must also address in crafting a smart, modern approach to criminal justice. How should we focus criminal justice resources on the most-violent offenders—such as perpetrators of homicides and gun crime, sexual assault and rape, crimes against children, human trafficking, and hate crimes—that pose the greatest risk to public safety and work to prevent such crimes in the first place? How can we use data and research to understand the underlying drivers of such violence and work with a broad coalition of stakeholders in the community to prevent violence and ensure safe homes, schools, and streets? How can we best serve the needs of crime victims and communities that suffer from persistent violence? And how do we accomplish these goals while simultaneously working to repair the relationship between the police and the individuals they are charged with serving and protecting, which has become badly frayed in many communities?

These are difficult questions without easy answers. As communities across the country register their moral outrage through protest, this hearing takes an important step toward the action and resolution those communities desperately need. While nothing can be done to bring Michael Brown and Eric Garner back to their families, there is much that can be done to initiate change. The U.S. Department of Justice is conducting a civil rights investigation of both of these incidents to provide heightened review of police practices in those cases. President Barack Obama has proposed additional funding to improve police training and increase the use of body cameras by officers, as well as better oversight of federal programs that provide military equipment to local police departments.

We should continue to seek out new ideas and fresh perspectives for how to address the issues raised by these incidents, such as the increased use of special prosecutors to investigate fatal police shootings of unarmed individuals and other forms of enhanced federal review of police tactics and use-of-force policies. Additionally, we must deepen our investment in ensuring more diversity in police departments and prosecutor's offices, a crucial step in repairing the fractured relationship between police and community in many places across the country.

The recent incidents in Ferguson, Missouri, and Staten Island, New York, have initiated a fierce debate about the role of prosecutors in the justice system. The American justice system is a vast and complex system, operating along a continuum from referral and arrest through sentencing and re-entry. In recent weeks, however, the role of the local prosecutor and the grand jury system have come under intense scrutiny.[1] Following the return of "no true bill," or no indictment, in both the Michael Brown and Eric Garner cases, communities across the country have been up in arms about the potential conflict of

interest of local prosecutors. This question about the role of county prosecutors versus special prosecutors is an issue that we have been wrestling with for some time.

Some states have established permanent special prosecutors' offices. Maryland handles a variety of cases, from violations of election law to police misconduct, through an independent special prosecutor. The office has gone after high-ranking officials. Since 2008, it has brought embezzlement charges against former Baltimore Mayor Sheila Dixon (D) and misconduct charges against former Anne Arundel County Executive John Leopold (R).[2]

New York has a long history of using special prosecutors. In 1972, the state created a special prosecutor's office to explore police corruption in New York City, responding to the truthful allegations that were later chronicled in the film "Serpico."[3] At that time, the blue-ribbon Knapp Commission advocated for the creation of a special prosecutor's office in New York City that would supersede the jurisdiction of the local district attorneys.[4]

The office had some detractors, primarily local district attorneys, who alleged prosecutorial overreach. According to the *New York Law Journal*, the special prosecutor's office in New York "established a remarkable track record in fairly, objectively and successfully investigating and prosecuting police officers and others in the criminal justice system suspected of criminality."[5] In 1990, New York Gov. Mario Cuomo (D) disbanded the special prosecutor's office for budgetary reasons.[6] However, calls to reinstate and extend it to address police misconduct have returned over the years.[7]

There have been a number of voices in the wake of the most recent incidents calling for automatic referrals to a special prosecutor following fatal police shootings in local jurisdictions. As with any issue that requires deeper reflection, there are questions that must be answered that will include difficult and tense evaluations of the current system. However, justice requires no less of us. At the Center for American Progress, we are committed to the advancement of and the continuous improvement upon of the ideals that founded this country. We believe that progress will happen by engaging across issue areas to address the systemic problems highlighted by the events of recent weeks. In order to achieve that goal, we must also continue today's discussion in our communities with elected officials and relevant stakeholders, regardless of how difficult that conversation may be.

Over the past year, CAP has begun to explore a number of issues related to inequities in the justice system and in our laws and policies that negatively affect access to the ballot box and contribute to the lack of representation of people of color in elected offices, police departments, and positions of power in government. Some of this work is described in detail below.

Reducing barriers to re-entry and economic security for Americans with criminal records

Between 70 million and 100 million Americans—or as many as one in three—have some type of criminal record.[8] Many have only minor offenses, such as misdemeanors and trivial infractions; others have only arrests without conviction. Nonetheless, because of the rise of technology and the ease of accessing data via the Internet—in conjunction with federal and state policy decisions—having even a minor criminal history now creates lifelong barriers that can block successful re-entry and participation in society. This has broad implications—not only for the millions of individuals who are prevented from moving on with their lives and becoming productive citizens, but also for their families, communities, and the national economy.

Today, a criminal record serves as both a direct cause and consequence of poverty. Having a criminal record causes poverty by presenting significant obstacles to many of the essential building blocks of economic security, including employment, housing, education and training, building good credit, and more. Convictions can result in substantial monetary debts as well.[9] And a criminal record is a consequence of financial hardship due to the growing criminalization of poverty and homelessness.[10] One recent study finds that our nation's poverty rate would have dropped 20 percent between 1980 and 2004 if not for mass incarceration and the subsequent criminal records that haunt people for years after they have paid their debt to society.[11] Failure to address this link as part of a larger anti-poverty agenda risks missing a major piece of the puzzle.

It is important to note that communities of color—and particularly men of color—are disproportionately affected. People of color make up more than 60 percent of the population behind bars.[12] Black men are incarcerated at a rate six times higher than that of white men, and Latino men are incarcerated at a rate 2.5 times that of white men.[13] Research shows that mass incarceration and its effects have been significant drivers of racial inequality in the United States, particularly during the past three to four decades.[14]

Moreover, the challenges associated with having a criminal record come at great cost to the U.S. economy. Estimates put the cost of employment losses among people with criminal records at as much as $65 billion per year in terms of gross domestic product.[15] That is in addition to our nation's skyrocketing expenditures for mass incarceration, which today total more than $80 billion annually.[16]

The lifelong consequences of having a criminal record—and the stigma that accompanies one—stand in stark contrast to research on "redemption" that documents that once an individual with a prior nonviolent conviction has stayed crime free for three to four years, that person's risk of recidivism is no different from the risk of arrest for the general population.[17] Put differently, people are treated as criminals long after they pose any significant risk of committing further crimes—making it difficult for many to move on with their lives and achieve basic economic security, let alone have a shot at upward mobility.

The United States must therefore craft policies to ensure that Americans with criminal records have a fair shot at making a decent living, providing for their families, and joining the middle class. This will benefit not only the tens of millions of individuals who face closed doors due to a criminal record but also their families, their communities, and the economy as a whole.

CAP published a report offering a road map of policy solutions to remove barriers to economic security and mobility for Americans with criminal records. For CAP's full suite of recommendations, see "One Strike You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records."[18]

Place-based and concentrated poverty

For millions of Americans, opportunities for a better future are limited simply because of the ZIP code where they grew up or now live. According to the 2008–2012 American Community Survey, or ACS, more than 12.4 million Americans live in severely distressed neighborhoods where the poverty rate is at least 40 percent or higher.[19] That figure represents a 72 percent increase in the number of people living in high-poverty neighborhoods since the 2000 Census.[20]

Such high-poverty communities are characterized by inferior housing, failing schools, inadequate public infrastructure, and few employment opportunities.[21] A growing body of research shows that being raised in such communities undermines the long-term life chances of children. For example, poverty has been shown to genetically age children,[22] and living in communities exposed to violence impairs cognitive ability.[23] This increases the likelihood that children will have poor health and educational outcomes and few employment opportunities in the future.[24] In fact, even when income is held constant, families living in areas of concentrated poverty are more likely to struggle to meet basic needs, including food and housing, than their counterparts living in more affluent areas, where families face fewer stressors, such as less exposure to crime and improved air quality.[25] It is evident that the federal government has a role to play in undoing the effects of past policies that contributed to these outcomes.

CAP has released a number of reports outlining how the administration and members of Congress can ensure the federal government can be the most effective partner to local leaders working to transform high-poverty communities. For example, our report "A Renewed Promise" urges Congress to pass tax credit legislation for designated Promise Zones and outlines how to improve the implementation of the initiative overall.[26] Another report, "Eds, Meds, and the Feds," outlines how the federal government can foster the role of universities and hospitals in community revitalization.[27] Lastly, "A Disaster in the Making" outlines specific ways Congress and federal agencies can do more to protect low-income communities from extreme weather events.[28] The intersection of community and poverty requires place-based strategies that focus on the entire range of issues that communities face and confront those challenges simultaneously.

Fees and fines: How we build up the criminal justice apparatus and punish the poor

A recent CAP report explores the rise of fees and fines and their effects on communities across the country.[29] In a growing nationwide trend, states and localities have increasingly shifted to a system of "offender-funded justice"—funding their law enforcement and court systems through fines and fees levied on individuals involved with the criminal justice system. Examples include various types of "user fees" that get tacked onto a conviction, public defender fees for defendants who exercise their right to counsel, and "pay-to-stay" fees to offset the costs of incarceration, among many, many others. Many states and localities assess late-payment fees, steep collection fees, and even fees for entering an installment payment plan. Total criminal justice debts can rise into the hundreds, thousands, and even tens of thousands of dollars.[30]

These debts compound the collateral consequences of a criminal record and transform punishment from a temporary experience into a long-term, even lifelong status. In many states, individuals are not eligible to clean up their criminal records until they have paid off all criminal debts. Outstanding criminal debt can also stand in the way of public assistance, housing, employment, and access to credit. Moreover, while debtor's prison was long ago declared unconstitutional, missing a payment can be a path back to jail in many states.[31]

While these fees may seem a tempting source of revenue to states and localities seeking to close budget gaps, they are being levied on a population that is by and large unable to pay. Between 80 percent and 90 percent of criminal defendants in the United States are poor enough to qualify for a public defender, and between 15 percent and 27 percent of people released from prison expect to go to a homeless shelter upon release.[32] As many as 60 percent of formerly incarcerated individuals remain unemployed a year after release.[33] A study of court clerks in Florida revealed that just 9 percent of criminal debts were

expected to be collected.[34] And a study in Washington state found that formerly incarcerated men face criminal debts that equal 36 percent to 60 percent of their annual incomes; even if they paid $100 per month—constituting 11 percent to 15 percent of their monthly earnings—they would remain significantly indebted 10 years later.[35]

Ferguson, Missouri, offers a stark example of this problematic trend. Shortly after the death of 18-year-old Michael Brown, the Ferguson City Council met to discuss sweeping changes to the city's court system, which critics said unfairly targeted low-income black people.[36] The council identified court fees and fines as the city's second-highest source of revenue. The court fees would often result in trapping young black men in a cycle of unpaid tickets and arrest warrants.[37]

Alongside the explosion in incarceration and hyper-criminalization in the United States, the past three to four decades have seen the rise of for-profit prison companies—an industry whose business model depends on mass incarceration. These companies admit as much: For example, the Corrections Corporation of America stated in a 2010 report, "The demand for our facilities and services could be adversely affected by ... leniency in conviction or parole standards and sentencing practices."[38] Seeing the potential for great profits, private companies have increasingly entered other parts of the criminal justice space as well, ranging from construction companies that build prisons and jails; to providers of food, clothes, and medical services; to private probation companies that supervise individuals on parole and probation; to debt collection companies that pursue individuals for criminal justice fines and fees, to name just a few. The resulting "prison industrial complex" thus has a direct financial interest in the continued expansion of incarceration. In the coming months, the Center For American Progress will examine the costs and long-term effects of the privatization trend, the potential consequences, and what this means for the American people.

As we begin to examine how to rebuild trust in government and government institutions, this is an area ripe for review. ArchCity Defenders Inc., a St. Louis-based advocacy group, recently published a white paper on the financial burden of legal fees on the indigent in Missouri.[39] They observed 60 different courts across the state to determine which courts engaged in practices that "violate fundamental rights of the poor, undermine public confidence in the judicial system, and create inefficiencies," such as incarceration for the inability to pay fines, losing jobs and housing as a result, and being refused access to courts. While finding that approximately half the courts they observed did not engage in such behavior, at least 30 courts did. The group's paper focused on three municipal courts that were the worst offenders: Bel-Ridge, Florissant, and Ferguson. Its findings included:

- Defendants who cannot afford an attorney generally receive higher fines and jail time.
- People who are arrested on a warrant for failure to appear in court to pay fines frequently sit in jail for an extended period.
- Despite their poverty, defendants are frequently ordered to pay fines that are triple their monthly income.
- The amount of funds collected through the municipal courts seems to be inversely proportional to the wealth of the municipality.
- In all three focus municipalities, authorities disproportionately stop African American motorists, with African Americans more likely to be searched and arrested.
- For many municipal court defendants working jobs at an hourly wage, missing three or four days of work while in jail will very often result in being fired.

A recent CAP report highlights emerging best practices in this area and lays out recommendations for

Congress, the U.S. Department of Justice, and states and localities. For CAP's full suite of recommendations, read "One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records."[40]

Addressing the criminalization of LGBT people and people living with HIV

Each year in the United States, thousands of lesbian, gay, bisexual, and transgender, or LGBT, people, and people living with HIV, or PLWH, come in contact with the criminal justice system and fall victim to miscarriages of justice. In fact, LGBT people and PLWH, especially those of color, are significantly overrepresented in all aspects of the penal system, from policing to adjudication and incarceration. Yet their experiences are often overlooked, and little headway has been made in dismantling the cycles of criminalization that perpetuate poor life outcomes and push already vulnerable populations to the margins of society.

According to a recent national study by Lambda Legal, a startling 73 percent of all LGBT people and people living with HIV surveyed have had contact with police during the past five years.[41] Five percent of these respondents also report having spent time in jail or prison, a rate that is markedly higher than the nearly 3 percent of the overall U.S. adult population that is under some form of correctional supervision—jail, prison, probation, or parole—at any point in time.[42]

It is important to note that these disproportionately high rates of involvement with the criminal justice system are not simply a response to greater incidences of illicit behavior by LGBT people or a higher propensity for crime within the LGBT community. Deep-seated homophobia and transphobia, as well as stereotypes about race and gender, manifest in biased policing practices that presume LGBT people and PLWH are inherently guilty or deserving of victimization.

Moreover, LGBT people and PLWH are often targets rather than perpetrators of violence, enduring significant rates of violence and harassment at the hands of both community members and law enforcement. For example, transgender people of color in particular are three times more likely to be victims of harassment and assault than non-transgender people. Yet according to the National Coalition of Anti-Violence Programs, 48 percent of survivors who reported violence to the police also reported incidents of police misconduct.[43] Under these conditions, many people are afraid of the police and have nowhere to turn for help when they are victimized.

Even as attitudes toward and acceptance of LGBT people have reached an all-time high, justice sadly continues to be elusive and conditional for LGBT people and PLWH due to a range of unequal laws and policies that dehumanize, victimize, and criminalize these populations. Significant policy reforms are needed to ensure that they receive equitable treatment.

As a first step, it is critical that we prohibit profiling based on race, gender, gender identity and expression, and sexual orientation and ensure that all criminal justice reforms include provisions that protect the civil and human rights of LGBT people.

CAP recently co-authored one of the first comprehensive publications to offer federal policy recommendations to address the myriad criminal justice issues that affect LGBT people and PLWH. For our full recommendations, see "A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV."[44]

Lack of representation, voting, and the impact on communities of color

The right to vote is a core tenet of our citizenship. As Supreme Court Chief Justice John G. Roberts Jr. explained, "There is no right more basic in our democracy than the right to participate in electing our political leaders."[45] The United States is strongest and best served when its leadership is reflective of the people it serves and when our government reflects the talent and experiences of all Americans.

In 2013, U.S. Supreme Court's *Shelby County v. Holder* ruling weakened the landmark Voting Rights Act of 1965. In fact, November 4, 2014, marked the first Election Day in 50 years in which voters went to the polls without many important protections. As a consequence, many states imposed suppressive new voting laws that make it harder for eligible voters to cast their ballots. According to a Brennan Center analysis, "at least 83 restrictive bills were introduced in 29 states" in 2013.[46] Not surprisingly, the 2014 election had the worst voter turnout in 72 years.[47]

There is a correlation between voter ID laws and lower voter turnout. The U.S. Government Accountability Office found that voter ID laws decreased turnout in Kansas and Tennessee elections from 2008 to 2012 and that turnout was particularly low for voters between the ages of 18 and 23, African Americans, and new voters.[48] Furthermore, 2014 preliminary turnout data show that states with photo ID laws had lower turnout.[49] These new laws disproportionally affect communities of color and the elderly.

In a first-of-its-kind study of 2012 data, the Center for American Progress found that in 16 states, counties with higher percentage of minorities cast provisional ballots at a higher rate than counties with lower percentage of minorities. Although provisional ballots were originally meant to be a fail safe, 2.7 million were cast in 2012, or one of every 41 in-person votes. Nearly one-third of those were not counted. The report notes several concrete recommendations to address this troubling correlation related to provisional ballots, including modernizing voter registration, implementing same-day registration, expanding early voting, and providing online registration. Suppressive voter ID laws, which dampen both turnout and participation for voters, are wrongheaded and will have long-lasting impacts on the health of our democracy.

For further information, please see "Uncounted Votes: The Racially Discriminatory Effects of Provisional Ballots."[50]

Unfortunately, structures of power in the United States—including elected bodies, police departments, and leadership positions in government agencies—often do not reflect the communities they serve. Many studies over the years have documented this gap in representation in gender, racial, and socioeconomic status. For example, while men make up 49.2 percent of the population, they make up 71 percent of elected officials. Women, who represent 50.9 percent of the population, make up 29 percent of elected officials. The gaps along racial lines are even more pronounced. Non-Hispanic whites today make up 63 percent of the population, but they hold close to 90 percent of elected offices. In contrast, people of color, who represent 37.2 percent of the population, only account for 10 percent of elected officials. Police departments reflect this pattern as well.[51]

The lack of representation of people of color raises grave concern regarding democratic legitimacy and fundamental issues of political representation. As we have seen in Ferguson, New Orleans, and other cases, our lack of reflective representation erodes trust between the government and the governed, disempowers disadvantaged communities, and creates racial tensions in communities across America, which threatens our democracy. The American public knows this, which is why 86 percent of Americans

are concerned about the low number of people of color and women in elected positions.[52] But beyond a concern over not having proportionate representation, racial and ethnic diversity can result in significant, positive policy changes for people of color and disadvantaged Americans.

Based on research data, African American state legislators are more likely to introduce measures to combat racial discrimination, as well as measures generally aimed at improving education, health care, and social well-being. Similarly, Latino legislators spearhead issues related to immigration, language learning, and opportunities for immigrants. Women of color, in particular, are powerful agents of change. When women of color assume powerful leadership positions, the prospects improve for legislation to expand access to programs that provide a path to opportunity for low-income Americans and increase benefit levels to those who need these programs the most.[53]

Thus, it is imperative that instead of creating more barriers for representation and civic engagement, steps are taken to create more opportunities to enable the participation of a broader sector of our society. To that end, policy efforts at the local and national level should aim to ensure the right to vote and to make it easier to vote. In addition, government agencies, including police departments, should make every effort to recruit a diverse pool of applicants for all their positions and strive to reflect the communities they serve.

For further reference, please see "All In Nation: An America that Works for All."[54]

Conclusion

We are now in a moment of unprecedented national attention on the persistent inequities and injustices in our criminal justice system that continue to affect too many communities around the country. I would like to thank the committee for holding this hearing and taking this important step in beginning to finally address some of these issues. Regardless of our party affiliation or ideology, we can all agree that we can, and must, do better.

Endnotes

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Hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Written Testimony of Alecia Phonesavanh

December 8, 2014

On May 28, 2014, a SWAT team broke into my sister-in-law's house located about an hour outside of Atlanta in the middle of the night. My husband, Bounkham, our four kids and I were sleeping when a flashbang grenade, a military grade weapon that creates a noise so loud and a flash so bright it temporarily disorients anyone nearby, went off in our room as police officers burst through the doors with assault rifles. We were confused, scared, and wanted to know what was going on. My baby, Bou Bou, was crying. I can still remember the pain in his voice as he cried out, but the officers would not let me get to him, no matter how much I begged. Instead, they screamed at me to sit down, shut up and blocked my view, so I couldn't see my son. But I could see the singed crib and a pool of blood. The officers told me he lost a tooth. The flashbang grenade had landed in my baby's crib. My husband saw the damage to the crib and blood on an officer standing over our son before he was tackled to the ground by a SWAT officer, put in a chokehold, and handcuffed.

The sound of Bou Bou's wailing still haunts me to this day. I had to wait several hours before learning about his horrific condition. Before the ambulance came, Bounkham begged the officers to tell him what was going on, but one officer walked towards him like he was going to kick him, and told him to shut up and be quiet or he would go to jail. The paramedics finally arrived to take Bou Bou to the hospital, but my husband and I had to stay at the scene for questioning. I had no answers to any of their questions. I was only thinking about my baby and whether or not he was still alive. Finally, an officer handed us a piece of paper with an address for a hospital in Atlanta and told us we could go pick up our son there.

I later learned that the SWAT raid was conducted to serve a warrant for the arrest of a distant relative who no longer lived in the house we were staying in. He was arrested hours later, a few miles down the street, for the distribution of narcotics. He had sold "meth" to an unidentified person for $50. The police didn't have to kick in the door to arrest him. They simply knocked and he peacefully came out. All the damage to my family was done for merely $50.00 worth of drugs.

When I arrived at the hospital I was confused when I was told he was in the burn unit. They told me my son suffered from third degree burns throughout the front of his body. He had a gaping hole in his face and chest, and was placed in a medically induced coma. Since the incident, he has been recovering from a total of eight surgeries, one of which was to reattach his nose to his face. He lost his nipple, and has a huge scar on his chest. In the beginning and still now during the night, my son wakes up screaming and holding his face. It was so traumatizing to my husband and I. We couldn't sleep. Our girls still have a hard time sleeping as well. One night after the raid, my 8 year old daughter woke up in the middle of the night screaming, "No, don't kill him! You're hurting my brother! Don't kill him." I used to tell my kids that if they were ever in any trouble they should go to the police. That trust is no longer there.

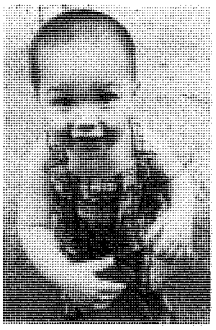
The grand jury decided not to charge any of the officers involved in severely injuring our son. The police department decided not to help us pay for the over $1 million in hospital bills. I am

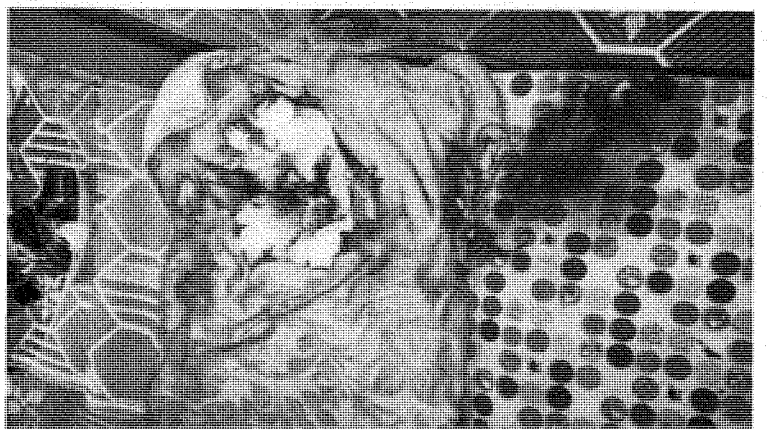
devastated and angered by these decisions. A SWAT team raided a home (even though our minivan with car seats inside was parked in the driveway and our kids' toys were in the yard), nearly fatally injured my son, and walked away unscathed. Police need to be held accountable for their actions. Because of this incident, my son will probably have to have double reconstructive surgeries twice a year, every year, for the next 20 years to get him somewhat back to normal. No child's life should be derailed like this. No family should have to endure what we've been through.

Unfortunately, more people will get hurt and more families will suffer so long as people turn a blind eye and continue to allow police officers, who are supposed to protect us, to run around with military weapons like dangerous flash stun grenades, destroying innocent lives, like our precious son, without any consequences. Not a single officer was affected by the raid. My girls were traumatized, my baby was ripped apart, and my husband was violently thrown to the ground by an officer. He is currently awaiting shoulder surgery that we cannot afford. This is unacceptable. It is so disheartening to see the impact of militarized police forces in our communities. What happened to my family and I was due to a hurried, sloppy, and failed drug raid. We cannot let this continue.

My family may still be struggling to recover, but we are empowered by the idea that our story will help spur change. We will continue to fight until we receive justice. This is a national effort. Members of Congress must join in these efforts. We must all work together to stop the excessive militarization of our police. Yes—we want law enforcement officers properly equipped to safely do their jobs. We need them to serve and protect and we want them to be safe. But law enforcement officers do not serve or protect when through acts of incompetence and recklessness they harm the innocent with dangerous grenades or other military pieces of equipment. Better training is clearly needed and less use of potentially lethal force against innocent citizens who have done nothing wrong, like our son.

Thank you very much.





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Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
"The State of Civil and Human Right in the United States"
December 9, 2014
Submitted by
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Chairman Durbin, Ranking Member Grassley, and distinguished members of the Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights, thank you for the opportunity to address the state of civil and human rights in the United States.

The Brennan Center for Justice is a nonpartisan law and policy institute that seeks to improve the national systems of democracy and justice. The Brennan Center for Justice was created in 1995 by the law clerks and family of the late Supreme Court Justice William J. Brennan, Jr. as a living memorial to his belief that the Constitution is the genius of American law and politics, and the test of our institutions is how they treat the most vulnerable among us. Affiliated with New York University School of Law, the Brennan Center has emerged as a national leader on issues of democracy and justice.[1]

The Brennan Center is committed to advancing improvements in the areas of civil and human rights through our work in the areas of democracy, justice and liberty and national security. Specifically, our focus on voting rights, criminal justice reform and ending mass incarceration as well as our efforts to ensure the protection of civil liberties by promoting an open and transparent government that respects the rule of law and privacy, are hallmarks of our civil and human rights work. We recognize that our nation is at a particularly crucial moment in its history regarding how we move forward in our effort to protect the rights of our citizens, from criminal justice to voting rights. We appreciate the opportunity to offer this testimony.

[1] This testimony does not represent the opinions of NYU School of Law.

I. REFORMING THE NATION'S VOTING SYSTEM THROUGH MODERNIZATION AND STRENGTHENING VOTING PROTECTIONS TO ENSURE A STRONGER DEMOCRACY IS A CRUCIAL STEP IN ADVANCING AND PROTECTING CIVIL RIGHTS

Ensuring that every eligible American has the right and opportunity to engage in our political process is a fundamental civil rights issue. Since the 2010 election, 22 states have passed new restrictions on the right to vote. The nation needs Congress's leadership to help improve the business of running elections.

Congress should: 1) modernize voter registration; 2) adopt minimum standards for polling place resources; 3) expand early in-person voting; 4) revitalize the Voting Rights Act; and 5) restore voting rights to citizens living and working in the community with criminal convictions in their past. Together, these reforms will make our election system more free, fair, and accessible to all eligible citizens.

A. Modernize Voter Registration

Voter registration is the single biggest election administration problem in the United States. One in eight registrations nationwide contains serious errors, and one in four eligible Americans are not registered to vote at all.[2] The continued use of inefficient and error-prone paper-based registrations is the primary cause of this problem.[3] Recent data suggest that this problem has not abated. In the 2012 election, 2.8 percent of in-person voters experienced registration problems, up from 2.0 percent in 2008.[4]

Congress should pass legislation that puts the onus on the government to register eligible Americans and modernizes how we register voters. Specifically, Congress should pass legislation that: 1) digitally transfers to election officials the registration information of citizens who have chosen to register while conducting business with a government office, 2) provides for online registration, 3) make a voter's registration move with that voter within a state, and 4) provides for the ability to correct and update registration up to and on Election Day. Congress can look to the Voter Empowerment Act, sponsored by Rep. Lewis and Sen. Gillibrand, and the Voter Registration Modernization Act, sponsored by Sen. Gillibrand, for approaches to these reforms.

Modernizing registration produces several tangible benefits. It would simplify the registration process and bring 50 to 65 million eligible Americans into the electoral process. At the same time, it would ease burdens on election officials and make our voting system less expensive. It would also reduce fraud because voter records would be more accurate and up to date.

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B. Adopt Minimum Standards for Managing Polling Place Resources

There is a widespread consensus that inadequate allocation of resources – whether of voting machines, poll workers, or ballots – can lead to long lines and ultimately prevent thousands from voting.[5] Long lines reduce voter turnout and satisfaction; one analysis estimated that in Florida alone, more than 200,000 voters may have been discouraged from participating in the 2012 election because of long lines.[6] A recent Brennan Center study, *Election Day Long Lines: Resource Allocation*, examined precinct-level data from Florida, Maryland, and South Carolina and found that voters in precincts with more minorities tended to experience longer waits and that such precincts tended to have fewer machines. Overall, we found the precincts with the longest lines had fewer machines, poll workers, or both.

Congress should pass legislation to ensure that polling stations are sufficiently resourced. One starting point is the LINE Act, sponsored by Sen. Boxer, which would require states to provide a minimum number of poll workers and voting machines at each Election Day and early voting site.[7] The Presidential Commission on Election Administration (PCEA) urged states to improve the management of polling place resources by examining such resources and setting maximum acceptable wait times – concluding that voters should generally not have to wait in excess of half an hour to vote under normal circumstances.[8]

Congress can also take an immediate step to address both polling place resources and what the PCEA called an "impending crisis in voting technology"[9] by confirming the pending nominees to the Election Assistance Commission, which has been without commissioners since 2011. Past elections have showed that persistent and widespread equipment failures can have a damaging effect on public perception of election integrity, especially when exacerbated by close and highly politicized contests. These problems highlight the need for an effective agency devoted to improving election administration.

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[5] In 2012, examples of inadequate resources leading to long lines include Richland County South Carolina, (Jody Barr and Jennifer Emert, Richland County: "We Will Conduct a Thorough Investigation", WISTV.COM, Nov. 7, 2012, available at http://www.wistv.com/story/20035057/what-happened-with-the-polls-in-richland-county), and Oahu, Hawaii (Karleanne Matthews, The Election. What Happened?, HONOLULU WEEKLY, Nov. 28, 2012, available at http://honoluluweekly.com/feature/2012/11/the-election-what-happened/).

[6] Scott Powers and David Damron, *Analysis: 201,000 in Florida Didn't Vote Because of Long Lines*, Orlando Sentinel, Jan. 23, 2013, *available at* http://articles.orlandosentinel.com/2013-01-29/business/os-voter-lines-statewide-20130118_1_long-lines-sentinel-analysis-state-ken-detzner. Professor Theodore Allen found that long lines in Florida caused an estimated 49,000 people in central Florida not to vote. He previously found that long lines in Franklin County, Ohio discouraged approximately 20,000 people from voting. Voters who experience longer lines have less positive evaluations of their voting experience. Scott Powers and David Damron, *Researcher: Long Lines at Polls Caused 49,000 not to vote*, Dec. 29, 2012, *available at* http://articles.orlandosentinel.com/2012-12-29/news/os-discouraged-voters-20121229_1_long-lines-higher-turnout-election-day (citing analysis of Theodore Allen).

[7] S. 58, 113th Cong. (2013).

[8] Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration* 14 (2014), *available at* https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf ("PCEA Report").

[9] *Id.* at 62.

C. Expand Early In-Person Voting

The antiquated notion that all ballots cast in-person must be voted on a single day, in an 8 or 12 hour period, fails to reflect the realities faced by Americans with complex lives. It also burdens poll workers who must serve waves of voters. Congress should pass legislation to improve election administration by establishing national standards for early in-person voting (EIPV). The standards would include: establishing EIPV a full two weeks before Election Day, extending early voting hours, and including the last weekend before Election Day. The Brennan Center report *Early Voting: What Works* provides further detail on five key benefits to such reforms: 1) reducing stress on the voting system on Election Day; 2) alleviating long lines on Election Day; 3) improving poll worker performance; 4) allowing early identification and correction of registration errors and voting system glitches; and 5) providing greater access to voting and increased voter satisfaction.

D. Revitalize the Voting Rights Act

The Supreme Court in *Shelby County v. Holder* effectively eviscerated the core provision of the Voting Rights Act (VRA), leaving millions of voters without the protection of the most effective tool in American law to combat racial discrimination in voting. Existing laws are simply insufficient to fill the void left by the Supreme Court's decision. In 2013 and 2014, at least 10 of the 15 states that had been covered in whole or in part by Section 5 introduced new restrictive legislation that would make it harder for minority voters to cast a ballot. Further, seven other formerly covered states also passed restrictive legislation in 2011 and 2012, prior to the *Shelby County* decision. Congress should pass the Voting Rights Amendment Act[10] to restore these protections. A robust VRA – with a reinvigorated Section 5 at its core – continues to be necessary to secure the equal voting rights promised to all citizens by the Constitution.

E. Restore Voting Rights to Citizens with Criminal Convictions

Over 4 million American citizens living and working in our communities are denied the right to vote because they have a criminal conviction in their past. Congress should pass the Democracy Restoration Act,[11] introduced by Sen. Ben Cardin and Rep. John Conyers. Restoring voting rights to people with criminal convictions would strengthen our democracy and advance civil rights for millions of citizens. Further, it would aid law enforcement by aiding the re-entry process, and facilitate election administration by relieving confusion among election officials and the public about who is eligible to vote.

II. REFORMING THE NATION'S CRIMINAL JUSTICE SYSTEM IS KEY TO ADVANCING CIVIL AND HUMAN RIGHTS IN THE NEXT DECADE

In recent years, momentum has grown to address mass incarceration at the federal level. Two key forces drive over incarceration in the United States: (1) the increased number of individuals entering prison every year; and (2) the increased length of time each prisoner spends behind bars. This reality is never more apparent in the federal context than in relation to federal drug crimes.

[10] H.R. 3899, 113th Cong. (2014).
[11] H.R. 4459/S. 2235, 113th Cong. (2014).

Not only have the number of prisoners prosecuted and processed into the system increased, but the mandatory length of prison terms has increased for drug offenders in particular. The result is an overpopulated, understaffed federal Bureau of Prisons (BOP) with little additional benefit to public safety. Below we discuss two alternative measures that can and should be considered by Congress to build on the momentum to address mass incarceration at the federal level through systemic reforms.

A. Reform Sentencing Laws to Reduce Severe Mandatory Minimum Sentences

Current mandatory minimum penalties are a primary inefficiency in the federal justice system. They lengthen sentences for not only drug offenders subject to the penalties, but for all drug offenders in the federal system. This reality exists because the U.S. Sentencing Commission chose to incorporate the harsh mandatory minimum drug penalties enacted by Congress during the 1980s into the federal sentencing guidelines. Though the Sentencing Commission has taken steps to alleviate the harsh effects of this decision – including most recently reducing the guideline range for most drug sentences – these reforms cannot have the same impact as Congressional action. Reducing mandatory minimums would reduce the uniform severity of the federal system (longer sentences for all offenders) that contributes to its current overcrowding problems. Long sentences for drug offenders contribute significantly to the federal prison population's unsustainable growth.[12] Every year, 15,000 offenders are convicted of drug crimes that carry a mandatory minimum penalty.[13] Legislative changes to these laws would have a substantial impact on the overcrowding of federal prisons and create numerous cost-efficiencies.

Congress is currently considering a piece of legislation that would reduce mandatory minimum penalties for drug offenders. The Smarter Sentencing Act (S. 1410), introduced by Senators Dick Durbin (D-IL) and Mike Lee (R-UT), would reduce mandatory minimums for all drug offenders. The Brennan Center supports this legislation as measure that will improve the rationality of the federal justice system without posing unreasonable threats to public safety.

There are several advantages to reducing the severity of mandatory minimum sentences as a means to address the pressures of mass incarceration. First, reducing the mandatory minimum length through legislative reform will not result in automatically shortened sentences; rather, this reform allows judges to make more individualized sentencing decisions narrowly tailored for the specific offender. Second, such legislative reform does not eliminate harsh sentences for serious offenders. Mandatory minimum penalties were created to apply to kingpins and high-level drug dealers, but the reality of its application has been much broader. Only 7 percent of all drug offenders have the enhancement characteristic Congress envisioned when it created these penalties, and yet 62 percent of drug offenders receive mandatory minimum sentences.[14]

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[12] JULIE SAMUELS, NANCY LA VIGNE & SAMUEL TAXY, URBAN INSTITUTE, STEMMING THE TIDE: STRATEGIES TO REDUCE THE GROWTH AND CUT THE COST OF THE FEDERAL PRISON SYSTEM 23 (2013), *available at* http://www.urban.org/UploadedPDF/412932-stemming-the-tide.pdf [hereinafter URBAN INSTITUTE, STEMMING THE TIDE] ("The amount of time served by drug offenders – a function of [mandatory minimum] sentences and truth-in-sentencing requirements – is the single greatest contributor to the growth in the prison population.").

[13] *Id.* at 24.

[14] *See* U.S. SENTENCING COMM'N, 2013 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS tbl. 40, 43 (2013) (calculating role adjustments for drug offenders and total number of drug offenders receiving mandatory minimums).

Reducing mandatory minimum penalties for drug offenders will reduce the average sentence of drug offenses generally, thus creating a more proportionate analysis for all federal sentencing.

Reducing mandatory minimum penalties for drug crimes will likely benefit the public greatly. The U.S. Sentencing Commission collected data on the recidivism rate of offenders who benefited from the crack-minus-two amendment implemented in 2007 to alleviate the harsh effects of previous crack versus powder cocaine mandatory minimum sentences. The results of the Commission's study indicate that those offenders who received the reduced sentences under crack-minus-two had a modestly lower rate of recidivism (30.4%) as compared to other drug offenders (32.6%). This is consistent with data suggesting that longer sentences do not effectively deter individuals, and may in fact have a criminogenic effect on particularly lower level offenders.[15]

Moreover, reducing mandatory minimum penalties will provide billions of dollars in fiscal savings. The bill, if passed, reduces certain 20-year, 10-year, and 5-year mandatory minimum drug sentences to 10-year, 5-year, and 2-year sentences. In 2013 alone, more than 14,000 offenders were sentenced to a five or ten year mandatory minimum sentence.[16] If these offenders serve their full sentences, the federal government will spend $3.3 billion on these individuals. If they had been sentenced under the proposed SSA structure, the government would spend $1.5 billion to incarcerate these offenders.[17] It is clear that this amendment will provide fiscal savings that can produce improved efficiencies across BOP and DOJ.

B. Adopt Success-Oriented Funding

On a more systemic level, Congress should implement "Success-Oriented Funding" (SOF) for the BOP budget as another practical and efficient method to reduce the federal prison population. Set forth in a recent Brennan Center report, SOF uses the power of the purse to steer the criminal justice system toward the twin goals of reducing crime *and* reducing mass incarceration – goals research shows are not in conflict.[18] The concept is simple: fund what works. Grounded in economic principles and built on discrete models in other policy areas, Success-Oriented Funding ties government dollars as closely as possible to whether agencies or programs meet clear, specific, measureable goals. These goals would drive toward what policymakers and researchers increasingly see as a new, modern, and more effective justice system. The model imports private sector business principles and applies it to public dollars to make government work better. It draws on tried and tested principles of economics, finance, and management.

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[15] *See, e.g.*, Cassia Spohn and David Holleran, *The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders*, 40 CRIMINOLOGY 329 (2002).

[16] U.S. SENTENCING COMM'N, 2013 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS tbl. 43 (2013) (indicating that 6,350 drug offenders received five-year mandatory minimum sentences and 7,862 drug offenders received ten-year mandatory minimum sentences in 2013).

[17] Calculations assume $30,000 per prisoner, per year and multiples the number of prisoners by the cost by the mandatory term of incarceration. Comparisons are made between the five- and ten-year sentences versus the five- and two-year sentences, respectively.

[18] *See* PEW CTR. ON THE STATES, ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 17-20 (2009), *available at* (describing how more prison spending brings lower public safety returns); *see also* Spohn & Holleran, *supra* note 7 (discussing the criminogenic effect of incarcerating low level drug offenders).

Broad goals for funding include: reducing recidivism, reducing crime, reducing prison sentences, and reducing incarceration. Agency-specific goals would vary depending on the agency or program funded. For example, budgets for community corrections would focus on reducing recidivism and budgets for police would focus on reducing violent crime. SOF ties grant dollars to these goals.

The federal government aids states and cities by subsidizing their criminal justice costs through grant funding. Federal criminal justice grants send at least $3.8 billion to states and localities each year.[19] These dollars flow to local police departments, prosecutors, courts, prisons, and reentry programs.[20] These grants are critical to states and cities, which have come to rely on annual federal largesse. Additional programs send billions in dollars and equipment to law enforcement for fighting terrorism and other purposes; the Department of Homeland Security alone awarded nearly $1 billion in 2013.[21]

Congress should lead a coordinated effort to reorient all federal criminal justice grants toward the goals of reducing mass incarceration and better reducing crime. One way to reorient these grants is to implement "Success-Oriented Funding" to all federal criminal justice programs that fund crime fighting and other criminal justice activities. Because these dollars travel across the country, implementing Success-Oriented Funding into federal grants can shift practices and outcomes across the country.

In June 2014, President Obama introduced his FY 2015 Budget proposal for the Department of Justice, which requests $27.4 billion for the Justice Department, of which $173 million is set aside for targeted investments for criminal justice reform efforts. The President's budget provides a needed boost to the types of competitive, evidence-based grant programs that make better use of taxpayer dollars. His budget also improves the Byrne JAG program, by calling for an additional $45 million to be funded through competitive grants that are conditioned on potential Byrne JAG program recipients making a good case for how they will use the money. The budget also creates a $15 million incentive grant program, essentially bonus money for which states and localities can compete.

The Brennan Center supports these efforts because they move budgeting and funding toward Success-Oriented Funding by holding recipients of federal dollars accountable for their spending choices by implementing direct links between funding and proven results. Members on both sides of the aisle also support criminal justice funding reform. House Judiciary Committee

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[19] The authors calculated this total based on a thorough search for data available online for each grant program the federal government offered in 2013 to support criminal justice activities. The authors found this data primarily on websites hosted by federal agencies that offered 2013 grant opportunities. Where 2013 data was unavailable for an identified criminal justice program, the authors instead compiled data on the most recently available year. The authors excluded programs dedicated to national security purposes in order to determine the particular total amount the federal government spends for criminal justice purposes. Based on its limitation to publicly available data, it is possible this calculation does not include all data for all federal grants that support criminal justice activities. However, it includes a robust compilation of available data. Data on file with the authors.

[20] For example, DOJ alone offers federal financial assistance to a broad range of criminal justice actors, including scholars, practitioners, experts, state and local governments and agencies, crime victims, and law enforcement agencies. *See Grants*, DEPARTMENT OF JUSTICE, http://www.justice.gov/business/ (last visited July 25, 2014).

[21] DEP'T. OF HOMELAND SECURITY, FY 2013 HOMELAND SECURITY GRANT PROGRAM (HSGP) 1 (2013), *available at* http://www.fema.gov/media-library-data/8d0439562c89644a68954505a49cbc77/FY_2013_Homeland+Security+Grant+Program_Fact_Sheet_+Final.pdf

Chairman Robert W. Goodlatte (R-VA) stated "grant programs are not always designed or administered as efficiently as they should be – which means that less money is actually sent to help the boots on the ground." Congressman Robert Scott (D-VA) expressed a similar concern about the need to ensure successful returns on our investments in grant dollars. Success-Oriented Funding allows Congress to ensure the criminal justice system is producing results while not increasing unintended social costs. Success-Oriented funding principals improve the use of taxpayer money, promote accountability and reduce government waste.

III. SECURING OUR NATIONAL SECURITY MUST BE BALANCED WITH THE NEED TO PROTECT CIVIL AND HUMAN RIGHTS

A. Profiling

Our country is founded on the principle that all Americans – regardless of race, religion or ethnicity – will be treated equally by our government. Many of us, or our ancestors, came to America fleeing religious persecution and discrimination and in search of a country that would allow us to follow our consciences free from harassment. As our law enforcement agencies carry out the enormous responsibility of keeping us safe, they must do so consistent with these values and relying on the strength of our communities.

Selecting individuals for law enforcement scrutiny on the basis of race has long been recognized as both wrong and ineffective. Nonetheless, racial profiling persists and, since 9/11, has been joined by the equally invidious practice of religious profiling.

As a consequence, many law enforcement agencies have instituted polices that target individuals for scrutiny because of their religion. In particular, evidence is mounting that law enforcement agencies deliberately target American Muslims for surveillance without any basis to suspect wrongdoing.

The NYPD, for example, has for years run a program that monitors American Muslim communities living in the tri-state (New York, New Jersey, and Connecticut) area.[22] This surveillance appears to be based on religion, rather than any specific leads or other objective reasons to suspect wrongdoing. It has also been ineffective, generating no leads or prosecutions.[23]

Unfortunately, the NYPD is not alone in its efforts to map American Muslim communities. The Federal Bureau of Investigation (FBI) has carried out similar programs.[24] It has also assigned

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[22] Matt Apuzzo & Adam Goldman, *With CIA Help, NYPD Moves Covertly in Muslim Areas,* ASSOCIATED PRESS (Aug. 23, 2011), *available at* http://www.ap.org/Content/AP-In-The-News/2011/With-CIA-help-NYPD-moves-covertly-in-Muslim-areas.

[23] Adam Goldman & Matt Apuzzo, *NYPD: Muslim Spying Led to No Leads, Terror Cases,* ASSOCIATED PRESS, (Aug. 21, 2012), *available at* http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases.

[24] *See e.g.,* Federal Bureau of Investigation, Electronic Communication: Detroit Domain Management, (July 6, 2009) *available at* http://www.aclu.org/files/fbimappingfoia/20111019/ACLURM011609.pdf (documenting the FBI's attempt to open a "Domain Assessment" in Michigan based on the fact that Michigan has "a large Middle-Eastern and Muslim population").

informants to infiltrate mosques and report on congregants.[25] And it has systematically kept tabs on the lawful First Amendment activities of American Muslims.[26]

This type of institutionalized religious profiling draws upon the explicit connection some law enforcement agencies, particularly the NYPD and the FBI, have drawn between religiosity and terrorism. But such profiling is just as pernicious and ineffective as profiling on the basis of race or ethnicity.[27]

The mass interviews and detention of Muslims after 9/11 failed to turn up a single known connection to the 9/11 attacks; similarly, no terrorism or national security charges resulted from the mass interviews of Muslim immigrants leading up to the 2004 election.[28] There is no evidence that the NYPD's widespread mosque infiltration has uncovered any existing terrorist plots, and indeed, senior CIA officials have described a similar program of mosque infiltration that the CIA undertook overseas as ineffective.[29]

What is clear, however, is that profiled groups come to resent and fear the police in their communities. The same holds true for religious profiling, and there is ample evidence that the above activities have triggered — as one national Muslim organization testified before Congress — "fear and suspicion within the Muslim community toward law enforcement."[30]

In short, religious profiling creates the same injustices and harms that are generated by racial and ethnic profiling. It burdens American Muslims' fundamental right to practice their religion without unwarranted government scrutiny. It is ineffective in preventing criminal and terrorist activity. It may be counterproductive because it breeds resentment among Muslim communities and therefore discourages their cooperation with law enforcement. Finally, it perpetuates negative stereotypes about Muslims and thus feeds into a poisonous dynamic of bias and intolerance.

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[25] *See* Transcript of Record at 668, United States v. Cromitie, No. 09-558 (S.D.N.Y. Oct. 18, 2010); Second Amended Complaint at 24-25, Monteilh v. FBI, No. 8:2010-cv-00102 (C.D. Cal. Sept. 2, 2010).

[26] RECORDS MGMT. DIV., FED. BUREAU OF INVESTIGATION, FOI/PA NO. 1071083-001, RESPONSE TO FREEDOM OF INFORMATION ACT REQUEST BY AMERICAN CIVIL LIBERTIES UNION FOR SURVEILLANCE RECORDS ACLU-25 (on file with the Brennan Center).

[27] *See* FAIZA PATEL, RETHINKING RADICALIZATION, (Brennan Center for Justice at NYU Law, 2011), *available at* http://brennan.3cdn.net/f737600b433d98d25e_6pm6beukt.pdf.

[28] Tom R. Tyler, Stephen J. Schulhofer & Aziz Z. Huq, *Legitimacy and Deterrence Effects in Counter-Terrorism Policing: A Study of Muslim Americans*, 44 LAW & SOC'Y REV. 365, 396 (2010).

[29] Seth Freed Wessler, *A Closer Look at Ray Kelly's Multi-Billion Dollar Army of Spies*, COLORLINES, (Mar. 1, 2012), http://colorlines.com/archives/2012/03/ray_kelly_multi-billion_dollar_army_profling_spying_muslims.html.

[30] *See e.g. Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. 62 (2010) (written testimony of Farhana Khera, President and Exec. Dir., Muslim Advocates); *Radicalization, Information Sharing and Community Outreach: Protecting the Homeland from Homegrown Terror: Hearing before the Subcomm. on Intelligence, Info. Sharing and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 110th Cong. 6 (2007) (statement for the record of Sireen Sawaf, Gov't Relations Dir., S. Cal. Muslim Pub. Affairs Council), *available at* http://hscdemocrats.house.gov/SiteDocuments/20070405120720-29895.pdf; Nicole J. Henderson et al., U.S. Dep't of Justice, *Policing in Arab-American Communities After September 11* ii (2008), *available at* https://www.ncjrs.gov/pdffiles1/nij/221706.pdf.

On December 8, 2014, the Department of Justice (DOJ) issued new Policy Guidance on the use of profiling by federal law enforcement agencies.[31] On its face, the new Guidance appears to make some improvements to the previous rules, last revised in 2003. Most notably, it extends the prohibition on racial and ethnic profiling to include "gender, national origin, religion, sexual orientation, or gender identity."[32] The Guidance also purports to cover "all enforcement activities other than routine or spontaneous law enforcement activities." However, it creates new loopholes within this category; as a result, the rules may actually offer less protection in some circumstances than the previous version. Moreover, ambiguous language in the text and in footnotes makes the guidance more likely to create confusion rather than to clarify it.

- **Agencies and Personnel Affected.** The Guidance appears to cover "all activities"[33] conducted by federal law enforcement agencies. But in a footnote the new Guidance explicitly exempts "Federal non-law enforcement personnel" from coverage. Such exempt personnel arguably include FBI intelligence analysts, as well as other DOJ employees, and large swaths of personnel in other federal agencies, such as the Department of Homeland Security, the Department of Defense, and the Department of the Treasury.
- **Border Activities.** Whereas the previous rules did not cover law enforcement activities at the border, the new Guidance retains that loophole and expands it further. The Guidance "does not apply to interdiction activities in the vicinity of the border, or to protective, inspection, or screening activities."[34] Interdiction is a broad term that could refer to drug enforcement, immigration enforcement, customs enforcement, and other criminal activities within 100 miles of the border.
- **Treatment of Non-Routine Enforcement Activities.** The previous rules distinguished between "routine or spontaneous law enforcement activities" and "specific investigations," allowing officials to consider race and ethnicity in the latter context if persons of a particular race or ethnicity were reliably linked to "an identified criminal incident, scheme, or investigation." The new Guidance adds "a threat to national or homeland security, a violation of Federal immigration law, or an authorized intelligence activity" to the list. The last category, in particular, creates a circularity in which intelligence activities may take race and other characteristics into account so long as the activities are authorized.
- **National Security Exemption.** While the previous rules exempted national security activities, the new Guidance removes that exemption by name. But at the same time, the new loophole for considering race and other characteristics if linked to "a threat to national or homeland security" or "an authorized intelligence activity"[35] creates ambiguity at a minimum, and could become its own *de facto* exemption for national security activities. Indeed, the examples provided in the Guidance make clear that profiling will be broadly tolerated in national security and intelligence investigations: they endorse the consideration of prohibited "characteristics" in conducting "source

[31] U.S. DEPT. OF JUSTICE, GUIDANCE FOR FEDERAL LAW ENFORCEMENT AGENCIES REGARDING THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY (Dec. 2014), *available at* http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf
[32] Id. at 2.
[33] Id. at 2.
[34] Id. at 2, n. 2.
[35] Id. at 4.

recruitment"[36] relevant to an authorized intelligence activity, as well as the mapping of specific ethnic communities "if it is undertaken pursuant to an authorized intelligence or investigative purpose."[37]

- **Application to State/Local Law Enforcement.** The previous rules regulated only federal law enforcement agencies, and thus did not cover the state and local police departments at all. The new Guidance applies to state and local police participating in federal law enforcement task forces.[38] But to the extent that the Guidance is an improvement over past policy when it comes to "routine or spontaneous" law enforcement activities, it still fails to leverage all federal power to regulate state and local law enforcement activities.
- **Enforcement.** The 2003 rules provided no enforcement mechanism whatsoever. The new Guidance will treat allegations of unlawful profiling "just like other allegations of misconduct."[39] But given the ambiguity of the Guidance and remaining loopholes, greater oversight and transparency of federal law enforcement training will be required.

As an unjust and ineffective technique, there should be no loopholes to allow the use of racial, ethnic, gender, national origin, religious, sexual orientation or gender identity profiling in national security cases, in intelligence gathering activities, or at the border. It makes no sense to prohibit profiling in routine law enforcement scenarios, but then allow it to continue when the stakes are even higher. By the same token, strong anti-profiling rules should also apply to state and local law enforcement. There is simply no good argument for not extending such protections. Congress need not commandeer the states to achieve this goal; it could easily require compliance as a condition of continued federal funding for law enforcement.

Recommendation

- Congress should urge the Department of Justice to amend its 2014 Guidance to ban profiling in all contexts. The Guidance should apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds or access to federal law enforcement and intelligence systems.

B. Police Militarization

The shooting of Michael Brown in Ferguson, Missouri, has sparked a long overdue discussion about the militarization of local police. The funds and equipment funneled to local police departments to fight the "war on drugs" and the "war on terror" have given police access to military hardware that seems inappropriate for their role in America's communities. Moreover, these "wars" have altered the relationship between police and the populations they are sworn to protect, creating a counter-insurgency mindset in which the public is perceived as the enemy.

There is currently an array of federal grant programs that provide equipment and tactical resources to state and local law enforcement, including programs administered by the

[36] Id. at 8.
[37] Id. at 10.
[38] Id. at 1.
[39] Id. at 11.

Department of Defense (DOD), the Department of Justice (DOJ), and the Department of Homeland Security (DHS):

- **Department of Defense**. To date, Congressional concern over the militarization of police has focused on the DOD's "1033 Program," which provides surplus military gear – machine guns, grenade launchers, helicopters, and tanks – to state and local police. In 2013 alone, the 1033 Program transferred nearly $450 million worth of military equipment designed for the battlefields of Iraq and Afghanistan to civilian police.[40] Equally troubling, however, is the DOD's "1122 Program," which allows local police to purchase new military weapons and equipment with no federal oversight whatsoever.

- **Department of Justice**. The DOJ operates the "High Intensity Drug Trafficking Areas Program," which doled out more than $238 million in 2013 to help police fight drug crimes and terrorism.[41] In New York City, for example, police used the money to purchase surveillance vehicles and computer systems to store reams of innocuous information about law-abiding Muslims as if Brooklyn was Baghdad.[42] The DOJ also provides assistance to local police through the "Edward Byrne Memorial Justice Assistance Grant (JAG) Program," which, among other things, provides funding for body armor, weapons, helicopters, and even GPS tracking devices.[43]

- **Department of Homeland Security.** DHS runs the "Homeland Security Grant Program," which last year gave more than $900 million in counterterrorism funds to state and local police.[44] According to a 2012 report by Sen. Tom Coburn, this money has been used to purchase tactical vehicles, drones, and even tanks with little obvious benefit to public safety.[45] It also funds state and local "fusion centers" operating Suspicious Activity Reporting (SAR) programs, which have not been especially useful in preventing terrorist attacks, but contribute to the counterinsurgency mindset and raise serious civil liberties concerns.[46]

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[40] *About the 1033 Program,* DEF. LOGISTICS AGENCY DISPOSITION SERV., http://www.dispositionservices.dla.mil/leso/Pages/default.aspx (last visited Dec. 4, 2014).
[41] *DEA Programs: High-Intensity Drug Trafficking Areas (HIDTAs)*, DRUG ENFORCEMENT ADMIN., http://www.dea.gov/ops/hidta.shtml (last visited Dec. 4, 2014).
[42] Eileen Sullivan, *White House Helps Pay For NYPD Muslim Surveillance,* ASSOCIATED PRESS, (Feb. 27, 2012), *available at* http://www.ap.org/content/ap-in-the-news/2012/white-house-helps-pay-for-nypd-muslim-surveillance.
[43] LAURA WYATT, GRANT ACTIVITY REPORT: JUSTICE ASSISTANCE GRANT (JAG) PROGRAM, APRIL 2012-MARCH 2013, 4 (Bureau of Justice Assistance, 2013), https://www.bja.gov/Publications/JAG_LE_Grant_Activity_03-13.pdf; BUREAU OF JUSTICE ASSISTANCE, EDWARD BRYNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM- FREQUENTLY ASKED QUESTIONS, 12 (2014), https://www.bja.gov/Funding/JAGFAQ.pdf; BUREAU OF JUSTICE ASSISTANCE, TRACKING DEVICES FOR VULNERABLE POPULATIONS, (2013) https://www.bja.gov/Funding/TrackingDeviceFunding.pdf.
[44] *DHS Announces Grant Allocation for Fiscal Year (FY) 2013 Preparedness Grants,* DEPT. OF HOMELAND SECURITY, http://www.dhs.gov/news/2013/08/23/dhs-announces-grant-allocation-fiscal-year-fy-2013-preparedness-grants (last visited Dec. 4, 2014).
[45] *See generally* Senator Tom Coburn, *Safety at Any Price: Assessing the Impact of Homeland Security Spending in U.S. Cities,* (Dec. 2012), *available at* http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=b86fdaeb-86ff-4d19-a112-415ec85aa9b6.
[46] *See generally* Michael Price, National Security and Local Police (Brennan Center for Justice at NYU Law, 2013), http://www.brennancenter.org/sites/default/files/publications/NationalSecurity_LocalPolice_web.pdf .

The White House recently conducted a review of these programs and found that they "do not necessarily foster or require civil rights/civil liberties training" and "generally lack mechanisms to hold [local law enforcement] for the misuse or misapplication of equipment."[47] The report called for an Executive Order designed to improve federal coordination and oversight as well as increase training requirements and local community engagement. While such reforms are certainly needed, the review failed to address a more fundamental question: Should local police have military equipment in the first place?

To be sure, it is important to protect police officers from harm, and in limited situations, that might mean the use of body armor or a SWAT team. But as a general rule, the focus should be on how the police can protect the people they serve, not the other way around. It is therefore critical to weigh the pros and cons of these federal programs and assess whether they should continue at all.

Congress should be attuned to the drawbacks of putting military hardware in the hands of local police interacting with a civilian population. Easy access to such equipment incentivizes its use and encourages the counter-insurgency tactics that have become a part of American policing.

In addition to better oversight and training, it is equally important to find ways to combat the consequences of the war paradigm: the encouragement of a mindset that views residents as potential threats rather than potential partners. This approach is fundamentally at odds with community policing strategies that emphasize building trust and cooperation between the police and the people they serve, which have long been at the center of the Justice Department's stated philosophy. Federal dollars should flow to support – rather than undermine – this goal.

Recommendations

- Congress should review all federal programs providing military equipment to state and local police and assess whether the programs should continue given the harm to community policing efforts and erosion of community trust.
- Based on its review, Congress should impose limits on the flow of military equipment to state and local police and eliminate exceptions for counter-drug or counter-terrorism activities.

IV. CONCLUSION

The Brennan Center thanks the Senate Judiciary Committee, Subcommittee on the Constitution, Civil and Human Rights. We appreciate the opportunity to submit written testimony on the state of civil and human rights and to offer our recommendations on ways to improve upon and advance protections in these areas.

[47] Executive Office of the President, Review: Federal Support for Local Law Enforcement Equipment Acquisition, 3 (Dec. 2014) http://www.whitehouse.gov/sites/default/files/docs/federal_support_for_local_law_enforcement_equipment_acquisition.pdf .

Militarized Police, Mourning Families

A letter from the family of Matthew David Stewart

Imagine turning on the television to see a breaking news story about a shooting in your community, only to see that your child's address is listed as the location of the shooting.

Imagine seeing footage of a SWAT team entering your son's home—a man who had never run afoul of the law previously.

Imagine learning that the house was raided and people were shot, not knowing who or why.

Imagine, as a mother, learning that your son was one of the people shot, and that you cannot hold, comfort, or even see him.

Imagine watching helplessly while police and prosecutors tarnish your son's name in the media by claiming he was a "cop killer" merely because he defended himself against people he believed were breaking into his home, not realizing it was the police.

This was our experience on January 4, 2012, as our son and brother, Matthew David Stewart, was the target of a botched raid.

Six officers were wounded that fateful evening, one of whom died of his wounds. Matthew was shot four times.

Matthew missed Thanksgiving and Christmas this year as he sat in jail—where he died in 2013, allegedly taking his own life out of despair and lack of faith in the judicial system.

Two deaths, multiple injuries, and profound chaos and controversy—and all of it avoidable.

From Matthew's mother, Sonja

I have never been the same since my son was taken from me unnecessarily. Matthew was my firstborn—the child that had my total attention from day one. We raised him, like our other children, in a close-knit community; he was taught from his youth that America was a nation with God's blessing.

Losing my son due to the law enforcement system has caused me to see things in a totally different light than my previous idyllic days of contentment and ignorance. Today, I am disgusted with police officers and no longer trust their judgment. I recognize that their power is significant, their training inadequate, and their people skills leaving much to be desired.

I do not believe that they understand, let alone adhere to, the U.S. Constitution. They generally do not serve the citizens who employ them; law enforcement culture has a pervasive and persistent "them or us" mentality.

My son was taken from me because of a few plants. Law enforcement officers took no interest in the fact that my son chose to self-medicate with marijuana for his depression. Although illegal, this action did in no way deserve the response meted out against him.

I am torn apart thinking of Matthew's experience on that awful night. His wounded body was dropped, mostly naked, to bleed out in the street in the dead of winter. Neighbors informed me that the officers dragged him outside while kicking and spitting on him.

I miss who I was before my son was taken from me. I miss being cheerful and outgoing. This entire process made me physically ill for a prolonged period, and I remain under a doctor's care. It has affected every single personal relationship I have. I miss the way things were before. I miss my son.

I am tired of talking—I want reform, and I want it yesterday. Do we allow this horrid, evil violation of our inalienable rights to continue? How many more officers and individuals—people with family members who love them—need to needlessly die before the system changes?

We need more "peace" officers and less "law enforcement" officers—if officers in my community had operated under this different and proper mindset, my Matthew would still be alive.

From Matthew's father, Michael

Nearly three years ago, our family experienced what no one should have to endure.

My wife called me into the living room to see that Matthew's address was being publicly broadcast, revealing that there had been a shooting. I felt like someone had kicked me in the stomach. Sent into shock at the thought of what could have happened, I got in my truck and headed to my son's home.

I attempted to find out what was happening but was turned away by police officers. My wife and I soon made our way to the hospital to determine our son's condition; we wanted to be with him. They didn't even know the name of the person police had shot, who they were now treating—we had to provide it to them. From that day on, authorities denied us any contact with our Matthew.

It's hard to put into words the feelings I felt as we endured the media's reports, regurgitating the claims of law enforcement officials. They accused Matthew of being a "cop killer" and made claims about terrorist affiliations or possession of child pornography, which were later quietly retracted after the damage had been done.

Matthew served with honor in the Army and helped protect our nation. He received many commendations and had never been in trouble with the law. His self-medication, while illegal, was not a violent crime, nor did it affect or influence others; he was not distributing the prohibited plants.

The more we learned about what really happened, my eyes became gradually opened to the injustice that exists within the "justice" system. I've often asked myself what the police were protecting the community from by invading my son's home with weapons drawn because of some

plants. I wonder why they served a daytime warrant in the dark of night, or why they were in plain clothes while entering Matthew's home, screaming, with weapons at the ready. I wonder why no investigation was performed prior to banging down that door. I wonder how things would have been different if police officers had done their job properly.

I have lost confidence in the criminal justice system, having now been subjected to heartless brutality by those who are supposed to protect and serve my community. I laugh at the notion that we are presumed innocent until proven guilty.

Our family is forever wounded because of the actions of these government agents, aggressively enforcing a law that in no way merited the excessive force used against my son. We do not trust these individuals, and I personally have contempt for the lies that have been told about my son, as officers "circled the wagons" to protect one another against negative publicity and legal repercussions.

Matthew is alleged to have committed suicide in jail, but the authorities bear blame for failing to protect him while he was in their custody. They are responsible for his death.

Having been put through this traumatic situation, we have met many other families in similar circumstances who have lost loved ones due to the actions of police officers all too willing to shoot first and ask question slater. Collectively, we perceive the criminal justice system to be broken, police officers unworthy of our trust, and government agents at both a local and a national level out of touch with the reality of what is happening in and to this country.

It won't change until police officers are held accountable for their misdeeds, rather than receiving proverbial slaps on the wrist or outright justifications for their unjust actions.

My son's home was forcibly invaded by police officers in plain clothes. As a result, two people died, and several officers were wounded. But the impact certainly does not end there; our family is suffering, and Matthew's friends and loved ones still deal, in a very real and raw sense, with the consequences of this aggressive and unrestrained police behavior.

What's especially tragic is the sad truth that it was all avoidable.

From Matthew's sister, Rachel

The injustice done towards my brother has rocked me to my core. It happened only a week after I became a mother—one which no longer knew what kind of world she had brought a baby into.

What would I teach my child about the government, or the police—that they are here to help us when in need? That they are honest and serve the people who employ them?

Or do I teach them the awful truth forced upon me through the actions against my harmless brother—that they are agents of corruption and brutality? That our lives are not of value to them? That if you make a mistake they claim (and exercise) the right to break down your door, violate the sanctity of your home, and attempt to (or actually) take your life?

I am a nurse by profession, and the actions of the police in my community—in Matthew's case and others—have affected my outlook there as well. I work very hard to heal and improve the lives of my patients, yet around me I see law enforcement officers justified in unnecessarily harming or terminating the lives of these people.

Matthew met my infant son—his first nephew—through a small, blurry video display in the Ogden jail. My son only knows about "Uncle Mashew" through photos.

Despite creating new life, I cannot overcome the loss of Matthew's. There is a void at every family gathering; I am no longer part of a family of seven, but rather six.

Why? Because of the aggressive, unnecessary, and entirely preventable violent enforcement of a minor offense.

My brother is not just a headline or a statistic—he is a man who was and is loved, mourned for, dreamt about, cried over, and deeply, heart-wrenchingly missed.

God help us to change a system that can ruin—and has ruined—so many lives.

 Norman C. Rabin

December 9, 2014

Re: Email, in advance of Testimony, for the Hearing process, of Hearing on "The State of Civil and Human Rights in the United States", hearing held, today, December 9, 2014
Re: Request to be (at least) temporarily alleviated from U.S. Government non-consensual, electromagnetic signals monitoring and assault [a day and night governmental infliction], in such a way as interferes with my best submitting TESTIMONY, to you;
Re: Thank you to Stephanie

Attn: Hearing on "The State of Civil and Human Rights in the United States", of December 9, 2014
U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050 / telephone: 202-224-7703

Dear Honorable Chairman Senator Richard J. ["Dick"] Durban, and Honorable Ranking Member Senator Rafael E. ["Ted"] Cruz, and the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights,

Thank you for scheduling your hearing of today on "The State of Civil and Human Rights in the United States".

The first purpose of this email is to thank Stefanie [Trifone] for the submission information, so that written submissions can be considered, as part of the Hearing process, for your [above-noted] Hearing of today.

The second purpose of this email is to register my intent to [timely] submit Testimony toward your subcommittee Hearing of today, and to request your help to be (at least) temporarily alleviated from Ongoing, day and night, U.S. Governmental non-consensual, electromagnetic signals monitoring and assault, of my human body and brain, which I am being subjected to [and which includes even attack at my memory formation! and at deep brain memory related processes! during my human sleep]. I request (at least) temporary alleviation from ANY U.S. Governmental [electromagnetic signals] monitoring and assault [upon my body and brain] which might interfere with my best submitting my TESTIMONY to you. Thank you.

It's nice that we have newspapers, television, and other media, which bring forth public discussion of Criminal Justice (appropriate punishment, crime prevention, and prison release toward a law abiding, economically viable, life), Police Practices (searches, appropriate use of force), Community Relations (with law enforcement, and with the governments of municipalities which empower them), and Voting Rights issues.

However, there are Civil Rights and Human Rights problems, in the United States, which may be QUITE LARGE, AND/OR MORE EGRATIOUS, and which ought to demand inclusion within your attention, today, as well.

Could we mention 'Human Rights', but for example, ignore Governmental SLAVERY, if the U.S. Government, or States, were Blatantly keeping slaves?

I come forward not to allege slavery. But: I here come forward as an individual, and as a member of National Crime Victims' Organizations, FFCHS, Freedom From Covert Harassment and Surveillance, to here register my intent to come forward to your Hearing process, regarding: a Wrongdoing which

amounts to 'involuntary servitude', and a state of 'peonage', upon hundreds of citizen victims of Ongoing, Non-Consensual, U.S. 'Classified' Human Research / Experimentation [Research, Development, Testing, and Evaluation,] which performs electromagnetic signals monitoring and harassment and assault upon the human body and brain, typically day and night, 7 days a week, and for many [including myself], for years and years [10, 15, 20+ years!], and with 'no end in sight'.

The 13th Amendment [to the U.S. Constitution] forbids involuntary servitude, yet surely the U.S. Government has sought to 'gain' [technology?, science knowledge?, software quality-assurance/ complexity/robustness?], from their brain and body monitoring and surveillance program; that sounds to me like Servitude to a Governmental project.

The 5th Amendment requires no deprivation of liberty [or life, or property] without due process of law; but no written NOTICE has been presented to myself or other victims, to allow us to challenge such the illegal governmental action [bodily: surveillance, monitoring, and assault]. How can each such victim reasonably make his or her case? without Notice, and without a designated Forum [a Special Court?, or, Governmental Office?] to go to for such matters, which have been treated as 'classified' matters?

The 4th Amendment forbids violations of the security of one's person [and papers and effects], without a warrant. But, even after the U.S. Supreme Court [June 2014] has confirmed that searches of a person's cell phone requires a warrant, in the case of myself and many other FFCHS member victims, OUR very BODIES [which are, logically, more private than a cell phone!] are being violated by electromagnetic signals which are capable of: interacting with; and, intercepting bodily information from; and, interfering with;, OUR BODILY PROCESSES [including human electrophysiology processes, which are the processes most directly being 'monitored' and 'assaulted', but also including other bodily processes as well [for example: cognitive processes, via cognitive intrusion with 'sound', 'voice', and/or 'visual imagery' imposed upon the sleeping or waking mind, and other senses reachable via the human nervous system and brain [e.g., stimulation/neurological replay of taste, smell, or 'sugar-specific' appetite sense]; and there are allegations that cellular processes are sometimes targeted or effected; and, overall bodily stress].

The 8th Amendment forbids Cruel and Unusual treatment. And, the ICCPR, and the Convention Against Torture [CAT], which our U.S. has Ratified, further forbid degrading treatment and non-consensual scientific [including 'national security related scientific'] experimentation. [ICCPR, Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."] [CAT: Adopts the 1st sentence of ICCPR Article 7, and provides detailed rules for implementation and adherence, and further, CAT article 16 WIDENS CAT obligations to include 'other forms of' cruel, inhuman or degrading treatment or punishment. CAT, Article 16: "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, ... In particular, the obligations contained in articles 10 [education], 11 [review], 12 [investigation] and 13 [right to complain, and for complaints to be impartially evaluated] shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."]

[CAT, Article 1, defines Torture to include: " "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining .. information or a confession, punishing him for an act he or a third person .. committed or is suspected of .., or intimidating or coercing him or a third person". Many victims, myself including, are intimidated, and therefore effectively coerced, by transmitted threats (variously during our daily lives),

where those threats refer to assault, degrading or cruel treatment, or even torture, which has one or more times in the past been inflicted upon the victim. I myself have been terrorized for years, concerning [satellite rape of a sleeping male human being], and thereby I am in effect caused: to make various phone calls [to U.S. Government], and to set alarm clock(s) during my sleep time, for periodic [[urination during sleep time]], in my efforts/hopes to be less at risk to [[satellite rape of sleeping male human being, which in the past typically has assaulted me synchronous my being subjected to transmitted artificial dreams (during sleep) depicting [[urination; or, other 'below the belt' related contents]].]

Thank you again for holding your hearing of today, and I hope that you won't attempt to 'improve one part of your house while a different part of your house is on fire or infested with ants, bees, birds, and mice.' A nation of liberty, a land of liberty, is where all law-abiding citizens enjoy liberty as much as possible, without detriment to law-abiding fellow citizens, in as sincere a manner as possible. It is sick folly for the U.S. Government to be involved in willful violations of constitutional rights and human rights.

I hope that you will include within the concern of your Hearing's process:

'Are there any Blatant and/or Egregious and/or Willful, Violations of Human Rights, by federal or state or local governments, or by private parties [if such private party violations are police-able], currently occurring, or repeatedly occurring, in the United States?'

Very Very Sincerely,
Norman C. Rabin

P.S. I notice that I share a birthday with Honorable Senator Ted Cruz. [I was born in 1960.] And, I appreciate that you held your hearing 1 day before the Anniversary of the [December 10, 1948] U.N. Declaration on Human Rights, and shortly before the Anniversary of the [December 15, 1791] Bill of Rights [Amendments 1 to 10] of the U.S. Constitution ['Bill of Rights Day']. And yet, 'every day is a day for the Bill of Rights, and the U.N. Declaration of Human Rights'.

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights hearing on
"The State of Civil and Human Rights in the United States"
December 9, 2014
2:30 P.M. Dirksen Senate Office Building Room 226
Written Testimony submitted by Congresswoman Judy Chu (CA-27)

Chairman Durbin, Ranking Member Cruz and Members of the subcommittee, thank you for holding this timely hearing on the state of civil and human rights in our country.

It has been nearly five months since Michael Brown was shot and killed on a street in Ferguson, Missouri. Two years before his death, almost to the day, the Sikh community was shaken to the core when a gunman opened fire at a Sikh gurdwara in Oak Creek, Wisconsin, killing six people and injuring others. These events are symbolic of the uncomfortable truth that racism and xenophobia are ever-present in the United States.

This hearing comes at a crucial time. It is colored by the recent rise in hate crimes, the release of long overdue profiling guidance from the Department of Justice (DOJ), and the news that the Muslim community is still being watched by our government. These events are continuous reminders that many communities of color are feeling that they are not being treated fairly under the law.

So much has changed since that unthinkable day on September 11, 2001, when two planes crashed into the World Trade Center. Among the impacts of 9/11 that we can never forget, we must include the ugly hate crimes that occurred and continue to occur.

That is why, as Chair of the Select Committee on Hate Crimes, I introduced AJR 64 in the California State Legislature, a resolution which condemned acts of violence and bigotry against Muslim Americans, Arab Americans, Sikh Americans and South Asian Americans. I'm proud to say that this resolution got a unanimous vote.

Yet as great as that moment was, I was quickly brought down to earth. After a Sikh American spoke at a press conference celebrating the resolution, he drove home, and stopped at a gas station in Los Angeles. He paid for gas and heard a commotion. As he stepped outside, he sees a man in his car, face beet red, sticking out his middle finger, and shouting uncontrollably, "F__ you! Take that rag off your head, and go back where you came from!"

Too many tragedies followed over the years.

In 2011, two Sikh men in Elk Grove, northern California were shot down while they were out on an afternoon stroll. They were not murdered for money; they were murdered for their turbans.

One year later, the shooting of a Sikh gudwara in Oak Creek, Wisconsin left six dead and several others injured.

And in September of this year, Linda Sarsour, a prominent Muslim community activist and her colleague, were chased down the street in New York by a man who threw a trash can at them and told them, "I'm going to cut your head off and see how your people feel about that."

These stories show us that we still have a long way to go as a nation to end the hate violence and xenophobia in the United States.

A dynamic of hostility and fear still surround many Muslim communities, and has resulted in troubling levels of violence and a rising tide of xenophobic rhetoric. The number of hate crimes targeting Muslim Americans increased by nearly 50% between 2009 and 2010, and since then, the number remains high. In New York City alone, there were 15 incidents of anti-Muslim hate crimes in 2014, compared with seven last year; 12 took place between July and August of this year. In 2012, half of Americans reported discomfort with women in burqas, mosques in their neighborhoods, or Muslims praying in airports.

Such xenophobia has found its way into the political sphere, where public officials have used divisive rhetoric and fear mongering in political discourse. Such rhetoric was seen in the March 10, 2011, Congressional hearing held by the House Homeland Security titled "The Extent of Radicalization in the American Muslim Community and that Community's Response." The hearing, spearheaded by Congressman Peter King (R-NY), claimed Muslim communities warranted suspicion and special scrutiny.

The rise of hate crimes in South Asian, Muslim, Sikh, Hindu, Middle Eastern, and Arab communities is compounded by the fact that these communities remain targets of discriminatory government policies, such as profiling and surveillance by law enforcement agencies at multiple levels. I was disturbed to learn that the New York Police Department (NYPD), with help from the Central Intelligence Agency (CIA), had a massive surveillance program targeting Muslim college students across the Northeast. It was also revealed that the NYPD's surveillance program spread to places where Muslims eat, shop, and worship. Yet, there was no evidence of wrongdoing by any of the targeted individuals and the program failed to yield a single terrorism investigation or lead. NYPD recently decided to dismantle the very unit that targeted Muslim student groups, but this is only the first step as other biased policing programs remain in place.

In addition, the mapping of Muslim American communities is widely being used by federal law enforcement. The Federal Bureau of Investigation (FBI) is authorized to "identify locations of concentrated ethnic communities" if the locations will "reasonably aid in the analysis of potential threats and vulnerabilities." National security must be a priority for this country, but it cannot serve as a justification to arbitrarily target people simply based on their faith or appearance.

When entire communities are cast as being suspicious by law enforcement, there are serious consequences for our nation. A study by the Muslim American Civil Liberties Union found that NYPD spying both interfered with religious life and expression, and chilled freedom of speech. Furthermore, such tactics build mistrust between law enforcement and the communities they target. Muslim Americans are expected to report incidents of hate crimes to the very same law enforcement agencies that are conducting surveillance of their communities. We must end the

massive surveillance programs, and instead work to build relations based on understanding and trust with the Muslim American community.

As Chair of the Congressional Asian Pacific American Caucus (CAPAC), I am working to prevent profiling within our communities. Policies at the legislative and administrative level still allow profiling to occur at airports, at the border, and at the hands of state and local law enforcement. For many years now, I have continually pressed Attorney General Eric Holder to update the Department of Justice's (DOJ) 2003 Guidance on the Use of Race by Federal Law Enforcement to include a ban on profiling based on religion and national origin, and to close the loopholes that allow law enforcement to profile at airports and at the border.

Just yesterday, Attorney General Eric Holder released much anticipated updates to the DOJ's profiling guidance. This comes at a crucial time when communities of color are increasingly feeling that they are being treated differently by law enforcement and before the law. These changes are a positive step forward in that religion and national origin are included in the definition of profiling, and that data collection and enhanced training will be required by law enforcement.

And Congress must not shy away from its responsibility to address racial profiling and our broken criminal justice system. We must pass the End Racial Profiling Act, which was introduced by Congressman John Conyers and Senator Ben Cardin. This important piece of legislation would play a significant role in prohibiting law enforcement agencies from engaging in racial profiling, and would ensure accountability by offering sanctions and remedies for violations of law.

In addition, the updated profiling guidance retains concerning loopholes for the FBI, Transportation Security Administration and Customs and Border Patrol that would allow law enforcement to continue using biased-based profiling. These entities will still have a license to profile racial, religious and other minorities at the border under certain national security contexts. Law enforcement's practice to map entire communities based on their race, ethnicity and religion will still continue. These gaps are particularly troublesome to American Muslim and South Asian communities, who are increasingly subject to this type of surveillance. Our work is not done here. We must continue to press for meaningful changes through implementation of the new guidance.

There is a tide turning in our country. Communities of color are increasingly feeling as if they are being left out and treated unequally before the law. But, Ferguson and protests around the country tell us that these communities are speaking up and demanding real change. As we have more and more persons from diverse backgrounds speak out against injustices as well as racially and religiously motivated attacks and rhetoric, it is my hope that we will have a country that will be inclusive of all people, where no one feels unsafe, unequal, or un-American because of the color of their skin or their faith.

the CAMPAIGN for the FAIR SENTENCING of YOUTH

TESTIMONY PRESENTED TO THE U.S. SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS
DECEMBER 9, 2014

Mr. Chairman and Subcommittee Members:

I am pleased to submit testimony on the use of life without parole sentences on children convicted of serious crimes in the United States on behalf of the Campaign for the Fair Sentencing of Youth (CFSY).

The CFSY is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement age-appropriate alternatives to the extreme sentencing of America's youth with a focus on abolishing life without parole sentences for all youth. We work closely with formerly incarcerated youth, family members of victims, and family members of incarcerated youth to help develop sentencing alternatives for children that focus on their rehabilitation and capacity for reintegration into society. We work with policymakers across the political spectrum as well as a variety of national organizations to develop policy solutions that will keep our communities safe and hold children accountable in a fair and age-appropriate way when they are convicted of serious crimes.

Life Sentences Without the Possibility of Release for Children in the U.S.

Today, approximately 2,500 individuals have been sentenced to life without parole for crimes committed as children. A total of 39 states, the District of Columbia, and the federal government permit children to be sentenced to die in prison. At the state level, two-thirds of all individuals sentenced to life without parole for crimes committed as children reside in just five states: California, Florida, Michigan, Louisiana, and Pennsylvania.

There are approximately three dozen individuals serving life sentences without the possibility of parole (LWOP) or release in the federal system for offenses committed when they were younger than 18 years old. Individuals as young as fifteen have been tried and sentenced to life in prison without the possibility of parole or release in the federal system. Most individuals serving these sentences are now in their thirties, with ages ranging from twenty-three to forty years old. The racial disparity is extreme: at least 73.7% are minorities. More than half of the individuals serving life without parole or release for crimes committed as children in the federal system are black.[1]

[1] Data from letter dated April 22, 2010, from Alecia S. Sillah for Wanda M. Hunt, Chief, FOIA/PA Section, Federal Bureau of Prisons, to Ashley Nellis, Ph.D., in response to a Freedom of Information Act request.

This sentence is a final judgment that disregards children's unique capacity to grow and change as they mature into adulthood. Studies have shown that children's brains are not fully developed. As a result, children are less capable than adults to consider the long-term impact of their actions, control their emotions and impulses, or evaluate risks and reward. They also are more vulnerable and susceptible to peer pressure.

We also know from experience and from behavioral and brain development experts that children possess a unique capacity for change. The vast majority of children who commit crimes age out of criminal behavior and no longer pose a threat to society in adulthood. This highlights the need for sentencing policies that reflect the scientific and developmental realities of children, and creates an all-out ban on life without parole sentences for children.

Our country's recognition that children are still developing and have lessened culpability is reflected in the limitations we place on them. We don't allow children to enter into contracts, purchase or consume tobacco and alcohol, vote, or engage in other adult activities. We should also look at children who commit crimes through this same lens.

The practice of sentencing children to die in prison stands in direct contradiction to what we know about children. These sentences also are most frequently imposed upon the most vulnerable members of our society. Nearly 80 percent of child lifers reported witnessing violence in their homes; more than half (54.1%) witnessed weekly violence in their neighborhoods.[2] In addition, 50 percent of all children sentenced to life in prison without the possibility of parole have been physically abused and 20 percent have been sexually abused during their life. For girls serving life without parole sentences, more than 80 percent have been sexually assaulted.[3]

Violation of International Human Rights

Article 37 of the U.N. Convention on the Rights of the Child (CRC) prohibits the use of "capital punishment and life without the possibility of release" as sentencing options for people younger than 18.[4] The United States and Somalia are the only countries that have not ratified this Convention, which prohibits this cruel and unusual punishment.[5] The U.S. played an integral leadership role in the development of the CRC; yet the federal government and many state governments do not adhere to its landmark protections for children, including banning the use of life without the possibility of release as a sentencing option for children.

On November 20th, 2014, the U.N. Committee Against Torture, made the following recommendation to the United States:

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[2] *The Lives of Juvenile Lifers,* The Sentencing Project, March 2012, http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf
[3] *Id.*
[4] U.N. Convention on the Rights of the Child, http://www.ohchr.org/en/professionalinterest/pages/crc.aspx
[5] U.N. Treaty Collection, http://www.unicef.org/crc/index_30229.html

> "The State party should abolish the sentence of life imprisonment without parole for offences committed by children under 18 years of age, irrespective of the crime committed. Enable child offenders currently serving life without parole to have their cases reviewed by a court for reassessment and resentencing, to restore parole eligibility and for a possible reduction of sentence."

Under human rights norms, including various U.N. Conventions, the use of life without the possibility of parole or release sentences on children, constitutes a violation of human and civil rights. The United States remains the only country in the world that is known to sentence children to life without the possibility of parole or release.[6]

The U.S. Supreme Court & Extreme Sentences on Children

The United States Supreme Court, in a series of decisions during the last decade, has said that children are constitutionally different from adults and should not be subject to the nation's harshest punishments. In *Roper v. Simmons* (2005) the Court struck down the death penalty for children, finding it to be a violation of the 8th Amendment's prohibition on cruel and unusual punishment.[7] In that opinion, the Court emphasized the brain and behavioral development science showing that children are fundamentally different than adults in their development and that they have a unique capacity to grow and change as they mature.[8] In *Graham v. Florida* (2010) the Court struck down life without parole sentences for non-homicide offenses, holding that states must give children a "meaningful opportunity to obtain release."[9] Finally, in *Miller v. Alabama* (2012) the Court struck down mandatory life without parole sentences for homicide offenses, finding that sentencing courts must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."[10] The Court went onto say that the use of such sentences on children should be "uncommon."[11]

In the wake of the *Miller* decision, the U.S. Department of Justice has taken the position that it applies retroactively, and has allowed resentencing hearings for individuals previously sentenced to life to move forward. Today, 9 State Supreme Courts, including Wyoming, Texas, South Carolina, Mississippi, Nebraska, Massachusetts, Illinois, Iowa, and New Hampshire have ruled that *Miller* is retroactive and have ordered re-sentencing hearings in line with *Miller* for individuals currently serving life without parole for crimes committed as children. Unfortunately, 4 State Supreme Courts, including Minnesota, Louisiana, Michigan, and Pennsylvania, have ruled that Miller is not-retroactive, placing the individuals serving the sentence in those state in legal limbo for the time-being. On December 12, 2014, the U.S. Supreme Court granted Certiorari in *Toca v. Louisiana*, where it may definitively decide whether the *Miller* decision applies retroactively.

Support for Eliminating Life Sentences Without the Possibility of Release for Children

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[6] *Here Are All the Countries Where Children Are Sentenced to Die in* Prison, Huffington Post, Saki Knafo, September 20, 2013, http://www.huffingtonpost.com/2013/09/20/juvenile-life-without-parole_n_3962983.html
[7] *Roper v. Simmons*, 543 U.S. 551 (2005).
[8] *Id.*
[9] *Graham v. Florida*, 130 S. Ct. 2011 (2010).
[10] *Miller v. Alabama*, 132 S.Ct. 2455 (2012).
[11] *Id.*

Since the *Graham* and *Miller* decisions came down from the U.S. Supreme Court, there has been significant bi-partisan support to eliminate life without parole as a sentencing option for children.

In the past two-years, 6 state legislatures including Texas, Wyoming, West Virginia, Delaware, Hawaii, and Massachusetts have eliminated the use of life without the possibility of parole or release as a sentencing option for children. Prior to the *Miller* decision, legislatures in Kentucky, Kansas, Colorado, Montana, and Alaska had prohibited the use of the sentence on children. In addition, California, Washington, and Florida have limited the applicability of the sentence drastically; although, it remains a viable sentencing option for a small number of youth. And finally, Pennsylvania and North Carolina eliminated the sentence for felony murder cases. While there are some states that continue to allow the use of the sentence following *Miller*, there is a national trend beginning to move away from the practice of sentencing children to die in prison.

On October 25, 2014, the Criminal Justice Section of the American Bar Association approved a resolution, supported by the U.S. Department of Justice, which called on state and federal legislatures to prospectively and retroactively eliminate life without the possibility of parole or release as a sentencing option for children and ensure that they are provided with a meaningful opportunity to obtain release at a reasonable point into their incarceration.[12]

The American Correctional Association and the National Association of Counties both passed resolutions this year in support of eliminating life without parole as a sentencing option for children.[13] Across the political spectrum, there is a recognition that children are fundamentally different from adults and should be treated as such, even when they commit serious crimes.

The U.S. Sentencing Commission Guidelines, as well as federal sentencing laws, remain in violation of the 8th Amendment's prohibition on cruel and unusual punishment in light of both of the *Graham* and *Miller* Supreme Court rulings. Since these rulings came down, Congress has failed to bring the country's laws into compliance with the U.S. Constitution. The U.S. should follow the recent trend amongst states and align itself with international law on this issue.

Conclusion

Children can and do commit serious crimes. While they must be held responsible, our response should focus on rehabilitation and reintegration into society. As such, they should never be sentenced to life without the possibility of parole or release – a grave violation of human rights.

Thank you for the opportunity to submit this testimony. If you have any questions or want further information, please contact Jody Kent Lavy, Executive Director and National Coordinator for the Campaign for the Fair Sentencing of Youth, at jkent@fairsentencingofyouth.org or 202-289-4677. More information about the CFSY can also be found at www.fairsentencingofyouth.org.

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[12] http://www.americanbar.org/groups/criminal_justice/policy.html

[13] http://fairsentencingofyouth.org/wp-content/uploads/2014/10/ACA-Resolutions-and-Policies-on-Juveniles-Newly-Revised-and-Adopted.pdf; See also, http://www.naco.org/newsroom/countynews/Current%20Issue/8-25-2014/Pages/Resolutions-spark-debates-at-Annual-Conference.aspx

Page 1 of 7 Norman C. Rabin

December 15-16, 2014

Re: Testimony, for the Hearing process, of Hearing on "The State of Civil and Human Rights in the United States", hearing held, Tuesday, December 9, 2014
Re: Severe Ongoing Constitutional, and Human Rights Violations, via U.S. Government non-consensual, electromagnetic signals monitoring and assault of the human body and brain, day and night, against hundreds of U.S. Citizens [300 to 500 or probably more, across the U.S.]. There are many credible descriptions of interactive, real-time, day and night surveillance, monitoring, harassments, and assaults, since the early to mid 1990's, and advances in hardware and software, and probably mass production of hardware and/or other lowering of hardware costs, have enabled an overwhelming technology to be deployed on hundreds of citizens, day and night.

Re: This is not merely a privacy intrusive, or invasive, or assaultive 'monitoring of a person's thoughts and actions' and 'the deployment of harassments and assault, upon the thoughts, and upon the body, of that person'. It should be understood that this is an overwhelming technology. Overwhelming in 'electromagnetic signals power', and in speed of signals assault responsiveness. Besides from the physical and psychological stress which can result from any persistent harassment or affliction upon any human being, it is TECHNOLOGICALLY possible to overwhelm the human body, and brain, by electromagnetic-signals monitoring and assault technology which: has more electrical power than the human body uses as part of normal human electrophysiology; and, which has signals responsiveness [that is: how fast assaultive signals can be constructed or modified in response to a person's thoughts or actions] which is faster than the conscious mind, and non-mindful thoughts or actions [reflex actions, or trained skills or actions] of a human being. Also, the monitoring and assault technology is capable of 'blocking' or 'slowing' or [in effect] 'jamming' parts of the human brain or body which may happen to be currently faster than the signals response speed, thereby causing the person to be, in effect, overwhelmed/overpowered, even in instances where he/she might truthfully be able to have thoughts or actions of his/her own before the monitoring can detect them and possibly attempt to 'block', or to interfere with, such thoughts or actions. [[As if to say: 'let's block or interfere with this person thinking on their own concerning some chosen topic', or 'let's block or interfere with this person performing actions of their own concerning some chosen activity' (for example, a sports related or skill related activity).]]

Attn: Hearing on "The State of Civil and Human Rights in the United States", of December 9, 2014
U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050 / telephone: 202-224-7703

Dear Honorable Chairman Senator Richard J. ["Dick"] Durban, and Honorable Ranking Member Senator Rafael E. ["Ted"] Cruz, and the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights,

Thank you for scheduling your hearing of December 9, 2014 on "The State of Civil and Human Rights in the United States".

This TESTIMONY intends to bring forward, and to add to the TESTIMONY of others, concerning the above noted Ongoing Wrongdoing.

It's nice that we have newspapers, television, and other media, which bring forth public discussion of Criminal Justice (appropriate punishment, crime prevention, and prison release toward a law abiding, economically viable, life), Police Practices (searches, appropriate use of force), Community Relations (with law enforcement, and with the governments of municipalities which empower them), and Voting Rights issues.

However, there are Civil Rights and Human Rights problems, in the United States, which may be QUITE LARGE, AND/OR MORE EGREGIOUS, and which ought to demand inclusion within your attention, today, as well.

Could we mention 'Human Rights', but for example, ignore Governmental SLAVERY, if the U.S. Government, or States, were Blatantly keeping slaves?

I come forward not to allege slavery. But: I here come forward as an individual, and as a member of National Crime Victims' Organizations, FFCHS, Freedom From Covert Harassment and Surveillance, to your Hearing process, regarding: a Wrongdoing which amounts to 'involuntary servitude', and a state of 'peonage', upon hundreds of citizen victims of Ongoing, Non-Consensual, U.S. 'Classified' Human Research / Experimentation [Research, Development, Testing, and Evaluation,] which performs electromagnetic signals monitoring and harassment and assault upon the human body and brain, typically day and night, 7 days a week, and for many [including myself], for years and years [10, 15, 20+ years!], and with 'no end in sight'.

I am speaking from personal experience, and later in this Testimony I describe some details of my own case. A brief description is: since October-November 1990, I have personally been subjected to non-consensual, electromagnetic signals monitoring, and various harassments and assaults, of my body and brain, day and night, with 2-way 'voice to skull' communications, and thought reading (including audible reading aloud of my thoughts back to me, to my unequipmented head), and interactive assaults [I can subvocalize within my own head 'don't do that', and otherwise interact with it, and to try to urge 'them' to stop, or request that 'monitoring' parties try to intercede], and I am even targeted during my sleep by artificial dreams (composed visual scenes, with sound and/or voice contents).

As noted above, the Constitutional and Human Rights Violations here involve: a large, Ongoing, Illegal, U.S. Government Non-Consensual Human Experimentation / Research program:

Ongoing Non-Consensual U.S. Classified Human Research [since the early and mid 1990's]/Experimentation [R+D+T+E - Research, Development, Testing, and Evaluation] program consisting of Non-Consensual electromagnetic-signals monitoring and assault of the human body and brain, day and night, for years and years and years, with no apparent end in sight, currently inflicted upon 300 - 500 (or probably more) innocent U.S. Citizens, across the U.S..

- Monitoring includes:
  - advanced thought monitoring [including: monitoring of a person's silent 'thought verbalizations'; monitoring of most or nearly all of a person's sensory data (visual information, auditory information, touch, taste, smell, or at least their 'verbal' results within the human mind when sensory 'data' is perceived by the person)]; and,
  - advanced neurological monitoring of the human body [monitoring of the posture and location of a person at all times, but also easily including any neuromuscular action or sequences].

- Assault includes:
  - 'audible-to-victim' voice assault [so called: voice to skull transmissions, i.e., the victim hears voice and sound [of limited acoustic quality] as if he/she was wearing a headset with earphones - but there is no headset here];
  - inaudible or whisper-level synthetic telepathy (words, visual images, 'thoughts');
  - various inaudible mind-control assault (suppression of thought; temporary 'blockage' of short term memory [e.g., as if to temporarily 'jam' the brain location(s) where someone's name, or a particular word, or phrase, is stored within the victim's brain]; thought suggestion or stimulation - inaudibly suggested to have a particular idea, or sometimes, even repeatedly, suggested to do some action, and in effect coercively pushed towards doing that action [e.g., 'cook this food, read from this [reference or other] book']);
  - artificial or synthetic dreams [i.e., during sleep: having visual and sound (including voice) contents - visual images are imposed upon the retina? or upon the visual cortex? or other visual area of the brain, and sound is transmitted to the auditory parts of the head/brain];

  - neurological assault upon virtually any area or region, or neurological related function, of the human body, including: neurological stimulation [e.g., to sneeze, to cause nasal irritation, or to cause someone to need to wipe their nose]; to cause stimulation of, or to harass, or torment (or worse) various internal bodily organs; urinary or 'bodily functions' related assault [to unnaturally stimulate a person's urge to urinate neurology; to target one's colon [e.g., to unnaturally stimulate neuromuscular contractions], or other digestive organ(s), so as to unnaturally-early, or to coerce, someone to use the toilet]; neurological stimulation of various below the below s_xual neurology (innocent, healthy, dignity deserving, males, and females, fellow citizens have complained of this - various or many cases constituting s_xual region Torture, or 'violation' of a person's very private neurology areas); neurological stimulation of below the belt neurology which constitutes 'electromagnetic-signals rape' (stimulation of orga_m related neurology [e.g., while asleep], or other 'rape-level' violation of a victim's body);

The 13th Amendment [to the U.S. Constitution] forbids involuntary servitude, yet surely the U.S. Government has sought to 'gain' [technology?, science knowledge?, software quality-assurance/ complexity/robustness?], from their brain and body monitoring and surveillance program; that sounds to me like Servitude to a Governmental project.

The 5th Amendment requires no deprivation of liberty [or life, or property] without due process of law; but no written NOTICE has been presented to myself or other victims, to allow us to challenge such the illegal governmental action [bodily: surveillance, monitoring, and assault]. How can each such victim reasonably make his or her case? without Notice, and without a designated Forum [a Special Court?, or, Governmental Office?] to go to for such matters, which have been treated as 'classified' matters?

The 4th Amendment forbids violations of the security of one's person [and papers and effects], without a warrant. But, even after the U.S. Supreme Court [June 2014] has confirmed that searches of a person's cell phone requires a warrant, in the case of myself and many other FFCHS member victims, OUR very BODIES [which are, logically, more private than a cell phone!] are being violated by electromagnetic signals which are capable of: interacting with; and, intercepting bodily information from; and, interfering with;, OUR BODILY PROCESSES [including human electrophysiology processes, which are the processes most directly being 'monitored' and 'assaulted', but also including other bodily processes as well [for example: cognitive processes, via cognitive intrusion with 'sound', 'voice', and/or 'visual imagery' imposed upon the sleeping or waking mind, and other senses reachable via the human nervous system and brain [e.g., stimulation/neurological replay of taste, smell, or 'sugar-specific' appetite sense]; and there are allegations that cellular processes are sometimes targeted or affected; and, overall bodily stress]].

The 8th Amendment forbids Cruel and Unusual treatment. And, the ICCPR, and the Convention Against Torture [CAT], which our U.S. has Ratified, further forbid degrading treatment and non-consensual scientific [including 'national security related scientific'] experimentation. [ICCPR, Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."] [CAT: Adopts the 1st sentence of ICCPR Article 7, and provides detailed rules for implementation and adherence, and further, CAT article 16 WIDENS CAT obligations to include 'other forms of' cruel, inhuman or degrading treatment or punishment. CAT, Article 16: "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, ... In particular, the obligations contained in articles 10 [education], 11 [review], 12 [investigation] and 13 [right to complain, and for complaints to be impartially evaluated] shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."]

[CAT, Article 1, defines Torture to include: " "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining .. information or a confession, punishing him for an act he or a third person .. committed or is suspected of .., or intimidating or coercing him or a third person". Many victims, myself included, are intimidated, and therefore effectively coerced, by transmitted threats (variously during our daily lives), where those threats refer to assault, degrading or cruel treatment, or even torture, which has one or more times in the past been inflicted upon the victim. I myself have been terrorized for years, concerning [satellite rape of a sleeping male human being], and thereby I am in effect caused: to make various phone calls [to U.S. Government], and to set alarm clock(s) during my sleep time, for periodic [[urination during sleep time]], in my efforts/hopes to be less at risk to [[satellite rape of sleeping male human being, which in the past typically has assaulted me synchronous my being subjected to transmitted artificial dreams (during sleep) depicting [[urination; or, other 'below the belt' related contents]].]

I hope that you will review the information on my website, www.homestead.com/EMScandal . My most recent item posted there is my June2012 flier, which is reachable as the topmost web-link on my homepage, or reachable directly at: http://emscandal.homestead.com/files/june2012flyer/ ; I hope that you will read, or at least 'to web surf the flier, to verify sources cited', in the "Supplementation to the .. flyer" information there [providing links to U.S. Government documents, and to 2 cover story articles [U.S. World and News Report, and, Washington Post Sunday Magazine] concerning this topic].

Concerning my own individual case:

I was first targeted by electromagnetic weapons, by the U.S. Government, on Dec. 31, 1985 (at age 25), and was targeted covertly, without my knowledge that I was a victim of it, during: Jan.-March 1986, August- early-Oct. 1987, March, Sept.-Oct., Dec. 1989, and during much of 1990.

Since October - November 1990, [to present, December 2014], for over 24 years, I have been targeted by non-consensual electromagnetic signals monitoring and assault of my body and brain, day and night, including constant '2-way communications', 'voice to skull', between my own unequipmented head/mind and the perpetrators. The day and night monitoring includes advanced technology thought-monitoring, and full-body monitoring (of human electrophysiology - the human nervous system).

Details include: reading back to me of my thought-verbalizations; chronic imposition/insertion of thoughts/topics upon my brain; various neurological assaults, including notably: to stimulate urge to urinate; to early to, and/or assault at, 'toilet'; various occasional nasal harassment; during sleep, composed 'artificial dreams' (having visual and sound contents) projected upon my brain; chronic attack at sleep quality (attack at brain sleep-processes), and deficits, or worse, of sleep-quantity.

I don't have silence or quietude (the peacefulness of silence) within my own head. By using my brain's 'channels of attention', the U.S. Government is able to forcibly impose sound and information, and thereby distraction, upon my mind and brain. ['They' are able to impose upon a person's attention.]

Either multiple satellites (stationary, 'research' type satellites, much lower than conventional geosynchronous orbit, which enables fast real-time signals processing), and/or other technology, combined with very fast computers, are utilized to do this. (I allege satellites because: for example, I am able to angle a mylar-covered notebook (loosely covered with mylar) above my head, and to shimmer/shake it so that it intercepts some of the signals' energy in line with that mylar. [Mylar is a good general conductor of electromagnetic energy.] Also, years ago, I could walk closely around trees having very thick trunks, and signals from a satellite across the tree from me would be blocked. Also, in 1990, living in a suburb, there were no nearby cell phone towers back then. Also, even in late-1990, I was tracked and transmitted at wherever I went, even while on an airplane.)

By all appearances, this is part of a large U.S. Government conducted, illegal, Non-Consensual U.S. Classified Research/ Experimentation, Development, Testing, and Evaluation Program, to fully research and develop and evaluate usages of related technology. I suspect that it is the U.S. Government because: my complaints to U.S. Government have repeatedly resulted in regulation of, and changes in, and restrictions upon, various significant assault types; the U.S. Government possesses this technology (e.g., I was told in person by a U.S. Government employee in late 1990 that 'they sometimes use that technology on CIA trainees'); also, there are hundreds of victims, many with plausible governmental origin of their first being targeted (including sometimes specific classified U.S. programs); and, I first became a victim of this Crime the day after my taking out to read a mathematics

paper [a biomathematics Ph.D. dissertation] written by someone who had applied related mathematics to a classified U.S. government (military) projeet. [I took out the paper as part of my efforts to be a good employee of my then employer. It happens to be true that, at the time I took out the math paper to read, I had not yet learned that the paper's author had applied his mathematical ideas toward a Defense Department project.]

Since October-November 1990, I have complained in writing to the U.S. Government and the U.S. Department of Justiee, and to elected U.S. Government officials. There are now hundreds of (300 - 500 or probably more) victims of day and night, non-consensual electromagnetic signals monitoring and assault of each victim's body and brain.

Over the years, I have communicated with some 80 - 90 or more victims of various day and night, non-consensual, electromagnetic signals surveillance, monitoring, and harassment, and assault, upon each individual's body and brain. I have interviewed many of these victims.

As noted above, I am a member of FFCHS [Freedom From Covert Harassment and Surveillance], which is currently the largest national group of victims of alleged Non-Consensual high tech, 'Covert, Harassment, and Surveillance', and which has hundreds of members. [FFCHS has a weekly newsletter, and other information, which can be found at its website.] I personally know the Director/President of FFCHS, Derrick Robinson, and have met him in person a number of times, besides from telephone conversations and emails over the past number of years.

Also, concerning this matter: you might want to look at the website of mind justice . org . Perhaps you might want to contact its founder, and director, Cheryl Welsh [[who despite her being a non-consensual surveillance and harassments victim, attended and graduated law school]]. As her organization's website depicts, Cheryl Welsh is a published author of a number of articles closely related to this subject matter. I have known Cheryl Welsh for about 20 years, through numerous emails, and also by mail, and by telephone. [I have known Cheryl Welsh since about the time of a January 25, 1994 Hearing, held by Senator John Glenn, on "Human Radiation and Other Scientific Experiments: The Federal Government's Role".]

As described in the [June 2012] flier at my website (web link near the top of my homepage):

- One of the major Recommendation of the [October 1995 Final Report of] ACHRE (Advisory Committee on Human Radiation Experiments) was that the U.S. Government develop and adopt a governmentwide federal policy requiring unwaivable informed consent for human subjects of classified research.
- Senator John Glenn sought to implement that ACHRE Recommendation as part of a wide ranging bill regarding federally sponsored Human Research/Experimentation (January 22, 1997, bill S.193, 105th Congress; Sections 201 and 202 were the sections concerning 'classified research').
- President Clinton, in March 1997, attempted to implement that ACHRE Recommendation by Ordering a governmentwide federal policy change (March 27, 1997, Memorandum/ Administrative Order, for adoption of a federal policy requiring unwaivable informed consent for human subjects of classified research, Fed. Reg., May 13, 1997; but that policy change was never completed, and has not been acted upon since President Clinton left office).

As recommended by ACHRE, our U.S. needs to adopt specific federal law(s) and federal regulation(s), capable of protecting citizens from non-consensual classified human research.

Additionally, I believe that federal law(s) are needed which are capable, more generally, of protecting citizens from wrongdoing under governmental secrecy in general. [Elaborated below:]

Additionally, I believe that our country needs to adopt specific federal law(s) and federal regulation(s), which are capable of protecting citizens from wrongdoing under secrecy in general [specific laws, regulations, that victims, lawyers, judges could use relatively easily and effectively, to protect innocent citizens from wrongdoing; perhaps there could be 1 or a few special courts appropriately set up for this: for alleging rights violations involving secrecy, and for challenging such governmental actions]. I believe that this is needed, not only because of the glaring example of the above-described wrongdoing, but because this is not 1789 or 1791 - science, and also technology, can become very advanced, and the federal government is likely to often be at or near the forefront of new developments, and the Public needs a 'Protector' of individual rights against 'invisible' and/or 'virtually undetectable' uses of physics, chemistry, biology, or nano-electronics, or nano-mechanical, inventions and developments and discoveries. I believe that enforceable governmental power needs to be capable of watching, and governing, and policing, both willful abuses of power, and also scientific 'accidents', which can occur under Secrecy, in our modern world.

Thank you again for holding your hearing of December 9, 2014, and I hope that you won't attempt to 'improve one part of your house while a different part of your house is on fire or infested with ants, bees, birds, and mice.' A nation of liberty, a land of liberty, is where all law-abiding citizens enjoy liberty as much as possible, without detriment to law-abiding fellow citizens, in as sincere a manner as possible. It is sick folly for the U.S. Government to be involved in willful violations of constitutional rights and human rights.

I hope that you will include within the concern of your Hearing's process:

'Are there any Blatant and/or Egregious and/or Willful, Violations of Human Rights, by federal or state or local governments, or by private parties [if such private party violations are police-able], currently occurring, or repeatedly occurring, in the United States?'

Very Very Sincerely,

Norman C. Rabin

P.S. I notice that I share a birthday with Honorable Senator Ted Cruz. [I was born in 1960.] And, I appreciate that you held your hearing 1 day before the Anniversary of the [December 10, 1948] U.N. Declaration on Human Rights, and shortly before the Anniversary of the [December 15, 1791] Bill of Rights [Amendments 1 to 10] of the U.S. Constitution ['Bill of Rights Day']. And yet, 'every day is a day for the Bill of Rights, and the U.N. Declaration of Human Rights'.

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The Leadership Conference

The State of Civil and Human Rights in the United States

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
December 9, 2014

Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee: I am Wade Henderson, president & CEO of The Leadership Conference on Civil and Human Rights. I want to thank you for the opportunity to submit testimony for the record regarding the state of civil and human rights in the United States.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership to promote and protect the civil and human rights of all persons in the United States. Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative advocacy and public education. The Leadership Conference's more than 200 national organizations represent persons of color, women, children, organized labor, persons with disabilities, seniors, the lesbian, gay, bisexual, and transgender (LGBT) community, and faith-based organizations.

The Leadership Conference is committed to building an America as good as its ideals – an America that affords everyone access to the polls, ensures economic and educational opportunity for all, and guarantees that our justice system operates in a manner that is fair to all Americans.

This is the critical and necessary work of not only the civil and human rights community, but our elected officials, in order to continue to meet the current challenges we face in our society.

As such, we welcome the opportunity that this important and timely hearing provides to look back on what this subcommittee has accomplished and look forward to the work that is left undone in order to further advance civil and human rights in the areas of voting, justice system reform, and hate crimes protections.

I. Introduction

The Leadership Conference's goal - to create an America as good as its ideals - is not just rhetoric. We have come a long way from the race riots and physical violence of just decades ago. But we have far more work to do to create a fair and equal society, where all members are treated as first class citizens.

We mark a number of anniversaries this year –the 50th anniversary of the Civil Rights Act, the 5th Anniversary of the Hate Crimes Prevention Act, the 20-year commemoration of the United States' ratification of the Convention on the Elimination of All Forms of Racial

Discrimination (CERD), and the 10-year anniversary of the last OSCE anti-Semitism convening—while, next year, we commemorate the 50th anniversary of the Voting Rights Act. These anniversaries provide an ideal opportunity to reflect on how far we have come, and to rededicate ourselves to what lies ahead.

In addition to marking these significant anniversaries, this year, the United States was reviewed on its compliance with international human rights standards under treaties like CERD, the Convention against Torture (CAT), and the International Covenant on Civil and Political Rights (ICCPR). These treaties obligate member nations to take steps to reduce racial and ethnic discrimination and disparities within their borders. During the United States' review, voting rights, racial discrimination, criminal justice, and police brutality were consistently recognized as continuing problems that alienate a significant portion of our society.

These issues are among the most important for our nation to address in the 21st century. While much progress has been made, we still face struggles on many fronts. For the past several decades, our laws have largely failed to ensure the justice that we all seek. We need to fix our voting system so no voter is kept from the ballot box, and we must eradicate any and all racial discrimination in voting. We must reform our racially and ethnically discriminatory justice system. We need vigorous enforcement of hate crime protections and expanded, coordinated police-community efforts to track and respond to hate violence and improve hate crime data collection efforts.

These are big challenges. But historic anniversaries remind us that our journey toward justice is like an Olympic relay. We take the torch from those who came before and pass it along to those who will follow. We applaud efforts to address civil rights issues and spark reform, but a significant portion of the country continues to be alienated and disenfranchised. We must continue to work together to better protect and promote justice throughout the United States.

We hope this committee will continue to build on its impressive legacy. While much has been achieved, there is much left to do, and we look forward to working with the subcommittee on voting rights, criminal justice reform, and hate crimes, as well as other issues important to ensuring fairness and justice for all Americans. Moving forward, we must continue to work together to protect the right to vote for all Americans, by passing legislation like the Voting Rights Amendment Act (VRAA) and the Democracy Restoration Act (DRA). Indeed, this recent mid-term election made clear that voting discrimination remains a real and ongoing problem that must be actively rooted out. Moreover, tragic current events highlight systemic issues of police brutality and racial discrimination that persist at every stage of our justice system. We must enact policies aimed at improving the system in ways that reduce mass incarceration, assist in successful re-entry, and dispel racial biases that are pervasive throughout our country. Moreover, it is imperative to address violence committed against individuals because of their race, religion, ethnicity, national origin, gender, gender identity, or sexual orientation.

Although significant progress has been made to advance civil and human rights, these issues demonstrate the continued need for bipartisan collaboration to break down discriminatory barriers and promote justice throughout the United States. In partnership with civil and human rights groups and civic leaders, Congress and law enforcement officials can and should advance these reforms.

II. Voting Rights

The Aftermath of Shelby

Voting rights is a cornerstone of our democracy—if you don't vote, you don't count. The Voting Rights Act (VRA) is universally recognized as the most significant piece of legislation to emerge from the civil rights movement. It enshrined our most fundamental values by guaranteeing to all of our citizens the right to vote, which the U.S. Supreme Court has called "preservative of all rights."[i] It assures voters of color the utmost protection to participate fully in our political process.

As one of this country's most successful pieces of civil rights legislation, the VRA stands as a shining example of bipartisan cooperation. It has enjoyed broad, bipartisan support every time it has come up for reauthorization. In fact, since it was passed in 1965, each of the last four reauthorizations of the VRA were signed into law by Republican presidents. In each instance, members of both parties recognized the ongoing importance of protecting minority voters from discrimination and, during the most recent renewal in 2006, they worked together to amass an extensive record to establish the ongoing need for these protections.[ii]

Since the adoption of the VRA, Section 5 of the Act has been a particularly important and effective tool in the fight against voting discrimination.[iii] It requires review of any proposed voting changes in states with the worst histories of voting discrimination. However, in June 2013, in *Shelby County v. Holder*, the U.S. Supreme Court, in a bare majority vote, struck down a core provision of the VRA – Section 4(b) – which functioned to gut Section 5's federal "preclearance" compliance review process.[iv] In its wake, there is no comparable safeguard. That is why the *Shelby* decision was devastating not only to communities who have been protected by Section 5, but also to our nation's democratic process. The Court undermined congressional authority and wrongly gutted one of the most important protections the VRA contains. By striking down the coverage formula—Section 4(b)—the Court effectively removed the ability of Section 5 to do its job. Section 2 alone, involving cases are long, expensive, and complex, is insufficient to protect the rights of minorities and other marginalized groups. Accordingly, we now must look to Congress to renew its efforts to ensure that all voters are able to participate in the democratic process by passing legislation to correct the *Shelby* decision.

The VRA has provided significant protection to voters of color, particularly in areas where historical forms of discrimination in voting have proliferated. Although the days of poll taxes, literacy tests, and brutal physical intimidation are behind us, efforts at disenfranchisement of voters of color continue to this day. The *Shelby* decision made millions of voters of color more vulnerable to voting discrimination by opening the door for formerly covered states and localities to implement new and onerous restrictions on voting.[v] Two months after the Court's decision, the North Carolina state legislature passed a wide-ranging bill that adds numerous procedural barriers to voting and reduces voting opportunities by requiring a government-issued photo identification card, limiting early in-person voting, and prohibiting citizens from registering to vote in conjunction with early voting.[vi] Likewise, within mere hours of the *Shelby* decision, Texas state officials announced that they would immediately begin to enforce a 2011 photo-identification requirement for in-person voting—a requirement that had been blocked under Section 5 not only by an administrative objection by DOJ, but also by the judgment of a three-judge federal court.[vii] In the immediate wake of the *Shelby* decision, the city of Pasadena, Texas, changed the structure of its district council by eliminating two seats elected from predominantly Latino districts, and replacing those seats with two at-large seats elected from majority white districts. Within several months after *Shelby*, changes to early voting were announced in Georgia and Florida.[viii] Equally troublesome are reports of statewide voter purges in Florida and Virginia.[ix]

Although statewide changes to redistricting or voter qualifications are more widely known, the lack of preclearance is particularly troublesome at the local level where a number of counties and cities have

eliminated elected positions once held by people of color, altered voting districts or methods of election, moved or closed polling places, and shifted the dates of or even cancelled elections—all of which can effectively disfranchise voters of color, and which can occur without any prior public notice or legal challenge.

In the pre-*Shelby* world, states and local jurisdictions with a recent history of racial discrimination in voting had to notify their local community members of all proposed changes to the voting laws in the jurisdiction. By eliminating the requirement that states and localities have those proposed changes reviewed by the federal government to determine whether they are racially discriminatory, the Court also eliminated the notice requirement. Thus, there is no requirement that state or local government provide *any notice at all* to the local community when they plan to change the rules governing the voting process – including no notice of changes to polling place locations, changes in the times for early voting, or changes to the rules governing electoral districts. Where there used to be information sharing, collaboration among communities, and transparent government decision-making informed by the perspective of the local community, there is now silence and confusion.

The question for our country is whether this "new normal" is consistent with our vision of a vibrant, inclusive, 21st century democracy. Are we comfortable with a system that makes it harder for you to vote if you are poor, Black, Native American, or have a disability? The answer must be "no."

Voting should make us truly equal, whether we're rich or poor, young or old, famous or unknown, male or female, gay or straight, White, Black, Asian, or Latino. But in state after state, we've seen politicians manipulating the election rules to make it harder for people – primarily people of color, low-income people, and students – to register, vote, and have an equal political voice in our democracy.

Rather than blocking access to our democracy, we must all work together to ensure that all voters have a voice.

Why We Need the VRAA

The recent midterm federal election was the first to be held without the protection of Section 5. In it, we witnessed the most unfair, confusing and discriminatory election landscape in almost 50 years.[x] And it's a disgrace to our citizens, to our nation, and to our standing in the world as a beacon of democracy. However, it comes as no surprise. This is the predictable outcome of the first major election since the Supreme Court's decision in *Shelby*.

In elections across the country, from congressional races to local school board elections, the right to vote – and our democracy – took a brutal and totally unacceptable beating. The real losers in this election were the voters.

We cannot allow this recent mid-term election – with its discriminatory voting laws and mass confusion – to become the new normal. That's why Congress must restore the VRA.

We applaud bipartisan efforts to introduce legislation in Congress to address the gaping holes left by the *Shelby* decision. A group of senators and representatives, including Senator Durbin, cosponsored the Voting Rights Amendment Act of 2014, which updates the Voting Rights Act of 1965 in response to the Shelby decision. This bipartisan bill contains a modern, flexible and forward-looking set of protections that work together to ensure an effective response to racial discrimination in voting in every part of the country. It will enhance the power of federal courts to stop discriminatory voting changes before they go

into effect; establish a flexible coverage formula that is updated annually to require preclearance for all voter rule changes in places with numerous recent voting rights violations; require increased transparency through public reporting requirements that will help keep communities informed about voting changes across the country; and continue the federal observer program in order to combat racial discrimination at the polls.

Without congressional action, decades of progress in combating racial discrimination in our electoral system is now at risk. Our common aim is to ensure that all Americans can participate equally in the political process. It is crucial that we work together to ensure that no one is denied the right to vote, particularly because of his or her race or ethnicity.

Felon Disenfranchisement
Disenfranchisement of formerly incarcerated persons is contrary to our democratic principles, disproportionally impacts minorities, and is a barrier to successful reintegration.

Though, until the *Shelby* decision, the nation has made consistent progress toward expanding and securing the right to vote for all citizens, the denial of voting rights for formerly incarcerated individuals remains a huge issue. In one form or another, laws that disenfranchise individuals with felony convictions have existed in the United States since its founding. In fact, 29 states had such laws on the books at the time of the ratification of the Fourteenth Amendment in 1868.[xi] These laws were based on the concept of a punitive criminal justice system; because those convicted of a crime had violated social norms, they had therefore proven themselves unfit to participate in the political process. Beginning around the end of Reconstruction— many southern states significantly broadened felony disenfranchisement and began focusing on crimes believed to be disproportionately committed by African Americans.[xii] The practice, together with many of other measures, were used as a means to circumvent the requirements of the Fifteenth Amendment,[xiii] which prohibited states from preventing individuals from voting on the basis of "race, color, or previous condition of servitude."[xiv]

Currently, individuals with felony convictions in the United States are subject to a patchwork of state laws governing their right to vote. The scope and severity of these laws varies widely, ranging from the uninterrupted right to vote to lifetime disenfranchisement, despite completion of one's full sentence.

While some states provide only for the disenfranchisement of those currently serving their sentence, the vast majority of disenfranchised individuals have completed their prison term.[xv] Of the estimated 5.85 million American adults barred from voting, only 25 percent are in prison. By contrast, 75 percent of disenfranchised individuals reside in their communities while on probation or parole, or after having completed their sentences.[xvi] Approximately 2.6 million individuals who have completed their sentences remain disenfranchised due to restrictive state laws.[xvii]

Further, there is clear evidence that state felony disenfranchisement laws have a disparate impact on African Americans and other minority groups. At present, 7.7 percent of the adult African-American population, or one out of every thirteen, is disenfranchised. This rate is four times greater than the non-African- American population rate of 1.8 percent.[xviii] In three states, at least one out of every five African-American adults is disenfranchised: Florida (23 percent), Kentucky (22 percent), and Virginia (20 percent).[xix] Nationwide, 2.2 million African-Americans are disenfranchised on the basis of involvement with the criminal justice system, more than 40 percent of whom have completed the terms of their sentences.[xx]

Information on the disenfranchisement rates of other groups is extremely limited, but the available data suggests felony disenfranchisement laws may also disproportionately impact individuals of Hispanic origin and others. Hispanics are incarcerated in state and federal prisons at higher rates than non-Hispanics: about 2.2 times greater for Hispanic men and 1.7 times for Hispanic women.[xxi] If current incarceration trends hold, 17 percent of Hispanic men will be incarcerated during their lifetimes, in contrast to less than 6 percent of non-Hispanic white men.[xxii] Given these disparities, it is reasonable to assume that individuals of Hispanic origin are likely to be barred from voting under felony disenfranchisement laws at disproportionate rates.

Although voting rights restoration is possible in many states, it is frequently a difficult process that varies widely among states. Individuals with felony convictions are typically unaware of their restoration rights or how to exercise them. Further, confusion among election officials about state law contributes to the disenfranchisement of eligible voters.[xxiii] Reliable information on the rate and number of individuals whose rights have been restored is difficult to obtain, but preliminary data suggest that in states that continue to disenfranchise after the completion of an individual's sentence, the percentage of restoration ranges from less than 1 percent to 16 percent.[xxiv] This data indicate that the vast majority of individuals in these states remain disenfranchised.[xxv]

It is detrimental to individuals and society for voting rights to be taken away for life simply because a crime has been committed, especially after the individual's sentence has been completed and amends have been made. According to the American Civil Liberties Union:

> *Studies have shown that the benefits of voting are numerous. Individuals who vote generally help to make their communities safer and more vibrant by giving to charity, volunteering, attending school board meetings, serving on juries and participating more actively in their communities.* [xxvi]

Research has also shown that formerly incarcerated individuals who vote are less likely to be rearrested."[xxvii] In Florida, where former Governor Charlie Crist briefly made it easier for people with felony convictions to get their voting rights restored, a parole commission study found that re-enfranchised people with felony convictions were far less likely to reoffend than those who hadn't gotten their rights back.[xxviii] According to the report, the overall three-year recidivism rate of all formerly incarcerated people was 33.1 percent, while the rate for formerly incarcerated people who were given their voting rights back was 11 percent.[xxix]

When someone has served time in prison, society must restore that person's right to vote. There is no rationale for continuing to deny individuals the right to vote after the completion of their sentence. Simply put, no one in a democracy is truly free unless they can participate in it to the fullest extent possible.[xxx]

Recent efforts from both Democrats and Republicans are underway to address this problem, at least in federal elections. In the 113th Congress, Senator Ben Cardin introduced the Democracy Restoration Act (DRA), restoring voting rights in federal elections to disenfranchised individuals upon their release from incarceration. In addition, Senator Rand Paul introduced the Civil Rights Voting Restoration Act, which does not go as far as DRA, but would restore federal voting rights for non-violent offenders. Both Senators Cardin and Paul have pledged to work on a bipartisan basis to combine the two pieces of legislation and we hope they will continue to work in that fashion to pass reform legislation in the 114th Congress.

The administration has also expressed its support for re-enfranchising individuals with convictions. In February of this year, Attorney General Eric Holder recognized that it was time to reconsider laws that permanently disenfranchise individuals who have been released from incarceration.[xxxi] Unfortunately, the attorney general placed limitations on the department's support for removing voting bans. We encourage the Department of Justice to expand its support of automatic restoration and oppose restrictions for those on parole or probation or with unpaid fines.

The ability to vote—to have a part in choosing the elected officials whose decisions impact our lives, families, communities, and country—is at the core of our democracy and what it means to be an American. The VRAA and Democracy Restoration Act are workable approaches to resolve these problems and we must continue to work together to ensure no one is denied the right to vote because of racial discrimination or a former criminal conviction.

III. Justice System Reform

Our justice system is in crisis. The United States has the highest rate of incarceration in the world, with almost 2 million people incarcerated and 7 million people under some form of correctional supervision or control.[xxxii] Further, racial and ethnic minorities continue to be overrepresented in state and federal prisons. Though African Americans and Latinos make up 13 percent and 17 percent of the U.S. population, respectively, they comprise 40 percent and 35 percent of the federal prison population.[xxxiii] This is evidence of the continued racial bias and discrimination that persist at every stage of our justice system, from policing to trial to sentencing and finally to reentry. Without a doubt, tragic events like the deaths of unarmed individuals Michael Brown in Ferguson, Missouri, Eric Garner in New York City, New York, and Tamir Rice in Cleveland, Ohio, among others, provide a teachable moment for our nation – and an urgent opportunity to discuss and address the need for systemic reform.[xxxiv] The failure to do so will continue to erode any remaining trust that communities of color have in our justice system operating fairly and impartially.

Racial Profiling

More than a decade after President Bush announced racial profiling is "wrong and we will end it in America," communities of color across the country are still subjected to profiling in a variety of contexts. In particular, Muslim Americans and those perceived to be Muslim, including Arabs, South Asians, Middle Easterners, and Sikhs have been subject to heightened scrutiny, invasive questioning, and wide spread surveillance and mapping by federal law enforcement based on cultural and ethnic behavior since the 9/11 terror attacks.

Racial or discriminatory profiling involves the unwarranted screening of certain groups of people, assumed by the police and other law enforcement agents to be predisposed to criminal behavior. Multiple studies have proven that profiling results in the misallocation of law enforcement resources and therefore the failure to identify actual crimes that are planned and committed. In addition, by relying on stereotypes rather than proven investigative procedures, the lives of innocent people are needlessly harmed by law enforcement agencies and officials.

According to the U.S. Constitution, federal laws, and guidelines, every person has the fundamental right to equal protection under the law, regardless of race, ethnicity, religion, national origin, gender, sexual orientation, or gender identity. Profiling is antithetical to the founding principle in the Declaration of Independence that "all men are created equal" and to the constitutional right to equal protection under the law. Biased law enforcement practices primarily designed to impact certain groups are ineffective and

often result in the destruction of civil liberties for everyone. Racial profiling makes us all less safe, by distracting law enforcement from the pursuit of individuals who pose serious threats to security.

Racial profiling also violates international standards against non-discrimination and undermines U.S. human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights. Multiple international human rights bodies, including the United Nations Committee on the Elimination of Racial Discrimination (which monitors implementation of the ICERD), have raised concerns about the persistence of racial and ethnic profiling by U.S. law enforcement. In its 2014 concluding observations to the United States, the Committee stated "it remains concerned at the practice of racial profiling of racial or ethnic minorities by law enforcement officials."[xxxv]

Indeed, discrimination and racial disparities persist at every stage of the U.S. criminal justice system, from policing to trial to sentencing. Police officers, whether federal, state, or local, exercise substantial discretion when determining whether an individual's behavior is suspicious enough to warrant further investigation.[xxxvi] Profiling is so insidious and pervasive that it can affect people in their homes or at work, or while driving, flying, or walking, causing distrust in our diverse communities. Moreover, tragedies like the recent shooting death of Michael Brown, highlight the reality that military-style response by the local police to demonstrators, and allegations of racially biased law enforcement, are the result of longstanding and corrosive limitations on our nation's law enforcement policies that allow unlawful profiling to persist across the country.

For more than a decade, we have consistently urged the Department of Justice to revise its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of discriminatory profiling. Although the 2003 Guidance prohibited the use of race and ethnicity by federal law enforcement as an element of suspicion absent any suspect-specific information, it contained a blanket exception for national and border security. It also did not cover profiling based on religion, national origin, gender, sexual orientation, or gender identity and was not applicable to, nor binding on, state or local law enforcement.[xxxvii]

We applaud Attorney General Holder's commitment to ending racial profiling and the release of the long-awaited Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity. The revised guidance is a significant step forward from the 2003 Guidance by: including gender, national origin, religion, sexual orientation and gender identity as protected categories in addition to race and ethnicity; removing some of the existing loopholes, including one for national security; requiring enhanced data collection, additional training and oversight measures for federal law enforcement agencies; and applying to state and local authorities participating in federal task forces.

While these are significant advances, we remain troubled by the exceptions that remain for the screening and inspection activities for border and transportation security and U.S. Border Patrol activities in the vicinity of the border and ICE Homeland Security Investigation activities at ports of entry. These excluded activities create continued cause for concern, particularly because Latinos and religious minorities are disproportionately affected by their practices. In addition, we remain troubled by provisions that allow the offensive practice of collecting racial and ethnic information and "mapping" American communities around the country based on stereotypes. These mapping activities have unfairly targeted Arab, Muslim, Sikh, South Asian, and Middle Eastern communities. Moreover, the revised guidance does

not appear to curtail the Federal Bureau of Investigation's authority to engage in unlawful and abusive surveillance of innocent Americans.

Finally, we hope the 2014 Guidance will be used as an example for state and local law enforcement agencies of unbiased law enforcement practices. We remain committed to working with DOJ to ensure greater accountability for state and local police agencies that receive federal funds. It is more critical now than ever to ensure practices that end the ability for state and local agencies to profile individuals or communities and to continue to reward those agencies that adopt best practices.

In addition, we applaud and support federal legislative efforts to prohibit profiling through the End Racial Profiling Act (ERPA). ERPA would prohibit profiling and mandate training for federal law enforcement officials on these issues. As a condition of receiving federal funding, state, local, and Indian tribal law enforcement agencies would be required to collect data on both routine and spontaneous investigatory activities. The Department of Justice would be authorized to provide grants to state and local law enforcement agencies for the development and implementation of best policing practices, such as early warning systems, technology integration, and other management protocols that discourage profiling. Lastly, this important legislation would require the attorney general to issue periodic reports to Congress assessing the nature of any ongoing racial profiling.

Despite bipartisan energy supporting legislation like ERPA, racial profiling continues to be a pervasive and harmful practice that negatively impacts both individuals and communities. We look forward to working with policymakers and this committee to ensure progress of this important legislation.

Police Militarization and Excessive Use of Force

In addition to a reliance on unlawful profiling, issues of excessive use of force and militarization of law enforcement agencies are of grave concern to communities of color. Policing in the United States has become dangerously militarized, largely through federal programs that arm state and local agencies with weapons for use in law enforcement activities. The police response in Ferguson in the aftermath of the August 9, 2014, shooting death of Michael Brown brought national attention to the issue. The nation watched as peaceful protestors took to the streets to express their angst over Michael Brown's death and police responded with armored vehicles, assault rifles, and other military weapons and equipment. The country soon learned that such highly militarized responses were not limited to Ferguson. In fact, Special Weapons and Tactics (SWAT) teams have long been carrying out the so-called War on Drugs, though most often for low level drug offenses, in militarized fashion,[xxxviii] which disproportionately affects minority communities. Indeed, for drug investigations involving minorities, SWAT teams were twice as likely to force entry into an individual's home using violent tactics and equipment.[xxxix]

The Department of Defense excess property program, known as DoD 1033, provides surplus DoD military equipment to state and local civilian law enforcement agencies for use in counter-narcotics and counter-terrorism operations, and to enhance officer safety.[xl] Since the 1990s, DoD 1033 has provided more than $5 billion worth of surplus military equipment to state and local agencies at no cost to those agencies, yet at substantial cost to federal taxpayers.[xli] During a September 9, 2014 Senate hearing, we learned that one-third of the equipment being transferred through the program is new.[xlii] Hearing witnesses also revealed a lack of communication and coordination between the Department of Defense and the other agencies providing funding to local agencies for military equipment.[xliii] Ultimately, the hearing raised more questions than it provided answers.

The White House[xliv] and Congress[xlv] have begun examinations of DOD, DOJ, and DHS programs that transfer excess military equipment and weapons to police departments for counterterrorism and drug interdiction purposes.[xlvi] Specifically, the White House recently asked for federal funds to reform police departments to focus on improving officer training when given access to high-powered weapons.[xlvii] Further, in the recent NDAA reauthorization, the language expanding the program to include activity related to border security was removed.[xlviii] These are steps in the right direction, but more work must be done to prevent any future Fergusons from happening.

Additionally, the shooting death of Michael Brown is but one instance in a long list of unexplained deaths that has raised significant questions about misconduct and excessive use of force by police officers. Federal, state, and local police continue to use force, and in particular, more deadly force, disproportionately against individuals and communities of color.[xlix] The National Police Misconduct Statistics and Reporting Project, run by the Cato Institute, reports that there were 4,861 unique reports of police misconduct that involved 6,613 sworn law enforcement officers and 6,826 alleged victims in 2010, the most recent year for which there are data.[l] There were 247 deaths associated with the tracked reports in 2010 and 23.8 percent of the reports involved excessive use of force, followed by sexual misconduct complaints at 9.3 percent.[li] In 2010, states spent an estimated $346 million on misconduct-related civil judgments and settlements, not including sealed settlements, court costs, and attorney fees.[lii]

Though telling, these data are limited and do not provide a full picture of the scope of the problem. Currently, there is no federal requirement to collect data disaggregated by race on use of force or deaths in custody by state and local police, illustrating the crucial need for systemic reform at the federal level to address these issues.

The administration recently announced several new initiatives to study these issues and provide recommendations for solutions, including the purchasing of body worn cameras for police in the field, a pilot project to improve community police relations and more than 200 million dollars for better training of law enforcement officials. Though a step in the right direction, there is more to be done to restore the confidence that so many have lost in our justice system and to address issues of police misconduct.

Congress must act to collect reliable and comprehensive data disaggregated by race[liii] and use its federal funding authority to require state and local police departments to take necessary steps to reduce the use of deadly force and decrease instances of police misconduct. Further, the administration must continue to launch both criminal and civil rights investigations in cases of misconduct or excessive use of force by state and local police.

Sentencing

The proliferation of the use of mandatory minimum penalties, particularly at the federal level as a result of the "War on Drugs," has had a significant impact on minority communities and fueled the country's incarceration rates. This country has enacted policies that have contributed to an incarceration rate on a scale that exists nowhere else in the world, which, in turn, has resulted in a system that is racially and ethnically discriminatory – and, ultimately, unsustainable.

The economic, societal, and human costs of these policies have been devastating. We've destroyed Black and Brown communities all over the nation by locking up millions of Black and Brown men and thus robbing those communities of fathers, brothers, uncles, and sons. And we have accelerated the incarceration rate of Black women, making them the fastest growing segment of the prison population. This has been accomplished through a misguided so-called War on Drugs that has disproportionately

targeted nonviolent low-level drug offenders and others who are not necessarily threats to public safety and cohesion.

As a result, the federal prison system is out of control. The Bureau of Prisons is currently operating at 33 percent over capacity, housing about 219,000 inmates, 50 percent of which are drug offenders, and thereby eating up nearly a quarter of the Justice Department's annual budget.[liv] Perhaps no single factor has contributed more to these rising costs and over population than mandatory minimum sentences, meted out to low-level, non-violent drug offenders.

Beginning in the mid-20th century, Congress expanded its use of mandatory minimum penalties by enacting more mandatory minimum penalties generally, broadening its use of mandatory minimums to different offenses, particularly controlled substances, and lengthening the mandatory minimum sentencing.[lv] Mandatory minimums require uniform, automatic, binding prison terms of a particular length for people convicted of certain federal and state crimes without taking circumstances or individualized factors into account.[lvi]

Mandatory minimums were enacted for a variety of reasons. Proponents believed that they would: increase certainty in sentencing; act as a deterrent to potential offenders; warn that specific behaviors would result in harsh punishment; and increase public safety by removing dangerous criminals from our streets. This ideology was further buttressed by the belief by some that significant declines in crime over the last several decades were directly related to federal mandatory minimum penalties. Yet, since that time, we have learned that the imposition of mandatory minimum penalties have decreased certainty in sentencing; have not significantly deterred criminal behavior; have no causal relationship to reductions in crime; have increased the likelihood of recidivism; and have had a direct impact on rising incarceration costs.

Mandatory minimum sentencing systems are especially problematic because they require judges to act on a "one-size-fits-all" mandate for individuals, eliminating any of their judicial discretion and preventing courts from considering all relevant factors, such as culpability and role in the offense, and tailoring the punishment to the crime and offender. There is no space to check and balance the prosecutors' decisions in individual cases. In 2010, the U.S. Sentencing Commission conducted a study that demonstrated the quantitative impact of mandatory minimums. The Sentencing Commission found that in 2010, of the nearly 80,000 cases for which it had information, almost 25 percent of the offenders were sentenced to some sort of mandatory minimum penalty.[lvii] More specifically, 77.4 percent of those convictions that carried a mandatory minimum penalty were for drug trafficking offenses and minorities comprised three-quarters of those serving a mandatory sentence for a federal drug trafficking offense.[lviii] Further, in those instances in which relief from the mandatory minimum penalty occurred, it occurred least often for Black offenders.[lix]

Finally, the study also found racial disparities in the percentage of all federal offenders who were subject to a mandatory minimum penalty sentencing. Black offenders remained subject to the highest rate of any racial group at 65.1 percent of their cases, followed by Whites at 53.5 percent, Hispanics at 44.3 percent, and Other Races at 41.1 percent.[lx] Those who were convicted of their offense were subjected to 139 months, compared to 63 months for those offenders who received relief from their mandatory minimum penalty.[lxi]

As a result of this report, the Commission concluded that "If Congress decides to exercise its power to direct sentencing policy by enacting mandatory minimum penalties . . . such penalties should (1) not be

excessively severe, (2) be narrowly tailored to apply only to those offenders who warrant such punishment, and (3) be applied consistently."[lxii] Clearly, what was once thought to be sound criminal justice policy has had the unintended consequence of increasing disparities in the administration of justice and has led to mass incarceration.

Furthermore, the cost to incarcerate individuals for lengthy periods of time has become too great. Since 1980, and the transition from the War on Poverty to the War on Drugs in 1982, the United States has spent about $540 million on federal prisons.[lxiii] In 2013, the United States will spend more than 12 times that amount, reaching $6.8 billion.[lxiv] Mandatory minimums are cost-ineffective. Taxpayers spend almost $70 billion a year on prisons and jails,[lxv] raising state spending on corrections more than 300 percent over the last two decades.[lxvi] The Department of Justice has cut funding for crime-fighting equipment and personnel, and spends one out of four of its dollars to lock up mostly non-violent offenders.[lxvii]

In a time of such financial crisis, there is simply no rationale to spend millions of dollars on the prison system. Our country must look towards criminal justice models that rely less on punishment and focus more on rehabilitation and prevention. Resources should be funneled to programs that have that been proven to impact criminal behavior by diverting low level non-violent offenders away from prison and to treatment.

We have proven that we can work to correct wrongheaded policies, restore equality, and reduce costs without any significant impact on public safety. As recently as 2010, a bipartisan effort led by Senators Durbin and Sessions resulted in the passage of the Fair Sentencing Act (FSA), which reduced the sentencing disparity between powder and crack cocaine offenses, capping a long-term effort to address the disproportionate impact the sentencing disparity had on African-American defendants. In addition the U.S. Sentencing Commission has worked to address these systemic issues, voting in 2010 to adjust guideline ranges to comport with the FSA and making those new guidelines retroactive, and in 2014, to reduce sentencing guidelines by two levels across all drug offenses, making those changes retroactive, and allowing more than 50,000 incarcerated individuals to be eligible for a reduction in sentence.

Though admirable and a critical step in the right direction, these reforms are just a down payment on larger systemic reform needed to stem the flow of person into the justice system, reduce racial disparities, restore fairness in sentencing and decrease federal spending on incarceration. Progressives and conservatives alike agree, though for different reasons, that our current system is failing and must be reformed.

We applaud recent bipartisan efforts by members of this Subcommittee to make further changes. This Congress, Senators Dick Durbin and Mike Lee introduced The Smarter Sentencing Act of 2014, a narrow and incremental approach to address front end sentencing reform and reduce federal spending on prisons. If enacted, the legislation would narrowly expand the current "safety valve" to offenders who have two criminal history points, but do not pose a public safety risk; reduce the 5, 10, and 20 year mandatory minimums to 2, 5, and 10 years for certain drug offenses; and make the FSA retroactive, providing relief to approximately 8,000 individuals currently serving sentences under the old 100-1 disparity. Further, these proposed changes would have a significant impact on the federal budget, with the Congressional Budget Office estimating the bill would save $4.36 billion over 10 years and DOJ estimating $7.4 billion over 10 years.[lxviii]

We have an opportunity to correct our previous mistakes. Restoring certainty and fairness in sentencing and reducing an exploding prison population is both the moral and financially responsible course of

action. Studies have demonstrated that mandatory minimums are inherently unfair and ineffective. They have a disproportionate impact on communities of color, eliminate judicial discretion in the sentencing process, and apply a one size-fits-all approach, resulting in exactly what policymakers intended to guard against—uncertainty in sentencing and no real deterrent in criminal behavior. It is our hope that in the new Congress, policymakers will reach across the aisle to introduce and pass legislation that meets our collective goals and interests.

IV. Hate Crimes

Prior to the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, the Department of Justice could only investigate hate crimes motivated by the victim's race, color, religion, and national origin when the victim is engaged in a federally protected activity, such as serving on a jury. This law expanded the definition of federal hate crimes to include sexual orientation, gender, gender identity, and disability. It also removed obstacles that had made it difficult for the federal government to adequately prosecute these crimes. The HCPA encourages partnerships between state and federal law enforcement officials to more effectively address hate violence, and provides expanded authority for federal hate crime investigations and prosecutions when local authorities are unwilling or unable to act. It is the most important, comprehensive, and inclusive federal crimes civil rights enforcement law in the past 40 years.

We worked for more than a decade to secure passage of the Hate Crimes Prevention Act. The law stands as a testament to the power of effective and persistent work by a broad group of collaborators. Working closely with our House and Senate champions, including Senator Durbin, and through the leadership of The Leadership Conference, The Anti-Defamation League, and the Human Rights Campaign, we built a powerfully diverse coalition of support. We were able to amass a large, diverse coalition of more than 300 civil rights, professional, civic, educational, and major religious groups, 26 state attorneys general, U.S. Attorney General Eric Holder, former U.S. Attorney General Dick Thornburgh, and virtually every major national law enforcement organization in America, including the International Association of Chiefs of Police and the Police Executive Research Forum, in support of the bill.

None of this came easily, of course. But with our diverse coalition standing side by side the many members of Congress who supported this bill, we were able to celebrate a huge victory at the end of a 12-year fight.

Violence committed against individuals because of their race, religion, ethnicity, national origin, gender, gender identity, or sexual orientation remains a serious problem in the United States. In the more than twenty years since national hate crime reporting began, the number of hate crimes reported has consistently ranged around 6,000 to 7,000 or more annually—that's nearly one bias-motivated criminal act every hour of every day.[lxix]

The fifth anniversary of this important law provides a teachable moment for advocates, the administration, and Congress to promote awareness of the HCPA, to report on the progress our nation has made in preventing hate violence, and to rededicate ourselves and our nation to effectively responding to bias crimes when they occur.

The FBI has been tracking and documenting hate crimes reported from federal, state, and local law enforcement officials since 1991 under the Hate Crime Statistics Act of 1990 (HCSA). Though incomplete, the FBI's annual HCSA report provides a national snapshot of bias-motivated criminal

activity in the United States. Overall, reported hate crimes directed against individuals because of race, religion, sexual orientation, and national origin increased in 2012, as compared to 2011, but this comparison may still be misleading because of under-reporting. Notably, more than a quarter of law enforcement agencies did not provide the FBI with their hate crime statistics.[lxx] Only about 14,500 law enforcement agencies (out of about 18,000) reported in 2012.[lxxi] Almost 90 cities with populations over 100,000 either did not report hate crime data to the FBI or they affirmatively reported zero hate crimes.[lxxii]

The FBI, the Justice Department, and U.S. attorneys should create incentives for participation in the FBI's HCSA data collection program – including national recognition, targeted funding, and mechanisms to promote replication of effective and successful programs. In partnership with civil and human rights groups and civic leaders, Congress and law enforcement officials can advance police-community relations by demonstrating a commitment to be both tough on hate crime perpetrators and sensitive to the special needs of hate crime victims.

V. Conclusion

Moving forward, we must continue bipartisan collaboration to provide equal access to the right to vote, reform the justice system, and dispel racial disparities that are pervasive throughout our country. Half a century ago, civil rights activists fought to fulfill the promise of the Emancipation Proclamation from a century before. Fifty years later, we still struggle to turn the language of landmark civil rights legislation into living realities for all of our people. Legislation like the Voting Rights Amendment Act, the Democracy Restoration Act, the End Racial Profiling Act, and the Smarter Sentencing Act represent important steps toward addressing the deep injustices that plague our society.

However, these efforts alone are insufficient to fully address the depths of systemic issues of racial bias and discrimination. Federal enforcement of these policies has been slow and racial inequities continue to create barriers that stifle full participation in our democracy. Moving forward, we must continue to foster bipartisan collaboration to protect and advance civil and human rights for all Americans. Again, thank you for convening this hearing and for the opportunity for The Leadership Conference to express its views on the state of civil and human rights in the United States.

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[i] *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).
[ii] 152 CONG. REC. S8372 (2006).
[iii] 42 U.S.C. § 1973 (2006).
[iv] *Shelby Cnty. v. Holder*, 133 S. Ct. 2612, 2636 (2013).
[v] Wendy Weiser, *How much of a difference did new voting restrictions make in yesterday's close races?* BRENNAN CENTER FOR JUSTICE, Nov. 5, 2014.
[vi] *Id.*
[vii] Ryan Reilly, *Harsh Texas voter ID law 'immediately' takes effect after Voting Rights Act ruling*, HUFF. POST, June 25, 2013.
[viii] Wendy Weiser, *How much of a difference did new voting restrictions make in yesterday's close races?* BRENNAN CENTER FOR JUSTICE, Nov. 5, 2014.
[ix] *Id.*
[x] *Id.*
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[xii] Reuven Ziegler, *Legal Outlier, Again? U.S. Felon Suffrage: Comparative and International Human Rights Perspectives*, 29 B.U. INT'L L.J. 197, 217 (2011).

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Statement of the National Disability Rights Network
For a Hearing Held By the
Senate Judiciary Subcommittee on the Constitution,
Civil Rights and Human Rights
On
"The State of Civil and Human Rights in the United States"
December 9, 2014

The National Disability Rights Network (NDRN) would like to thank Chairman Durbin and Ranking Member Cruz for having this important hearing at this critical time. There are a number of significant issues occurring in the United States concerning recognition of civil and human rights for many populations including people with disabilities. This and prior hearings have been important to addressing these topics.

NDRN is the national membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium, which includes the Hopi, Navaho and Piute Nations in the Four Corners region of the Southwest.

Each P&A and CAP advocates for the recognition of civil rights for people with disabilities on a wide range of social policies including employment, education, housing, transportation and in a variety of settings including the community, juvenile justice facilities, public and non-public schools, and detention and correctional facilities. Collectively, the P&A Network is the largest provider of legally based advocacy services to people with disabilities in the United States.

A human right is a claim each person has by virtue of being human to those conditions and resources that are fundamental to life and dignity. They do not need to be specifically granted, nor can they be taken away. They exist for each person, regardless of the attitudes or laws that govern a society. Human rights encompass an array of political, social, economic and cultural rights. Human rights are not just abstract values such as liberty, equality, and security. Human rights are instead specific social practices to realize those values.

Americans with Disabilities Act - The Civil Rights Law for People with Disabilities

Historically, persons with disabilities have been viewed as "defective" and in need of fixing. Based on this view, the approach that society took to how to treat persons with disabilities was that they should be segregated from mainstream society. Based on the adoption of a medical model of disability, the United States systematically developed a society that imposed barriers on the participation of persons with disabilities in their communities. These barriers included attitudinal barriers (such as fear, ignorance, prejudice, and stereotypes), physical barriers (such as architecture, transportation and communication) and institutional barriers (such as policies, practices and procedures) that subject persons with disabilities to lives of dependency, segregation, exclusion and paternalistic treatment.

The Americans with Disabilities Act (ADA) provides "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" (42 U.S.C. § 12101 (b)). The ADA is the law that is the civil rights law for persons with disabilities and provides protections against discrimination in numerous areas of life including employment, state and local government services including schools, public transportation, telecommunications and places of public accommodations. (42 U.S.C. §§ 12101-12213).

While enactment of the ADA was an important moment in the recognition of the human and civil rights of people with disabilities, it has been the implementation and enforcement that has followed passage that has ensured that persons with disabilities are able to realize their civil rights not just as values by virtue of being human, but as tangible rights that have allowed for equality of opportunity and for full and equal participation in their communities. The P&A and CAP agencies have led the efforts to implement and enforce the ADA. From ensuring that people with disabilities have access to public accommodations like hotels and restaurants, have access to assistive technology to fully participate in their education or competitive, integrated employment, to remedy employment discrimination based on outdated views of the ability of a person with a disability, to ensuring that people with a disability are fully included in all aspects of the community, P&As and CAPs have been at the forefront of the enforcement of the ADA.

Voting Rights – Without Accessibility There Is No Right For People With Disabilities

Voting is perhaps the most fundamental civil right because it can determine whether all other rights are realized. While education may provide the substantive knowledge, voting is the right that leads to these other rights. NDRN and the P&A agencies have been involved for many years to ensure voting is accessible and available to all people through the Protection and Advocacy for Voting Access (PAVA) program created in the 2002 Help America Vote Act (Public Law 107-252). Although the United States has made significant progress toward ensuring that its electoral system is accessible to everyone, there is still much work to be done. People with disabilities continue to

confront barriers to the election process from registration to casting a ballot.

A 2001 GAO report on the 2000 Presidential election found that 84 percent of polling places had impediments to accessibility for people with disabilities. A similar report based on the 2008 Presidential elections found that the situation for people with disabilities had improved, but there were still significant problems – 73 percent of all polling places studied still had impediments to accessibility.

In addition, there are two national reports based on recent elections that discuss the barriers to voting faced by people with disabilities and their concerns with participating in the voting process. These reports are: The National Council on Disability's report titled *Experience of Voters in the 2012 Election Cycle* that had nearly 900 voters with disabilities respond to a national survey on the 2012 election; and a 2012 report from Rutgers University entitled Disability, *Voter Turnout and Voting Difficulties in the 2012 Elections.*

NDRN and the Protection and Advocacy agencies look forward to continuing to work with Congress, the Administration, as well as state and local voting officials to improve accessibility. It is important that a larger national discourse on elections administration and next steps toward ensuring access to the vote for all, including people with disabilities, occur so that the fundamental right to vote is protected.

Education – One of the Foundations for Human Rights

On December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. As a Declaration, it was not intended to be a legal instrument but instead signifies a moral and political commitment to a set of ideas. Article 26 of the Declaration states that "Everyone has the right to education."

School is the first formal public organization encountered by most children and provides the preparation and training needed to understand social policies. Education is a civil right within itself, and also the right that that allows for all human rights to be realized. Prior to 1975, students with disabilities were systematically denied access to a public education.

The two landmark cases that established that children with disabilities have a constitutional right to be included in public schools are *Pennsylvania Association for Retarded1 Children v. Pennsylvania* 343 F. Supp. 279 (E.D. Pa. 1972) and *Mills v. Board of Education* 348 F. Supp. 866 (D.D.C. 1972). The Courts held that children with disabilities must be given access to an adequate publicly supported education. Congress decided to recognize the right to education for children with disabilities and passed the Education for All Handicapped Children Act in 1975, amended numerous

1 This term is in the case name, but the medical community, mental health community, Congress, the Executive Branch and the Supreme Court in *Hall v. Florida* have all in recent years acknowledged the outdated and stigmatizing consequence of the word and have replaced it with "intellectual disability."

times, most recently in 2004 and renamed the Individuals with Disabilities Education Improvement Act (IDEA) (20 USC §§ 1400 et seq.).

For students with disabilities equal educational opportunity has meant not only structural and programmatic changes, but should also include the right to access the general education curriculum, provided necessary accommodations, and be educated in general education classrooms, in neighborhood schools with their peers. Equality of educational opportunity has little meaning if students gain equal access to education and then are taught that they are in some way inferior by being denied access to the general education curriculum, and classrooms. Educating students to tolerate diverse groups can be one of the most important contributions of schools to preparing students to be adults.

Because of the critical importance of education in everyone's life, NDRN, and the P&As and CAPs expend a large amount of time and energy ensuring that the rights of children with disabilities under the ADA, Section 504 of the Rehabilitation Act, and IDEA are protected and enhanced. From ending restraint and seclusion and unnecessary segregation in schools to ensuring students with disabilities are held to high expectations and standards, P&A and CAP agencies every year undertake over 10,000 individual cases, as well as engage in information and referral, training, and systemic advocacy for millions more students to ensure access to this critical civil right.

Passage of Federal Hate Crimes Law - Inclusion for People with Disability

This November was the fifth anniversary of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act becoming law. Until the passage of this law, only minimal protections existed for persons with disabilities who were victims of hate crimes. Every year, P&A agencies investigate incidents involving the serious and pervasive abuse, neglect and exploitation of persons with disabilities. NDRN led efforts to ensure disability was included in the Act with coalition partners and policymakers.

According to the data collected by the Federal Bureau of Investigation pursuant to the Hate Crimes Statistics Act, the number of reported hate crimes against individuals with disabilities has steadily increased since 2000 with 1.5 percent of single bias incidents being specifically related to the person's disability in 2009. As the first indictment demonstrates, although charged as a racially motivated hate crime, the man's significant intellectual disability was used to further harm the victim and give the appearance that a crime had not been committed because the individual had supposedly consented.

This first indictment involved a 22 year old Navajo man with an intellectual disability. The indictment alleges that the defendants branded the victim by heating a wire hanger on a stove and burning the victim's flesh, causing a permanent swastika-shaped scar on his arm. The indictment also alleged that the defendants used the victim's developmental disability to induce him to make a cell phone video in which he purportedly consents to the branding. Two of the defendants were sentenced on

January 25, 2012 for one count of violating the Act. NDRN and the P&A agencies remain leaders in the advocacy and implementation of the Hate Crimes Prevention Act. In addition, we are actively involved in the larger advocacy community working with the Administration through the Department of Justice to strengthen the data collection.

School Removal, Arrest and Incarceration – Intersection of Race and Disability

"Intersectionality" occurs when protected class memberships (race, ethnicity, disability, gender, and religion) overlap to create greater negative impacts for some individuals. Much P&A work involves intersectionality of protected classes in the areas of: 1) school discipline, 2) juvenile and criminal justice referrals, and 3) detention.

For example, when race and disability are combined, the results are more devastating than they are individually. An African American student is three times more likely to face suspension as a student who is white. A student of any race with a disability is more than twice as likely to be suspended, and an African American student with a disability is six times more likely to face suspension as a white student without a disability. Multiple suspensions drastically reduce the chances of graduating from high school and increase the chances of incarceration. "Besides the obvious loss of time in the classroom, suspensions matter because ... out of- school suspension increases a child's risk for future incarceration..." http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-summary-2012.pdf. Not surprisingly, children who are members of protected classes are also more likely to be referred into the juvenile justice system. (https://www.ncjrs.gov/pdffiles1/ojjdp/228306.pdf)

P&As in coalition with other civil rights leaders labor to address these injustices. P&As handle cases regularly that involve children and youth with disabilities who are also members of other protected classes. Here are some examples:

Massachusetts: The Center for Public Representation has filed a class action against the City of Springfield Massachusetts alleging claims under the ADA that the city discriminates against students with mental health disabilities by providing them with inferior education in a segregated school where they are disproportionately subjected to discipline, suspension and arrest. A number involved are children of color. The Department of Justice (DOJ) filed a Statement of Interest opposing dismissal. The DOJ memo is a significant statement of its interpretation of the application of the ADA to schools and the ADA's relationship to the IDEA.

Maryland: The Maryland Disability Law Center, the Maryland P&A, filed a complaint with the U.S. Department of Justice on behalf of a seventeen year old African American student with a disability. The complaint alleges that Wicomico County Public Schools (WCPS) discriminated against the student by : 1) funding a school based police officer, tasking that individual to respond to school rule violations, and relying on the arrest process and the Department of Juvenile Services (DJS) to respond to in-school

behavior, thereby circumventing the protections of the IDEA, Section 504 and the ADA; 2) failing to consider whether the behaviors that led to his suspensions and arrests were manifestations of his known disability of traumatic brain injury or of an unidentified emotional disability; and, 3) failing to provide him an appropriate education by failing to provide, among other things; meaningful interventions and supports and an appropriate placement, when it was clear that his current program was insufficient to keep him in the classroom.

Specifically, the complaint alleges that, per state regulation, the Memorandum of Understanding between the sheriff's department and WCPS was too broadly written, allowing the arrest process to be used to address violations of the school code. In addition, the financial and contractual relationship between the parties raises the question of whether removal and restraint by a school resource officer should trigger the protections of the IDEA. Despite numerous suspensions and arrests, WCPS did not revise his plan. The student was arrested at school 9 times, and was handcuffed and restrained. Ultimately, he was placed in detention, due to the school based arrests and referrals to DJS. The complaint also alleges systemic violations because of the districts use of police and arrest process in school, and failure to comply with request for information.

Mississippi: In a case involving gender and disability, Disability Rights Mississippi, the Mississippi P&A, acted as a plaintiff, along with 6 teenage girls with mental illness confined for non-violent offenses in a state training school, in a suit challenging excessive use of restraints, inadequate mental health care, and failure to protect from physical and sexual abuse. This class action lawsuit alleges that the named plaintiffs were shackled for between eight days to one month for 12 hours each day. The girls with mental illness who were shackled were required to eat, go to school, use the bathroom, and participate in physical exercise while shackled. Additionally, these girls were left unsupervised while on suicide watch and were able to slit their wrists and self-mutilate. Staff members physically and sexually abused the girls in their care: one girl was choked by a guard while another was groped and fondled while in isolation. After an incident in May 2007, six employees were suspended and an investigation launched. The suit sought to close the Columbia Training School. In 2004, the U.S. Dept. of Justice (DOJ) sued the state over conditions at this facility, resulting in a 4-year Consent Decree between the state and the DOJ.

Despite these and other significant efforts, P&As continue to encounter cases of this type demonstrating the intersection of disability with race and/or gender. NDRN and the P&As will continue to work to address these situations through individual and systemic work.

Again, we want to thank Chairman Durbin and Ranking Member Cruz for their work on many important civil and human rights topics over the course of the 113th Congress. We hope that this work will continue in the new Congress and NDRN and the P&A Network stand ready to help you in any way we can to protect and enforce the civil and human rights of people with disabilities.

The State of Civil and Human Rights in the United States
Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
Fawn Sharp, President, Quinault Indian Nation

> *"Our nation was born in genocide when it embraced the doctrine that the original American, the Indian, was an inferior race. Even before there were large numbers of Negroes on our shores, the scar of racial hatred had already disfigured colonial society. From the sixteenth century forward, blood flowed in battles of racial supremacy. We are perhaps the only nation which tried as a matter of national policy to wipe out its Indigenous population. Moreover, we elevated that tragic experience into a noble crusade. Indeed, even today we have not permitted ourselves to reject or feel remorse for this shameful episode. Our literature, our films, our drama, our folklore all exalt it."*

Dr. Martin Luther King, Jr., "Why We Can't Wait" (1963).

Senator Durbin and Members of the Subcommittee, I am Fawn Sharp, President of the Quinault Indian Nation. The Quinault Reservation is located on the on the southwestern corner of the Olympic Peninsula. I am also President of the Affiliated Tribes of Northwest Indians, which represents 57 tribes in six Northwest States, and Area Vice President of the National Congress of American Indians, which represents more than 500 tribal governments nationwide. Thank you for holding this hearing on the state of civil and human rights in the United States and the opportunity to highlight civil and human rights concerns facing Indian Country.

Historical Perspective of Civil and Human Rights of Native Americans in the U.S.
Located in the northwest corner of the United States, the Quinault Nation was one of the last Native Nations in the U.S. to be contacted by the European nations. Less than one year before the foundation of the United States, the first recorded contact between the Quinaults and non-Indians occurred on July 13, 1775, when the Spanish vessel *Sonora* anchored several miles from the mouth of the Quinault River. Not long after first contact, our Nation was sadly subjected to the same greed for our homelands and natural resources that tribes across the continent faced.

Prior to contact, the Quinault and all other Indian tribes were independent self-governing entities vested with inherent authority and control over our lands, citizens, and visitors to our lands. The European nations acknowledged our sovereignty. These entities entered into treaties with tribes to establish commerce and trade agreements, form alliances, and preserve the peace.

Upon its formation, the U.S. also acknowledged the sovereign authority of Indian tribes and entered into hundreds of treaties. Through these treaties, tribes ceded hundreds of millions of acres of our homelands to help build this Nation. In return, the U.S. promised to provide for the education, health, public safety, and general welfare of Indian people. Also, for Quinault and other tribes, the U.S. promised to preserve our rights to fish and hunt our aboriginal homelands.

For the Quinault, these solemn promises of the U.S. were detailed in the Treaty of Olympia, signed on July 1, 1855, and on January 25, 1856 (11 Stat. 971). Under our Treaty, we retained our status as a sovereign Nation with inherent rights to govern our lands, resources, and our

people. This includes access to our usual and accustomed lands and waters and the right to co-manage the natural resources outside of our Reservation border. The U.S. has legal treaty and trust responsibilities to keep its promises to the Quinault Indian Nation.

The U.S. Constitution acknowledges these treaties and the sovereign authority of tribes as separate governments. The Commerce Clause provides that "Congress shall have power to ... regulate commerce with foreign nations, and among the several states, and with the Indian tribes." Tribal citizens are referred to in the Apportionment Clause ("Indians not taxed") and excluded from enumeration for congressional representation. The 14th Amendment repeats the original reference to "Indians not taxed" and acknowledges that tribal citizens were not subject to the jurisdiction of the United States. By its very text, the Constitution establishes the framework for the federal government-to-government relationship with Indian tribes. Finally, the Constitution acknowledges that Indian treaties and the promises made therein are the supreme law of the land.

Over the past two centuries, the federal government has consistently violated each of these solemn obligations. In the late 1800's the federal policy of forced Assimilation authorized the taking of Indian children from their homes. Our ancestors were sent to boarding schools where they were forbidden from speaking their language or practicing their Native religions. The officially sanctioned philosophy was to "kill the Indian, save the man." The concurrent policy of Allotment sought to destroy tribal governing structures, sold off treaty-protected Native homelands, and devastated our economies. Under the authority of this policy, the federal government destroyed thousands of acres of Quinault Cedar forests making our homelands virtually unrecoverable.

During this same era, the federal and state governments sanctioned bounties for killing Native Americans as a means of facilitating the taking of our homelands and exploiting our natural resources. The term "redskin" was born out of this despicable time in our nation's history. The following advertisement from *The Daily Republican* in Winona, Minnesota, is representative of the time: "The State reward for dead Indians has been increased to $200 for every redskin sent to Purgatory. This sum is more than the dead bodies of all the Indians east of the Red River are worth."

These policies resulted in murders of hundreds of thousands of our ancestors, the taking of hundreds of millions of acres of tribal homelands, the suppression of tribal religion and culture, and the destruction of tribal economies. The aftermath of these policies continues to plague Indian Country to this day.

Current State of Human and Civil Rights of Native Americans in the U.S.

Since 1970, the federal government's official "Indian affairs" policy has fostered self-determination. However, the legacy of past federal policies and lack of knowledge and understanding of civil and human rights abuses suffered by Native Americans continue to harm our children, our homelands, and our future.

Even today, the U.S. sanctions the use of our homelands as dumping grounds for corporations without repercussion. Contaminants and habitat destruction have destroyed our ecosystems that sustain our precious fish, wildlife, water, trees and plants. These often government sanctioned actions are not only violations of the federal government's trust responsibility – they constitute civil and human rights violations. Damage and destruction of our ecosystems negatively impact the culture of the Quinault people and our traditional ways of life. Currently, we are fighting to prohibit in the import and transportation of crude oil shipments by rail and sea through our ancestral areas due to the significant potential risk from oil spills that would devastate our lands and seas, wildlife, fisheries, and our traditional ways of life.

While the federal policy of forced assimilation has long been denounced, Native Americans continue to struggle to exercise religious freedom. Every national park and forest is carved out of the ancestral homelands of Native Nations. Our historical and spiritual connections to the land have not been extinguished despite changes in title. However, federal officials often ignore their ongoing obligations to protect these sacred areas, disturbing gravesites, harming places that are traditional medicines and food grow, destroying them, conveying them to private interests, and preventing Native Americans access to these areas to practice our religions.

Just last week, Congress authorized the transfer of a known Native place of worship to a foreign-owned corporation to mine copper. Slipped into the 1,600+ page National Defense Authorization Act, Section 3003, the Southeast Arizona Land Exchange, transfers 2,422 acres of the Tonto National Forest to Resolution Copper, which is owned by foreign mining giants Rio Tinto PLC and BHP Billiton Ltd. These lands have played an essential role in Native religion, traditions, and culture for centuries. The lands are an Apache holy site and traditional cultural property with deep religious, cultural, archaeological, historical and environmental significance to Apaches, Yavapais and other tribes. Native people have lived, prayed, and died in this sacred area for centuries before this mining project was conceived. Despite nationwide opposition denouncing this transfer, including the Quinault Indian Nation and the Affiliated Tribes of Northwest Indians, Congress approved this atrocity with little debate.

Contemporary violations of Native American civil and human rights also come in the form of the suppression of voting rights, lack of quality education or opportunity for Native youth, violence against Native women, lack of access to justice, and the general failure of the United States to keep its promises to Native people. The following pages provide an outline of some of these violations.

The Treaty and Trust Relationship: Foundation for Native Human and Civil Rights

As noted above, the United States took hundreds of millions of acres of Native homelands. In return, it took on the obligation to provide for the health, education, and general welfare of Native Americans. Sadly, it continues to violate these solemn obligations. Tribal programs are funded at a fraction of need, causing a desperate situation for our health clinics, schools and other programs that provide critical services to our people. A state of emergency exists throughout most of Indian Country due to the impacts of continuing cuts in federal funding for essential tribal programs.

To address federal funding shortfalls contrary to the U.S.'s obligations to us, the Quinault Nation spends $4.4 million annually to supplement these funding lapses. Unfortunately, our situation is not unique in Indian Country. Many tribes face significant shortfalls for basic services, such as health care, education, law enforcement, and housing.

Tribes do not receive the same level of federal support that non-tribal citizens do, let alone the support promised them. All too often, this means tribal governments have to fill in the gaps, using very scarce tribal dollars to cover emergency needs of their members, and every one of those dollars has to be re-allocated from some other critical need. This situation is unacceptable.

The General Assembly of the National Congress of American Indians in Atlanta recently passed a resolution calling upon the federal government to fully meet its trust responsibilities in the federal budget. This resolution represents a demand by more than 500 tribes for the White House, Congress and all Federal agencies to budget the funding needed for all Indian programs to fully meet its legal treaty and trust obligations.

The 2003 Report of the U.S. Commission on Civil Rights titled, "*A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*" (*Quiet Crisis*) sadly rings as true today as it did a decade ago. An excerpt from the executive summary reads:

> The Federal government has a long-established special relationship with Native Americans characterized by their status as governmentally independent entities, dependent on the United States for support and protection. In exchange for land and in compensation for forced removal from their original homelands, the government promised through laws, treaties, and pledges to support and protect Native Americans. However, funding for programs associated with those promises has fallen short, and Native peoples continue to suffer the consequences of a discriminatory history. Federal efforts to raise Native American living conditions to the standards of others have long been in motion, but Native Americans still suffer higher rates of poverty, poor educational achievement, substandard housing, and higher rates of disease and illness. Native Americans continue to rank at or near the bottom of nearly every social, health, and economic indicator.

This is truly a crisis. We can no longer remain quiet. Too many of our people are hungry and sick. Too many of our young people are dropping out of school. Too many Native Americans are incarcerated or unemployed. Too many are dying. Too much of our traditional land as well as the water and the natural resources upon which we depend are being over-exploited, polluted, and destroyed.

Funding levels for tribal programs have not kept pace with those provided for other agencies within the Department of the Interior. Over the last 10 fiscal years, the budget for the National Park Service has grown by 33%; the Fish and Wildlife Service by 19%; the U.S. Geological Survey by 14.5%; the Bureau of Land Management by 14% and, last and apparently least, the Bureau of Indian Affairs (BIA) by only 10.5%—nowhere near enough to keep pace with inflation.

Base programs that support tribes' daily conservation responsibilities are funded at levels less than a decade ago. In 1999, the BIA reported that tribes had more than $356 million in unmet annual needs for natural resource management. Since then, there were numerous funding cuts to natural resource management. The BIA and tribes have lagged significantly behind in funding compared to other Interior agencies. Funding for tribal programs has also suffered from congressional rescissions and sequestration. There are additional ways that funding practices have disparately impacted Indian Tribes, such as contract support cost shortfalls. Further, federal administrations and congressional appropriations committees have often bumped up the pay for federal employees but singled out tribally operated programs for discriminatory exclusion. The list of cuts, shortfalls, and broken promises by the U.S. goes on and on; while, the needs of the Indian people continue to grow. It is time to put an end to this discrimination and crisis.

Native American Voting Rights

The first Americans were the last to be granted voting rights in the United States. For the first 150 years of our Nation's history, American Indians had no vote and no say in the destructive federal policies of Removal, Allotment, and Assimilation.

American Indians were first recognized as U.S. citizens with the right to vote in 1924. However, many states continued to deny American Indians the right to vote for decades. In 1937, the U.S. Solicitor General issued a report finding that American Indians in the state of Washington were not allowed to vote. New Mexico did not amend its prohibition on Indian voting until 1948. Indians first voted in Maine elections in 1955. South Dakota Indians were still fighting for the right to vote in some county elections in the mid-1970s. Even today, tribal governments must fight to fully exercise the voting rights of our citizens.
See http://inthesetimes.com/article/16773/the_missing_native_vote.

Even now, there are efforts to disenfranchise Indian voters at the polls, including efforts to eliminate requirements that ballots be in Native languages in addition to English under Section 5 of the Voting Rights Act and to make it difficult for Indian people to find out information about voting locations and to make voting locations/dates inconvenient to discourage voting.

United States is Failing our Native Youth

The federal government's funding failures inflict the greatest harm on our Native youth. Native American youth are the most at-risk population in the U.S., facing stark disparities in education, health, and safety. From 2000–2012, child mortality in the U.S. decreased by 9%. However, the child mortality rate among Native children has *increased* 15%! 37% of Native youth live in poverty. Native youth suffer suicide at a rate 2.5 times the national average. 58% of 3- and 4-year-old Native children do not attend any form of preschool. The graduation rate for Native high school students is 50%, far below the national average. Native children disproportionately enter foster care at a rate more than 2.1 times the general population and have the third highest rate of victimization.

Indian Education

Many of the problems faced by Native students, such as drug and alcohol abuse, are symptoms of poor self esteem due to unresolved internal conflicts resulting from educators and others in positions of authority asking students to give up their Native culture. This is not new, of course.

Just a few generations ago, the government took virtually all Native children away from their parents and put them in boarding schools where they were punished if they spoke, did or even wore anything Indian. Native families have a right to retain their heritage. Teaching methods and school curriculum should be changed so that they acknowledge and respect the cultures of Native Americans.

To build a strong positive identity, children need to interact with adults who reinforce and build on the cultural messages they have previously received in the home. However, too often in schools teachers do not reinforce what Native parents show and tell their children because they are either unaware of tribal culture or they don't care. This produces cultural discontinuity between home and school, forcing Native children to choose between their Native culture and school, often with harmful results.

More Native curriculum needs to be developed and used to reduce cultural discontinuity. Parents need to have the ability to ensure that schools provide their children with educational opportunities that will strengthen Native families rather than separate Native children from their parents. Academic student advocacy programs such as the ones sponsored by the American Indian Science and Engineering Society and by tribal colleges need to be encouraged. In some instances, charter schools with the flexibility to accommodate these needs are the answer. In Washington State, a bill sponsored by Tulalip tribal member and State Senator John McCoy established a "compact school" alternative which provides flexibility and yet keeps participating tribal schools in the regular funding system, with minimal but adequate state oversight. Creative ideas such as this, intended to protect the fundamental civil rights of American Indian people to retain their heritage and to keep their children in school should be researched and supported by Congress.

Native students also encounter racism in the state and local school systems. The Quinault Nation is currently engaged in a civil rights court case in federal district court in support of student athletes at our Taholah High School (School). Their civil rights have been violated by the actions of other school districts to dissolve the Coastal 1 B Athletic League rather than to include our School, depriving our students of league play and the benefits of interscholastic athletics for the past two years. Other school districts in the region originally imposed sanctions against the School, all of which were overturned by the Washington Interscholastic Activities Association. But the league has remained abolished. All of these problems followed many cases of non-Indians hurling racist slurs at our student athletes. At this time, the other school districts have not been willing to accept the most basic of civil rights training in settlement and the prospects of an agreement at this time are unlikely.

Juvenile Injustice in Indian Country

Native youth are also witnesses to and victims of violence at rates multiple times the national population. Native youth experience double the rates of abuse and neglect of Caucasian children and are more likely to be placed in foster care. Native youth between the ages of 12 and 19 are more likely than non-Native youth to be the victim of either serious violent crimes or simple assaults. Native youth are 2.5 times more likely to commit suicide than non-Native youth. Indian juveniles experience Post Traumatic Stress Disorder (PTSD) at a rate of 22%, close to triple the

rate of the general population. *See Indian Law and Order Commission Report (ILOC), Roadmap for Making Native America Safer* (Nov. 2013), http://www.aisc.ucla.edu/iloc/report/.

Native youth are also overrepresented in the federal and state criminal justice systems. Native youth are 1.5 times more likely than non-Indian youth to receive the two most severe punishments in the juvenile justice system: out-of-home placement (*i.e.*, incarceration in a state correctional facility) and waiver to the adult system. Nationwide, the average rate of new commitments to adult state prisons for Native youth is 1.84 times that of Caucasian youth. The majority of youth in the federal juvenile justice system are Native youth. 70% of youth committed to the Federal Bureau of Prisons (BOP) as delinquents are Native American, as are 31% of youth committed to BOP as adults. Compared to youth prosecuted in county/state juvenile justice systems, youth tried in federal court spend more time in detention and face tougher and longer sentences that are often served hundreds of miles from home. *Key Facts: Native American Youth in Federal, State, and Tribal Justice Systems,* http://www.campaignforyouthjustice.org/documents/Impact_on_Native_Youth.pdf.

The ILOC "Roadmap" Report finds that "Indian Country juvenile justice exposes the worst consequences of our broken Indian Country justice system. Native juvenile justice illustrates the fundamental point and promise of [the] report—greater Tribal freedom to set justice priorities, supported by resources at parity with other systems and full protection of Federal civil rights of all U.S. citizens, will produce a better future for Indian country and, importantly, for Native youth."

This report makes a number of common sense recommendations. Congress must amend federal law to restore exclusive power in tribal justice systems to handle criminal matters involving Native youth, while redirecting funds absorbed by the federal and state systems to tribal governments. Congress must reorganize/consolidate federal resources for tribal juvenile justice, allocating flexible use of funds to tribes through block formula funding rather than inflexible and burdensome grant programs. Where violent juveniles require treatment in secure detention, that treatment should be provided within a reasonable distance from the juvenile's home and informed by the latest and best trauma research as applied to Indian country. The Indian Child Welfare Act (ICWA) should be amended to provide that when a state court initiates any delinquency proceedings involving an Indian child for acts that took place on an Indian reservation, all of the notice, intervention, and transfer provisions of ICWA would apply. I urge the Committee to act on these and other recommendations set forth in the following reports to improve the system of justice for Native youth:

- *The Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence: Ending Violence So Children Can Thrive (2014).* http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/18/finalaianreport.pdf
- *Indian Law and Order Commission Report (ILOC), Roadmap for Making Native America Safer, Chapter 6 – Juvenile Justice: Failing the Next Generation* (Nov. 2013), http://www.aisc.ucla.edu/iloc/report/.

Barriers to Justice in the Criminal Justice System in Indian Country

For most jurisdictions in the U.S., crime is a local matter. States and local governments define crimes, conduct law enforcement activity, and impose sanctions on wrongdoers. Public safety officials are held accountable by their local community members. Jails and detention centers often are located within those same communities. Federal law enforcement rarely intrudes on state and local justice matters.

The opposite is true for this nation's Native jurisdictions. For Native Nations, the justice system is often located hundreds of miles from our communities. Investigators, prosecutors, juries, courtrooms, and detention centers are located far off-reservation often preventing access to justice and fostering a system of distrust. In the late 1800s, the U.S. enacted laws making crimes in Indian country a federal matter. Federal reports have consistently found that the current federal system of justice in place on Indian lands lacks coordination, accountability, and adequate funding. These shortfalls foster reservation violence and disrupt the peace and public safety of tribal communities.

Violent crime rates in Indian country are more than twice the national average, with violent crime rates exceeding 20 times the national average on some reservations. There is an epidemic of domestic and sexual violence in Indian country. Federal reports indicate that 34% of American Indian and Alaska Native women will be raped in their lifetimes, and 39% will suffer domestic violence. American Indian and Alaska Native youth experience 50% higher rates of child abuse compared to non-native youth.

Taking the power of justice from an entire population remains an ongoing civil and human rights violation. It is beyond time to change this system and restore full local control to tribal governments over all crimes committed on our lands. To address the inequities imposed on Native youth, to address many of these shortcomings in the justice system and to foster trust in the system, I urge the Committee to act on the recommendations set forth in the reports referenced above.

Violence Against Native Women

I applaud Congress for beginning to address the crisis of violence against Native women through enactment of the 2010 Tribal Law and Order Act and the 2013 Reauthorization of the Violence Against Women Act. However, much more work must be done to protect Native women from violence. For example, the recent FY15 Continuing Resolution/Omnibus spending bill set funding for the Crime Victims Fund established under the Victims of Crime Act (VOCA) at $2.3 billion. These funds are 100% dedicated to state governments. Despite the federal trust obligation to stop violence on Indian lands, none of these funds are directly provided to the thousands of victims of crime in Indian country. I urge the Committee to immediately correct this oversight by setting aside 10% of VOCA funds to victims of crime on Indian lands. In addition, to help better protect Native women, I urge you to act on the many other recommendations set forth the Amnesty International Report, *Maze of Injustice: the Failure to Protect Indigenous Women from Sexual Violence in the USA*, http://www.amnestyusa.org/pdfs/MazeOfInjustice.pdf (2007).

Police Killings of Native Americans
The recent police killings in Ferguson, Missouri, and New York City have rightly received national attention, resulting in dozens of protests nationwide. What hasn't received attention is the fact that Native Americans are victimized by disproportionate stops, searches, arrests, charges, prosecution, and sentencing.

According to the Centers for Disease Control and Prevention, "the racial group most likely to be killed by law enforcement is Native Americans, followed by African Americans, Latinos, Whites, and Asian Americans. Native Americans, 0.8 percent of the population, comprise 1.9 percent of police killings."

On August 30, 2010, officer Ian Birk shot and killed John T. Williams, an unarmed Ditidaht First Nations man, in Seattle, WA. Williams was a 7th-generation wood carver who suffered from a hearing impairment. He was carrying a three-inch carving knife and a piece of Cedar when Birk shot him seven seconds after being ordered to drop the knife. The elder carver's hearing impairment likely prevented him from responding to the officer's commands. Thousands of people saw the video of the incident and it was very clear that the officer was in no danger. No criminal civil rights charges were filed against the officer who killed Williams. The same prosecutor refused to file criminal and hate crime charges against Officer Shandy Cobane, who was caught on video stomping on a Latino man and shouting racial obscenities at him. Dozens of other police killings of Native Americans continue to receive little attention. I urge the Committee to re-examine this topic and invite witnesses from Indian Country to provide our perspectives.

Dire Health Care Needs in Indian Country
The 1921 Snyder Act and the 1976 Indian Health Care Improvement Act acknowledge the federal government's treaty and trust obligation to provide health care to American Indians.

The U.S. has also ignored this basic obligation. American Indians suffer significant health disparities compared to the national U.S. population. The average life expectancy of an American Indian is 4.1 years less than the rest of the U.S. population. Even basic dental care is lacking in Indian country. Ninety percent of American Indian children suffer from dental cavities by age 8 compared to 50% of the U.S. population.

Indian health care has been woefully underfunded. In 2013, the Indian Health Service (IHS) spent just $2,849 per person compared to a national average of $7,717. In 2010, the IHS estimated that it was only funding 56.5% of the level needed. This is far short of providing the services required under the U.S.'s treaty and trust responsibilities to Indian people. The report, *Quiet Crisis*, documented that funding for health care for federal prisoners is twice the level provided for health care for American Indians.

The lack of funding for Indian health care has resulted in concerns over the quality of health care delivered to Native Americans. Too often our family members and friends needlessly suffer because they are misdiagnosed for what could have been a preventable illness or fatality.

At such low levels of funding, tribal communities are often forced to save their precious dollars for life threatening situations and to defer important care for non-life threatening conditions. Many times, this results in prolonged pain management and generally worse outcomes for American Indian patients. Health professionals providing care for American Indians should not be placed into situations where they have to decide whether to do a procedure or not based upon the amount of funding left for the health facility that year. This is a violation of the basic human rights of the American Indians who receive care from IHS.

Meeting Federal Obligations of the UNDRIP

In September 2007, the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The UNDRIP affirms the collective rights of indigenous peoples vis-a-vis UN Member States in relation to culture, self-determination, education, social services, and development of land and natural resources. It also embodies respect for treaties and modern compacts with indigenous peoples and calls for proactive steps by UN Member States and the UN as a whole to secure these rights. On December 16, 2010, the U.S. endorsed the UNDRIP and announced that it aspires to use the principles set out in UNDRIP within the structure of U.S. law to inform the development of federal Indian policy.

Since the U.S. endorsement of the UNDRIP, tribal leaders have expressed disappointment that the federal government has not done enough to comply with it. Sadly, the UNDRIP is still having little impact on curbing violations of indigenous peoples' human rights. Indigenous peoples are being displaced from their lands and resources by large projects and extractive industries; Native women are still subjected to high rates of violence; and indigenous lands and sacred places continue to be taken and desecrated with little regard for Native culture and traditions.

The Department of State hosted consultations and scoping sessions with representatives of federally recognized tribes prior to the 2014 World Conference on Indigenous Peoples. However, it is clear that not enough is being done by the federal government to uphold the principles contained in the UNDRIP. As noted above, the passage last week of the Southeast Arizona Land Exchange and Conservation Act within Section 3003 of NDAA is just one of many examples of Congress utterly failing in its trust responsibilities to Indian people by giving away tribal sacred areas to mining companies that will destroy them.

The Quinault Nation urges the Committee to consider holding a hearing focusing on the U.S.'s policy toward Native peoples and the overall implementation of UNDRIP principles in federal tribal policy.

Conclusion

Congress can and must do more to ensure that basic human and civil rights of Indian people are protected. I thank the Committee for this opportunity to submit testimony and urge you to assist the Quinault Nation and the rest of Indian Country in ensuring that the U.S. lives up to its treaty promises and trust responsibilities.

WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

"The State of Civil and Human Rights in the United States"

Submitted to the
U.S. Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights

December16, 2014

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On behalf of the American Civil Liberties Union (ACLU), a nationwide organization that has worked in the 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 this country, we commend the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Human Rights for holding a hearing on "The State of Civil and Human Rights in the United States."

We submit this supplemental statement to draw the Subcommittee's attention to the continuing problem of inappropriate, improper and often illegal law enforcement responses to domestic and sexual violence that violate the civil rights of domestic violence and sexual assault survivors and endanger their lives.

While police abuses such as racial profiling or police brutality are well-understood as civil rights violations, police abuses toward survivors of domestic and sexual violence are not. These abuses include failure to address and prevent officers' commission of domestic and sexual violence, as well as police misconduct in enforcing domestic and sexual violence laws. For years, the ACLU has argued that systemic problems in policing domestic and sexual violence can violate civil and human rights because they are often rooted in discriminatory attitudes about women, as well as about people of color, immigrants, LGBT people and people who embody multiple, marginalized identities.[1] Victims of these crimes may be denied equal protection under the U.S. Constitution when domestic or sexual violence is treated less seriously than other offenses. Due process violations may also occur when police affirmatively condone the violence, or when a victim is put at greater risk as a result of police conduct.

Today, as our country and members of Congress assess and grapple with law enforcement reforms to achieve racial justice, we must also ensure that law enforcement policies and practices are free of gender stereotypes and gender bias because discriminatory law enforcement undermines efforts to end domestic and sexual violence and reduces confidence in the criminal justice system. It furthers the perpetuation of domestic and sexual violence by discouraging victims from coming forward and by allowing perpetrators to continue to commit crimes with impunity. Gender and racial bias in law enforcement have a particularly harmful impact on survivors who are women of color. Few victims will decide that their safety is advanced by reaching out to police when there is a history of police brutality in their communities, leaving them without recourse to the criminal justice system and vulnerable to violence. Moreover, discriminatory police responses to these crimes have been found to violate the U.S. Constitution and federal law and may violate international human rights law.

Domestic and Sexual Violence and Law Enforcement

Domestic violence and sexual assault are two of the most prevalent forms of gender-based violence. In the US, there are approximately 237,800 sexual assault victims each year,[2] and one in four women and one in seven men will experience domestic violence in their lifetime. Not only does

[1] American Civil Liberties Union, *Jessica Gonzales v. U.S.A.*, ACLU Blog (Oct. 27, 2014), https://www.aclu.org/human-rights-womens-rights/jessica-gonzales-v-usa.

[2] Rape, Abuse & Incest National Network (RAINN), *How often does sexual assault occur*, https://www.rainn.org/get-information/statistics/frequency-of-sexual-assault (aggregating results from the US Census Bureau for the Bureau of Justice Statistics National Crime Victimization Survey from 2008-2012).

domestic violence and sexual assault have ongoing and destabilizing effects on families, individuals, and communities but it also has an enormous fiscal impact: a study found that intimate partner violence costs the U.S economy $12.6 billion annually in legal and medical services, judicial system costs and low productivity.[3]

Until the last few decades, domestic and sexual violence was treated as a private matter, undeserving of police, governmental, or public attention. Far too often, survivors of domestic and sexual violence faced disbelief, victim-blaming, shaming, and hostility. That attitude frequently resulted in law enforcement's refusal to accept complaints, conduct investigations, or make arrests, even when the abuse clearly qualified as criminal. Over time, the U.S. has increasingly recognized that domestic and sexual violence are serious crimes that should be treated as such by law enforcement. The Violence Against Women Act and other federal laws and programs have, among other things, built criminal justice capacity and expertise, trained thousands of officers, and resulted in more effective law enforcement in many communities. Indeed, law enforcement has improved responsiveness to domestic and sexual violence by incorporating current, evidence-based research into law enforcement policies and providing training to relevant personnel.

Yet reports regularly surface of law enforcement agencies failing to investigate or adequately respond to domestic and sexual violence perpetrated by private individuals or officers. Discriminatory policing, including ignoring abuses committed by officers, refusing to enforce established laws, misclassifying or dismissing domestic or sexual violence complaints, and inadequate training and supervision, often stems from the reluctance of agencies to acknowledge the extent of crime in their communities and from stereotypes and misapprehensions about domestic and sexual violence.[4] Because domestic and sexual violence are committed primarily against women, and because domestic and sexual violence survivors often are subjected to gender-based stereotypes, law enforcement's failed responses can constitute impermissible discrimination.

Egregious and recent examples of law enforcement failures with respect to domestic violence and sexual assault were found in Puerto Rico where the ACLU documented police failure to enforce domestic violence laws that contributed to the highest per capita rate in the world of women killed by their intimate partners.[5] The Puerto Rico Police Department also systematically underreported rape crimes and rarely took action when their own officers committed domestic violence, allowing 84 officers who had been arrested two or more times for domestic violence to remain active. In Washington, DC, Human Rights Watch described serious problems with police documentation and investigation of sexual

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[3] University of Miami School of Law Human Rights Clinic, Columbia Law School Human Rights Institute & ACLU Women's Rights Project, *Domestic Violence & Sexual Assault in the United States: A Human Rights Based Approach & Practice Guide*, (Aug. 2014), *available at* http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/dv_sa_hr_guide_reduce.pdf.

[4] U.S. Dep't U.S. DEP'T OF JUSTICE, CIV. RTS. DIV., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT xi (Mar. 2011), *available at* http://www.justice.gov/crt/about/spl/nopd_report.pdf.

[5] American Civil Liberties Union, Failure to Police Crimes of Domestic Violence and Sexual Assault in Puerto Rico, (Jun. 2012), *available at* https://www.aclu.org/human-rights/failure-police-crimes-domestic-violence-and-sexual-assault-puerto-rico.

assault cases.[6] The Civil Rights Division of the Department of Justice recently examined and documented discriminatory law enforcement responses to domestic and sexual violence cases in police misconduct investigations, undertaken by its Special Litigation Section, in Puerto Rico, New Orleans, Maricopa County, AZ, and Missoula, MT.[7]

Another deeply troubling and widespread example of discriminatory policing is the biased enforcement of local "nuisance ordinances," which frequently authorize law enforcement to punish or penalize tenants or landlords based on requests for police assistance.[8] Police officers too often enforce the nuisance ordinances disproportionately against victims of domestic and sexual violence, with devastating consequences. For example, in Norristown, PA, an African-American domestic violence victim faced eviction because police concluded that she had violated the 3-strike nuisance ordinance – with each strike consisting of an act of domestic violence perpetrated against her, including a stabbing that required her to be taken by helicopter to a trauma center.[9] Additionally, the role and conduct of law enforcement with respect to campus sexual assault has also come under increased scrutiny.[10] In some campus cases, student survivors report the violence to law enforcement authorities only to have their complaints treated with hostility and dismissal; some survivors are deterred from filing complaints because of this expectation and experience. When police officers rely on gender stereotypes and bias in addressing campus sexual violence complaints, they deny victims equal protection under the law.

Making Progress to Eliminate Gender-Biased Policing

We applaud the Justice Department's current efforts to combat gender-biased policing. In addition to the groundbreaking investigations of police departments, last year the Office of Community Oriented Policing Services, the Office for Victims of Crime, and the Office on Violence Against Women of the Department of Justice issued a crucial joint statement on addressing gender discrimination in

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[6] HUMAN RIGHTS WATCH, CAPITOL OFFENSE: POLICE MISHANDLING OF SEXUAL ASSAULT CASES IN THE DISTRICT OF COLUMBIA, (2013) available at http://www.hrw.org/sites/default/files/reports/us0113ForUpload_2.pdf.

[7] U.S. DEP'T OF JUSTICE, CIV. RTS. DIV., INVESTIGATION OF THE PUERTO RICO POLICE DEPARTMENT (Sept. 2011), http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf; Findings Letter from Thomas E. Perez, Assistant Attorney General for the Civil Rights Division to Bill Montgomery, County Attorney, Maricopa County, Arizona on United States' Investigation of the Maricopa County Sheriff's Office (Dec. 2011), *available at* http://www.justice.gov/crt/about/spl/mcso.php. *See also* Statement of Thomas E. Perez, Assistant Attorney General for the Civil Rights Division at Missoula, Montana Press Conference (May 1, 2012), http://www.justice.gov/crt/opa/pr/speeches/2012/crt-speech-1205011.html [hereinafter "Missoula Statement"].

[8] American Civil Liberties Union, *I Am Not a Nuisance: Local Ordinances Punish Victims of Crime,* ACLU Blog (accessed Dec. 2014) *available at* www.aclu.org/notanuisance.

[9] American Civil Liberties Union, *Briggs v. Borough of Norristown et al.*, ACLU Blog (accessed Dec. 2014) *available at* https://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al

[10] U.S. Senate, Committee on Judiciary, Subcommittee on Crime & Terrorism. *Campus Sexual Assault: the Roles and Responsibilities of Law Enforcement*, Hearing, Dec. 9, 2014, *available at* http://www.judiciary.senate.gov/meetings/campus-sexual-assault-the-roles-and-responsibilities-of-law-enforcement. *See also* ACLU Statement for the Record for Roundtable Discussion on Campus Sexual Assault and the Criminal Justice System (Jun. 20, 2014), *available at* https://www.aclu.org/womens-rights/aclu-statement-record-roundtable-discussion-campus-sexual-assault-and-criminal-justice.

policing.[11] Because "gender bias plays a role in undermining the effective response by law enforcement to crimes against women," the statement announced that the prevention of sex-based discrimination by law enforcement is a "top priority" of the Civil Rights Division of the Department of Justice in its oversight of law enforcement agencies.

We encourage the Justice Department to expand its current efforts by issuing much- needed guidance to law enforcement on how the Constitution and federal laws apply to protect victims and to articulate the fundamental elements of effective law enforcement responses to domestic and sexual violence. Such guidance would give greater clarity to law enforcement agencies seeking to strengthen their practices and to survivors of domestic and sexual violence about their civil rights. For example, guidance issued by the Justice Department could encourage law enforcement agencies to address and integrate the following issues:

- Agencies should have in place policies that provide guidance with respect to basic, essential functions of law enforcement response to allegations of domestic violence and sexual assault. They should include protocols that address the following: 911 operators' receipt of domestic and sexual violence calls; initial and follow-up victim interviews, including how to safely communicate with victims and how violence and victimization may affect a victim's cooperation with law enforcement; identification and documentation of victim injuries; forensic examinations, including of victims; victim interviews and suspect interrogations; evidence preservation and crime scene management; enforcement of protective orders; follow-up investigations, including cases in which the suspect has left the scene; collaboration with victim advocates; and services and assistance to be offered to victims. Policies should also address domestic and sexual violence committed by officers.

- Agencies should require that cases alleging domestic or sexual violence be investigated with the same care and attention given to similar violent offenses. Staffing should be sufficient to allow for full and complete on-scene and follow-up investigations. Complaints should be recorded, preserving detailed, verbatim statements from victims and witnesses and describing the appearance of the scene, victim injuries and need for medical assistance, and results of forensic exams or laboratory analysis. Evidence should be collected in accordance with standard guidelines, such as by interrogating suspects, interviewing witnesses, ascertaining the history of violence, taking photographs, and gathering other physical and forensic evidence. Evidence collection should be performed to the fullest extent possible, even if time has passed since the crime. Investigative reports should include any reports prepared by patrol officers or other first responders.

- Law enforcement should not dismiss domestic or sexual violence complaints because they assume that victims will not cooperate or will not be good witnesses. Even where a victim

[11] U.S. Department of Justice, Office on Violence Against Women, Joint Statement of the Office of Community Oriented Policing Services, The Office for Victims of Crime, and the Office on Violence Against Women on Addressing Gender-Discrimination in Policing, (Jun. 2013), http://www.justice.gov/ovw/blog/joint-statement-office-community-oriented-policing-services-office-victims-crime-and-office.

expresses a reluctance to cooperate, law enforcement should not request that victims officially withdraw charges until the investigation is complete.

- Agencies whose jurisdiction covers Indian Country should establish and implement clear protocols for investigation, follow-up, and collaboration among federal, state, local, and tribal authorities. Agencies should ensure that training of officers includes discussion of jurisdictional issues and promotes cultural competency. DOJ has issued guidance on these issues, including memoranda and statements that address responding to domestic or sexual violence in Indian Country.[12] That another agency may have concurrent jurisdiction does not mean that federal, state, and tribal authorities can prematurely end the investigation of domestic or sexual violence, such as by failing to respond, document complaints, or collect and preserve evidence.[13]

- Law enforcement officers should be held fully accountable when they are alleged to have perpetrated domestic or sexual violence. Systems of recruiting, training, supervision, review of use of force, and internal officer investigations should incorporate standards for evaluating officers accused of sexual or domestic violence and for making criminal referrals where appropriate. Internal investigations should involve concurrent administrative and criminal processes, where possible, with due consideration of the rights of the accused officer. Procedures should also clearly lay out when and how officers should be relieved of duty and of their weapons, as prescribed by agency policy and federal and state law.

Again, we appreciate the attention that the Department of Justice has already given this too-often neglected issue and urge publication of additional guidance to law enforcement on gender-biased policing.

We also urge members of Congress to consider these important issues of gender and race as it begins to scrutinize police conduct. More immediately, we hope that as Congress seeks solutions to the problem of campus sexual assault, it will closely examine the policies and practices of relevant local law enforcement agencies that interact with student victims of sexual assault.

We look forward to working closely with Congress and the Department of Justice to eliminate law enforcement practices and policies that discriminate against survivors of domestic and sexual violence.

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[12] *See* Tom Perrelli, Associate Attorney General, Statement before the Senate Committee on Indian Affairs (Sept. 22, 2011), http://www.justice.gov/iso/opa/asg/speeches/2011/asg-speech-110922.html; Memorandum from David W. Ogden, Deputy Attorney General for U.S. Attorneys with Districts Containing Indian Country, Indian Country Law Enforcement Initiative (Jan. 11, 2010), http://www.justice.gov/dag/dag-memo-indian-country.html.

[13] *See* AMNESTY INTERNATIONAL, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA (2007), www.amnestyusa.org/pdfs/MazeOfInjustice.pdf.

Testimony to the United States Senate Committee on the Judiciary by Ms. Sahar Chinyere

December 16

2014

Dear United States Senate Committee on the Judiciary (ATTN: Sen. Whitehouse's and Sen. Durbin's subcommittees): Please include in the Congressional record this 12/16th/2014 draft of my testimony (also being uploaded in video-format to: http://www.youtube.com/user/ChinyereDOTcom/videos where uploads appear in reverse chronological order). Thank you.
- Sahar Chinyere, Founding Spokesperson of SnoEOawc (http://www.facebook.com/SnoEOawc).

12/16th/2014 FINAL DRAFT (that replaces my 12/9th/2014 preliminary draft)

(This document includes this cover page + 10 pages of main body + 6 pages of additional citations & further recommended reading for a total of 17 pages)

The following is from 1:28:22 - 1:36:04 of the Expanded Presentation to the Attention of the U.S. Presidential Commission for the Study of Bioethical Issues video that I produced, and uploaded on October 30th, 2012 to http://youtu.be/RsdAzMUA7b8:

Closing Appeal by Ms. Sahar Chinyere, Founding Spokesperson of SnoEOawc (pronounced 'Snowy Oak', acronym for Stop Non-Consensual Experiments on All World Citizens):

"Hello. My name is Sahar Chinyere. I am the founding Spokesperson of SnoEOawc. It stands for Stop Non-Consensual Experiments on All World Citizens. The purpose of SnoEOawc is to help raise awareness of non-consensual human experimentation worldwide in an effort to help make it stop[1].

I'm appealing to this Commission because my understanding is that it was convened to review Human Research Subjects Protection[2] largely in light of the findings of Dr. Susan (Mokotoff) Reverby of Wellesley College[3a, 3b] when, funded partially at least by the government, she was doing research into the files of a doctor who was a U.S. Public Health Service doctor[4] during the time of the Tuskegee Syphilis Experiment[5].

My understanding is that she was surprised to find that {in addition to} the Tuskegee Syphilis Experiment {in the U.S. state of Alabama}... with regard to documentation that she found in this doctor's files {at the University of Pittsburgh}... additional non-consensual human experimentation had taken place in Guatemala which is now commonly referred to as the Guatemala Syphilis Experiment[6]. A distinction should be made that in Guatemala it has been documented that people were **deliberately infected** (emphasis added) with Syphilis as well as Gonorrhea and Chancres[7]. And something else of note is that the National Institutes of Health had provided a grant to help fund, at least in part, what was done in Guatemala[6].

Some people who are very concerned about signs that there may be some current non-consensual human experimentation taking place, internationally, have received a letter[8]: [It appears] written by someone who was working previously and who has gone back to work for the National Institutes of Health and in between was representing this BioEthics Commission, the U.S. Presidential Commission for the Study of Bioethical Issues[9].

The letter appears to be discouraging [people from reporting] to the Commission on these matters. And a lot of people have lost hope but I still have some hope that while it is our governments that apparently end up being found to be the entities that have financially **and otherwise** (emphasis added) supported non-consensual human experimentation, that it is our governments that might step forward and look into these matters and in fact are the only entities in a position to do so {on multiple levels}.

Therefore I want to ask this Commission to please look at another doctor's files. This is a doctor who held the office of Surgeon at the U.S. Public Health Service during the Tuskegee Syphilis Experiment[5, 10] (more formally referred to as the U.S. Public Health Service's "Study" at Tuskegee (city) of Untreated Syphilis in the Negro Male). pg. 1 of 6)

I [did] not name this doctor out of respect for his surviving family & loved ones because he died in August of [just the year before the video presentation to the attention of the Bioethics commission]. However, out of fairness to the rest of the medical community, I [identified] him sufficiently by his roles that anyone seriously looking into this matter further [would] not be able to confuse him with any other individual.

This doctor retired from the U.S. army with a rank of Colonel[10]. Specifically, according to his biography online, he retired from the U.S. Army Medical Reserves also referred to as the U.S. Army Medical Corps[10]. And he was based at Fitzsimons Army Medical Center in Aurora, Colorado[11].

The Center was renamed after they received a donation[12]. However, it is my understanding that, to some significant extent at least, it may have continued to actually operate as an army medical center[13].

This is now where the University of Colorado Hospital at Aurora is located[14]. I am further concerned because from what I have read there may have been some overlap including National Institutes of Health stipend support with regard to the James Holmes[15] case, the person who is now referred to as The Aurora, Colorado Theatre Shooter.

[James Holmes] was in fact studying in the field of NeuroScience[15a, 15b]. And that overlaps with the field of greatest concern that [aligns] with the types of complaints of people stepping forward currently that are concerned about non-consensual human experimentation taking place[16].

… The doctor that was based at the University of Colorado Hospital at Aurora and Fitzsimons Army Medical Center, in addition to having served as Surgeon at the U.S. Public Health Service during the Tuskegee Syphilis Experiment, was Medical Director of University Physicians, Incorporated[17] during the more modern non-consensual human experiment that is now referred to as Polyheme[18] – the Polyheme Artificial Blood Experiment[19, 20], and was reported on in 2006 by ABC (American Broadcasting Company) News[19, 20, 21].

The reason this is relevant, that he was Medical Director of University Physicians, Incorporated, during this time, is that that is the group of physicians that supplied the doctors to at least one … now publicly listed, participating facility, that was participating with that experimentation[22], which is the Denver Health [Medical Center] in Denver, Colorado[21].

Moreover, this doctor appeared before at least one U.S. Senate Appropriations Committee, specifically a committee for Foreign Assistance (http://www.chinvers.com/MbMm/HealthFactor/DrJohnSbarbaro-APPROPRIATIONScommittee1997.jpg, 105 Hearing, on 5/15/1997). And the complaints that I have been encountering are international. Therefore I will ask for someone from this Commission or to be able to refer to another government entity to please look into these matters and these files because while it does not seem to be a majority of physicians that would participate in such activity, there does seem to be a pattern where if a doctor is connected to one non-consensual human experiment there might be found that they are connected to more.

And I am going to ask you: Please, on behalf of all the people coming forward that are needing some help from our government … please unite internationally since this seems to be an international problem and, rather than looking to blame or to sue… please unite and … solve the problems that have been arising with regard to people coming forward and [reporting] similar symptoms as referenced by Dr. (John) Hall {and Dr. Robert Duncan}.

Thank you for your time."

{Dr. Hall, author of A New Breed: Satellite Terrorism in America, speaks from 30:44 - 36:02 in the video: http://youtu.be/RsdAzMUA7b8; Dr. Duncan, author of PROJECT: SOUL CATCHER: Secrets of Cyber and Cybernetic Warfare Revealed, speaks in the video from 19:18 - 22:15.}

Please note that since 2012, I have learned that the doctor whose activities I asked to be investigated, i.e. Dr. John Anthony Sbarbaro {deceased 2011, reportedly by cancer}, is the son of John Sbarbaro, also known as Antonio Sbarbaro {deceased}, who is described as "a double agent, serving both as funeral director to gangland and assistant district attorney in Chicago" at the webpage, http://ChicagoCrimeScenes.blogspot.com/2008/09/sbarbaros-funeral-parlor.html.

John Sbarbaro is listed as "Asst. State's Atty, later judge; also undertaker for all gangs" at:

http://www.MisterCapone.com/people.htm

"Dr. Sbarbaro grew up in Chicago, often working in his father's funeral business. Early on it was clear what he was going to become." This is a quote from a profile of him at:

http://www.UCdenver.edu/academics/colleges/medicalschool/administration/alumni/CUMedToday/profiles/Pages/John-Sbarbaro.aspx

At another website, http://DenverWorkersComp.blogspot.com/2013/08/john-anthony-sbarbaro-md-mph.html, is the following quote:

"In spite of all his formal education and physical separation from his childhood home in Chicago, John never left his true roots in how he resolved disputes. For example, in the early 70's when St. Anthony's Hospital and Denver General {**since renamed Denver Health**} were competing for trauma patients, St. Anthony's rejected an agreement that would keep its ambulances out of the city in return for the City and County of Denver staying out of the suburbs. Shortly after negotiations broke down a St. Anthony's helicopter landed in the City and County of Denver and its ambulance blade was quickly bumped by a passing Denver General Hospital Ambulance. The Chief

Operating Officer for St. Anthony's contacted John, and the following exchange took place. "John, your ambulance bumped by [sic] [my] helicopter." John responded, "God, Dutch, I am so sorry you know we have a lot of clumsy ambulance drivers, and of course, we are going to have an ambulance there every time you land in the City and County of Denver. I sure hope this doesn't happen again, but I can't promise it." Shortly thereafter, an agreement was reached were [sic] [where] St. Anthony's would not land its helicopter in the City and County of Denver and Denver General ambulances did not go into the suburbs."

The above quoted text has been published to the publicly visible internet page that is cited most directly above. It is by one of Dr. Sbarbaro's sons who wrote on the page's closing paragrapb, "Often... I would call my Dad to run medical issues by him. His views were always unbiased, to the point, and clear in their direction. His influence and guidance upon my career continues to this day." The son who wrote the text referenced the following source: "[Eileen] Welsome, Healers and Hell Raisers, Denver Health's First 150 Years. (Denver: Paros Press, 2011), Page 147-148." Ms. Welsome is the author of the book, The Plutonium Files: America's Secret Medical Experiments in the Cold War.

The following is quoted from my November 22^{d}, 2014 Letter Of Response to the Tragic Events Regarding Myron May, the person who was very quickly named, through mass media, The FSU Shooter. My November 22^{d}, 2014 letter is at http://www.facebook.com/notes/SnoEOawc/994375783911398:

"Just as recently as this July (12th, 2014), a literal circle of men blocked me in to a hotel room (in Las Vegas, Nevada) for no official reason and without any legitimate explanation. I was the only guest & occupant of the room. The men can literally be heard [from 3 to 5 seconds into] the video that I recorded live at the time, with a mocking attitude (of theirs) about keeping "the door blocked":

http://www.facebook.com/video.php?v=913678841981093&set=vb.245665488782435&type=2&theater

{The footage has been uploaded to the Videos section on facebook.com/SnoEOawc[1]. I heard from a party of not yet known reliability that those men were connected to a Psychological Operations Group from Ft. Myers, Florida. While I do not yet know if such group is based in Ft. Myers, I received evidence that a pair of men who were seated directly behind me on the first leg of my flight, via Delta Airlines, back to Huntsville International Airport, from Las Vegas International Airport, were traveling to Ft. Myers. (See SnoEOawc's Photos section[2].) Despite lack of prior interaction, they made the point to repeatedly kick the back of my chair as if intending to exacerbate the injury to my spine.}

Upon my initial arrival to the hotel room, a man in a uniform that was lurking directly across from my room made the sign of the cross just as I started crossing the threshold into the room.

In mid-2007, during the previous heavy surge in targeting that appears to have connections to Military, Intelligence, & other semi-covert to covert networks engaged in occult ritual, what I have been able to transcribe of what the "Audio Engineering Consultant, PF", who was moved [into] a nearby apartment in Toronto, Ontario, CANADA on the heels of my move from Aurora, Colorado, USA, said is as follows:

PF: ... Back off... What if on top of it the woman?.. Calm down...

I don't see it that way... That is what we do... These guys are... They cannot

win that woman... I'm going to show you that we have to... {Other voice says,

"Now a couple of things: Then smash his head..."} {PF continues:} Yeah... Look what

happened yesterday... Look what happened to you yesterday!.. [Someone]

is a [expletive]... The woman I saw... And still she looks absolutely

beautiful... A young woman, beautiful, beautiful thing... Because what is it

exactly?.. They want this woman... NSA... These are business partners... NAVY

people... [Sound frequencies {are} heard in {the} file, especially at {the} beginning before

voices raise & toward {the} end after {the} voice stops]

{This audio is at} http://youtu.be/nKQs2TxHPM8

Some seemingly related technical research is at:

http://www.USNA.edu/AcResearch/_files/documents/2002SummaryPDFs/DivEngWeapAerospaceEngDept2002.pdf

See specifically "Rapid Binary Gage Function for Extracting a Pulsed Signal Buried in Noise" & related research.

{Also see specifically "Recovery of Pulsed Signals Buried in Noise" at:

http://www.USNA.edu/AcResearch/_files/documents/2000SummaryPDFs/DivEngrWeapAerospaceEngrDept.pdf}

Http://www.USNA.edu is the homepage for the UNITED STATES NAVAL ACADEMY.

A professor within the highlighted section of the pdf [documents] is the father of someone by the same name who in Maryland, USA was expelled from the university that I attended (for my 1st two years of college). (pg. 5 of 10)

{This was a state university. Organized targeting at state & city universities could be more readily sponsored through appropriated taxpayers' money, sometimes referred to as "Black Budget funds".}

The son {a Presidential Scholar whose major was Psychology and whose stated aspiration was to be a Child Psychologist} was expelled {in his senior year} for sexual assault to rape of … female scholars during their first year. {Of potential interest, one of his Psychology professors, who was not known to be present at any of the assaults or to be familiar with his prior history, testified on the assailant's behalf. Further, another man appeared who represented himself as a Profiler for the FBI with an already open profile of the assailant but there was no follow-up by any off-campus Law Enforcement. As someone whose stepfather is a Psychiatrist, who prior to his stated retirement used to work for the Federal Bureau of Investigation and earned the U.S. Physician of the Year award during the George W. Bush administration, that man did seem to have the occupation or training he represented.} [The assailant] was also involved in Organized Stalking of the targeted scholars, was in a semi-secret society in which people called him Beelzebub (associated with Satan), and said during the time of the campus hearings (though not within the hearings themselves) that his parents made him rape the first-year female scholars."

In counter-surveillance audio from April 2007, the Audio Engineering Consultant, PF states:

"… I've been trying to change the people

around me and change my own perspective to what's good to do...

No, it's not in Colorado. It's not. What happened - What happened is

in Englewood, Colorado... They make checks for *[a party whose name is not clearly audible]*...

The ISP makes it possible for that computer...

That's the thing: Once the people begin to go online,

they see things they don't want to see and then in general I'm fu*ked [f'd] {There's a distinct pause}

about that, yeah... I'm working on this sh*t [expletive] like a mother fu*ker [f'er]..."

{This audio is at} http://www.chinyere.com/MbMmHealthFactor/APT244-MP3.mp3

Note that Colorado, USA is referenced where the audio took place in Ontario, CANADA, and that Englewood, Colorado is the location of the primary care clinic that "lost" most of my medical records there at Englewood, except for records forwarded to them by the Physical Therapy satellite clinic of the University of Colorado Hospital.

The following quote is from http://en.wikipedia.org/wiki/Project_MKUltra:

"The program engaged in many illegal activities; In particular it used unwitting U.S. and Canadian citizens as its test subjects, which led to controversy regarding its legitimacy. MKUltra used numerous methodologies to manipulate people's mental states and alter brain functions, including the surreptitious administration of drugs (especially LSD) and other chemicals, hypnosis, sensory deprivation, isolation, verbal and sexual abuse, as well as various forms of torture.

The scope of Project MKUltra was broad, with research undertaken at 80 institutions, including 44 colleges and universities, as well as hospitals, prisons and pharmaceutical companies. The CIA operated through these institutions using front organizations, although sometimes top officials at these institutions were aware of the CIA's involvement."

Continuing with my November 22^{d}, 2014 letter:

"IT IS MY WORKING CONCLUSION THAT TRAUMA INCLUDING THAT INFLICTED BY BULLYING, FALSE IMPRISONMENT, RAPE, AND MURDER IS BEING SYSTEMATICALLY PERPETRATED AGAINST TARGETS FOR THE PURPOSE OF MASS COERCIVE CONTROL.

Sadly, such is in line with history that appears to be repeating. …

My thoughts & prayers go out to ALL of those who have been adversely affected, and most immediately I pray for the full healing of the Florida State University student who was in critical condition upon hospital admission.

Although I have come to learn of targets in virtually every category imaginable, certain populations {including international scholars} seem to be disproportionately targeted.

Therefore I ask that those especially in Media, Ministry, and related fields such as Public Education take the time to learn about what is so far known about MK-ULTRA & its related activity in order to be as professionally, spiritually, and intellectually equipped as possible to help the growing number of people around the world in need of genuine supportiveness.

It is my understanding that U.S. Senator Edward Kennedy (deceased) was willing to help start new official inquiry into the modern covert activity that appears related to MK-ULTRA/'Behavior Modification'. {The person convicted of assassinating Robert Kennedy has reportedly been held in Colorado.} Missouri Representative James Guest (retired) also worked toward [new official inquiry].

There is a need for those currently representing the public in North America, and many other places where this set of concerns still needs to be addressed, to move forward with acknowledgement and protective measures to protect people from the highly organized, international abuse of covert networks & emerging technology that has been recognized by the European Union."

I am grateful beyond words to the people who have been working hard to get this set of concerns properly addressed despite extreme obstruction[23]. Among such people is Dr. Nick Begich, son of the disappeared U.S. Representative from Alaska, Nicholas Joseph Begich, Sr., and brother of U.S. Senator Mark Begich. Dr. Begich has provided 'Non-Lethal' Weapons demonstrations & education to the European Parliament: http://www.europarl.europa.eu/press/sdp/background/1998/b980209.htm.

The person believed to be my biological father facilitated Real-Estate Racketeering against me that prompted me to reside in Dr. Sbarbaro's neck of the woods for a few years as the residential property was located in Aurora, Colorado within a short drive of Denver International Airport[1]. Just one of the irregularities was the disappearance of official records[2].

While disembarking a Delta Comair connecting flight, from Huntsville International Airport, to Denver International Airport, at Northern Kentucky International Airport (in Covington, Kentucky), I experienced a 12- to 15-foot fall down the airplane's drenched steps – I had been told that there was no alternative way to depart the plane despite the rain continually hitting the uncovered steps. Among other things, later I learned that there was a safer alternative, and I heard of a nearby facility where people are said to be trained for covert operations.

In addition, I heard of a partnership between Delta Airlines and NASA, the National Aeronautics and Space Administration, headquartered in Huntsville, Alabama, that includes the testing of emerging technology. Further, I heard of an attorney representing a seemingly disproportionate number of people who fell under similar conditions. However, it was said that the attorney's name was not relevant because Delta Comair ceased to exist.

Among other out of the ordinary occurrences, what led me to learn that Dr. Sbarbaro was not a regular doctor was that he was heard saying about me, someone with whom he had no interaction to my knowledge, "Let's see if Physical Therapy (without benefit of an MRI) cripples her further first."

On April 28th, 2005, 1:05 p.m. Mountain Standard Time, I received e-mail from the Ethics Committee of the American Academy of Ophthalmology that strangely concluded:

"[I]t appears that the specialists in the endocrinology clinic have communicated

with the specialists in the ophthalmology department since your e-mail

correspondence began, but that the original request for consultation with

the ophthalmology department was not based upon a referral from your endocrinologist. ..." (pg. 8 of 30)

Their conclusion was false. In fact, the original request for consultation with the Ophthalmology department was based upon a referral from my Endocrinologist, Dr. Arthur Gutierrez-Hartmann, whom I heard was one of Dr. Sbarbaro's favorite employees. This and additional, related e-correspondence, including a photo-scan of the referral, is at:

http://chinvere.com/MbMm/Ethics.html

Even despite efforts to help me by the office of the Canadian Consulate in Denver, Colorado, that was treated to offensive run-around by the highly organized perpetrators, the American Academy of Ophthalmology's Ethics Committee did not follow up.

Retired Missouri Representative, James Guest, has a strong background in science and ability to understand Directed Energy Weapons (often misleadingly labeled 'Non-Lethal Weapons'). Prior to his career in Politics, he was an Aerospace Engineer. I spoke with Representative Guest directly on March 1st, 2011 during which conference he authenticated the copy of his October 10th, 2007 letter that is hosted at:

http://www.chinvere.com/MbMm/HealthFactor/October10th2007-ConfirmedAuthorizedLetterByRepresentativeGuest.jpg

Please note that Representative Guest informed me that just one of the serious obstructions that he experienced during his official efforts to have this set of concerns addressed was the relatively short-lived circulation by organized perpetrators of a false version of his actual letter.

The following text is quoted from Representative Guest's actual October 10th, 2007 letter, written while he was in office:

Dear Member of the Legislature and Friends:

This letter is to ask for your help for the many constituents in our country who are being affected unjustly by electronic weapons torture and covert harassment groups. Serious privacy rights violations and physical injuries have been caused by the activities of these groups and their use of so-called non-lethal weapons on men, women, and even children.

I am asking you to play a role in helping these victims and also stopping the massive movement in the use of Verichip and RFID technologies in tracking Americans.

Long before Verichip was known we were testing these devices on Americans, many without their knowledge or consent. With the new revelations of the cancer risk besides the privacy and human rights problems with the use of Verichip and RF signals, I am asking for your help in stopping these abuses and aiding those already affected."

The following link is to a photo of a "World TAG Unique RFID - Logistic and Industrial Transponder" that was one of several that suddenly appeared in the stairwells of the building where I resided in the first half of 2007 in Toronto, Ontario, Canada: http://www.chinvere.com/MbMm/HealthFactor/15-TRANSPONDER-zoomed.jpg –

– Immediately after I posted photos of them, the Radio Frequency Identification transponders disappeared as suddenly as they had appeared. Their appearance was on the heels of an injection[24] of concern that was administered by a physician connected to Dr. Sbarbaro, Dr. Meyer Stanley Balter, who was trained in medicine at McGill University in Montréal (Quebec, Canada) and was based at the University of Toronto (Ontario, Canada). From the Canadian Experiments section of the Wikipedia page on Project MKULTRA:

"[Dr. Donald Ewen Cameron] commuted from Albany, New York, to Montréal every week to work at the Allan Memorial Institute of McGill University… to carry out MKUltra experiments there. [The] research funds were sent to Dr. Cameron by a CIA front organization… In addition to LSD, Cameron also experimented with various paralytic drugs as well as electroconvulsive therapy at thirty to forty times the normal power. His "driving" experiments consisted of putting subjects into drug-induced coma for weeks at a time (up to three months in one case) while playing tape loops of noise or simple repetitive statements. His experiments were typically carried out on patients who had entered the institute for minor problems such as anxiety disorders and postpartum depression, many of whom suffered permanently from his actions. …

It was during this era that Cameron became known worldwide as the first chairman of the World Psychiatric Association as well as president of the American and Canadian psychiatric associations. Cameron had also been a member of the Nuremberg medical tribunal in 1946–47.

Naomi Klein argues in her book The Shock Doctrine that Cameron's research and his contribution to the MKUltra project was actually not about mind control and brainwashing, but about designing "a scientifically based system for extracting information from 'resistant sources.' In other words, torture." Citing Alfred W. McCoy, Klein further writes that "Stripped of its bizarre excesses, Dr. Cameron's experiments, building upon Donald O. Hebb's earlier breakthrough, laid the scientific foundation for the CIA's two-stage psychological torture method."

Since I originally shared this information, the Grants section of Dr. Balter's professional profile on the University of Toronto's website has been deleted. Further, the International Activities section of his profile has been redacted.

****Hopefully Dr. Sbarbaro's files, and other relevant evidence, are still intact. Thank you for your urgent attention to this set of concerns that has grown only more pressing, with yet more potentially related tragedy that has impacted the public, since the time that the U.S. Presidential Commission for the Study of Bioethical Issues was asked to "please look into these matters and these files". PLEASE LOOK INTO THESE MATTERS AND FILES.****

Remainder of Online References:

[1]http://www.facebook.com/SnoEOawe

(Description of SnoEOawe at the Community Page on Facebook)

[2]http://www.whitehouse.gov/the-press-office/2010/11/24/presidential-memorandum-review-human-subjects-protection

(U.S. Presidential Memorandum – Review of Human Subjects Protection, The White House, 11/24th/2010)

[3a]http://en.wikipedia.org/wiki/Susan_Mokotoff_Reverby (Prof. Reverby's Wikipedia page)

[3b]http://new.wellesley.edu/wgst/faculty/reverby (Prof. Reverby's CV)

[4]http://en.wikipedia.org/wiki/John_Charles_Cutler (Dr. Cutler's Wikipedia page)

[5]http://en.wikipedia.org/wiki/Tuskegee_syphilis_experiment

(Wikipedia page for the U.S. Public Health Service's "Study" at Tuskegee (city) of "Untreated Syphilis in the Negro Male")

[6]http://en.wikipedia.org/wiki/Guatemala_syphilis_experiment

(Wikipedia page for the U.S. co-sponsored STD experiments in Guatemala)

[7]http://www.cnn.com/2010/HEALTH/10/01/guatemala.syphilis.tuskegee/index.html

("Studies show 'dark chapter' of medical research", Elizabeth Landau, CNN, 10/1st/2010)

[8]http://www.jeffpolachek.com/26-frontpage/102-valerie-bonham-letter-of-july-27-2012

(Copy of letter dated 7/27th/2011 that appears to be written by Ms. Bonham)

[9]http://bioethics.gov/node/753

(4/9th/2012 Notice of Ms. Bonham returning to work for the National Institutes of Health)

[10]http://www.zoominfo.com/p/John-Sbarbaro/119820481

(Dr. Sbarbaro's professional bio)

[11]http://www.unboundmedicine.com/medline/print_citation/7632999/Physicians'_ethical_responsibilities_under_co_pay_insurance:_should_potential_fiscal_liability_become_part_of_informed_consent

(Dr. Sbarbaro was part of Dept. of the Army, Fitzsimons Army Medical Center, Aurora, CO, USA)

[12]http://en.wikipedia.org/wiki/Anschutz_Medical_Campus

(Wikipedia page for Anschutz Medical Campus)

[13]http://books.google.com/books?id=jG3qaYzxyVIC&pg=PA27103&lpg=PA27103&dq=Did+Fitzsimons+Army+Medical+Center+continue+as+an+army+medical+center+for+research&source=bl&ots=ZAI2Fyx0ab&sig=Iq7gBUJrF2iq91Jvg5fBkM4laPU&hl=en&sa=X&ei=NZOeUYjBHofK9gSVq4CIDw&ved=0CEMQ6AEwBDgK#v=onepage&q=Did%20Fitzsimons%20Army%20Medical%20Center%20continue%20as%20an%20army%20medical%20center%20for%20research

"With the expectation that the Departments of Defense and Veterans Affairs

will reach an agreement on sharing design and construction costs…"

(p. 27103, Congressional Record, V. 149, Pt. 19, October 24, 2003 to November 4 [sic w/o comma] 2003)

[14]http://www.uch.edu/locations/buildings-at-anschutz/

(University of Colorado Hospital Locations: Aurora, CO, USA 80045 inc. Anschutz Med. Campus)

[15a]http://www.cbsnews.com/8301-505263_162-57479463/james-holmes-received-thousands-from-grad-school-grants-ahead-of-deadly-aurora-shooting/

("James Holmes received thousands from grad-school grants ahead of deadly Aurora shooting", CBS, 7/25th/2012)

[15b]http://articles.latimes.com/2012/jul/24/science/la-sci-sn-the-nih-did-not-give-money-directly-20120724

("NIH did not give money directly to Colorado shooting suspect", Jon Bardin, Los Angeles Times, 7/24th/2012)

[16]http://www.economist.com/node/1143583

("Neuroscience: The future of mind control ", The Economist, 5/23d/2002)

(2 of 6 pp. of additional links)

[17]http://www.ucdenver.edu/academics/colleges/medicalschool/administration/alumni/CU MedToday/profiles/Pages/John-Sbarbaro.aspx

("John Sbarbaro's Chess Game", Dan Meyers, CU School of Medicine: CU Medicine Today:

University of Colorado Anschutz Medical Campus, 5/2010)

[18]http://www.lmu.edu/Page39810.aspx

("GOVERNMENT,MARKETS, AND BLOOD: THE CASE OF NORTHFIELD LABORATORIES

AND POLYHEME", article at Loyola Marymount University webpage, appears possibly via Tuskegee University)

[19]http://abcnews.go.com/blogs/headlines/2006/07/artifical_blood/

("Artificial Blood Experiment Hits 27 U.S. Cities", Brian Ross and Joseph Rhee, ABC News, 7/7th/2006)

[20]http://abcnews.go.com/WNT/story?id=2166664&page=1#.UYwiJbXU9bo

"Dr. Ernest Moore, is running the experiment at the Denver Health Medical Center, the single biggest location in the nationwide test.

Dr. Moore says the experiment could not be done if the patients' consent had to be obtained first."

("(Tran)Script: Artificial Blood Experiment", Brian Ross, ABC News, 7/7th/2006)

[21]http://abcnews.go.com/WNT/story?id=2166058&page=1#.UZWSRVIo6M8

("Artificial Blood Experiment: Is Your City Participating?", Asa R. Eslocker and Astrid Hill, ABC News, 7/7th/2006)

[22]https://www.cu.edu/sg/messages/4310.html

("HSC faculty: Campus must not break ties, lose progress in move to Fitzsimons", Susan Barney Jones, 8/20th/1998)

[23]http://www.intelligence.senate.gov/study2014/sscistudy1.pdf

(U.S. Senate Select Committee on Intelligence: Committee Study of the [CIA's] Detention and Interrogation Program)

[24]http://www.chinyere.com/MbMm/HealthFactor/Arm.JPG

(Photo of site of injection that became severely painful & inflamed in reaction to Dr. Balter's administration of

a yet to be identified substance that he claimed to be Cortisol, an anti-inflammatory to which I am *not* allergic)

Further Reading/Viewing/Listening:

- [A]http://www.facebook.com/SnoEOawc/videos
(Video section at SnoEOawc community page)

- [B]http://www.facebook.com/media/set/?set=a.100908982910666O.1073741832.245665488782435&type=3
(Photo Album, "UnitedStatesSenateCommitteeOnTheJudiciary-AlbumOfPhotos" at SnoEOawc community page)

- [C]http://www.chinyere.com/MbMm/MbMm.html
(Evidence of the interrelated Real-Estate Racketeering)

- http://www.chinyere.com/MbMm/HealthFactor/HealthHomePage.html
(Chinyere.com Public Safety Alert with General Overview of Who, Where, When, What, Why, & How)

- http://www.chinyere.com/MbMm/HealthFactor/ADVANCED_MEDICAL_OPTICS-paper.jpg
(Advanced Medical Optics paper that was found with a paint tray on the exterior second-floor landing of the building where I resided in the first half of 2007, just west of Metro Hall that was/is located on the next street-block)

- http://profiles.smartprocure.us/organization/ADVANCED-MEDICAL-OPTICS--pang-andrew
(Commercial database of Government Contracts)

- http://www.facebook.com/Snol:Oawc/photos/a.100908982910666O.1073741832.245665488782435/100935869083056
(Photo of a former prescription-bottle for synthetic thyroid-hormone replacement that caused my Endocrinologist in that time-period, Dr. Arthur Gutierrez-Hartmann, to demand, with what sounded like alarm, "Who told you to switch manufacturers?" This caused me to conduct a search for the manufacturer, Sandoz.)

- http://www.FrankOlsonProject.org/Articles/Spin.html
("Dulles {i.e. Allen Dulles} convened a high-level committee of CIA and Pentagon officials who agreed the agency should buy the entire Sandoz LSD supply lest the KGB acquire it first. …

…

"The objectives were behavior control, behavior anomaly-production, and counter-measures for opposition application of similar substances," states a heavily redacted CIA document on MK-ULTRA released under a 1977 Freedom of Information Act request".)

- http://youtu.be/vDMHIbiuMxg
(Video featuring several of my photographs of evidence: Freedom of Mind - 3 – Overcoming Fear)

- http://news.bbc.co.uk/2/hi/uk_news/magazine/4443934.stm
("Project Paperclip: Dark side of the Moon" by Andrew Walker, BBC News, Last Update: 11/21st/2005, begins with "Sixty years ago the US hired Nazi scientists to lead pioneering projects, such as the race to conquer space These men provided the US with cutting-edge technology which still leads the way today, but at a cost.")

- http://en.wikipedia.org/wiki/William_Francis_Pepper#Prominent_cases
(Prominent Cases section of the Wikipedia page on Dr. William Francis Pepper, Esq.)

(1 of 2 pp. of additional links)

http://en.wikipedia.org/wiki/RapeLay

(Wikipedia page on RapeLay, "a 3D eroge video game made by Illusion, released on April 21, 2006 in Japan. ... The game centers on a male character who stalks and rapes a mother and her two daughters. ... The game was subsequently banned in Argentina, Malaysia, and Thailand for "graphic depictions of glorification of sexual violence", and "sexual content".

...

... It features a realistic sexual simulator which allows the player to grope and undress the characters on a crowded train. Later, the player may have forced intercourse with all three women at his leisure. ... RapeLay also has a ... counter, which carries a danger of pregnancy.

After completing the storyline and "breaking" the girls, there are six modes of gameplay.

...

Five player or "5P" mode, where the player is restricted to one sex position, with three other males raping one girl during gang rape. The level restrictions for this mode include locations with small space.

...

The story begins with Kimura being arrested for groping a woman on a subway train and getting caught by Aoi. His father is an important politician, and manages to get his son released from jail. ... he traps her in a public bathroom and rapes her, taking pictures of her...

... Kimura ambushes [the mother] and ties her up. He then rapes her in the park, and takes pictures of her... before handing her over to his gang of helpers on the side, who detain her for him.

... After getting off the train, [Aoi, the oldest daughter] asks Kimura why he is doing this, at which point she remembers he is the groper who was arrested for molesting a woman. Getting in a vehicle, he and his helpers take Aoi to a hotel which his family owns, and rapes her, again taking photos.

After having his way with Aoi, Yuuko and Manaka are taken into the room via a secret door. With all 3 captured, he reveals his plans to make them his sex slaves. Of course, Yuuko tries to cover for her daughters and pleads with him to take her instead. He considers this and tells Yuuko he might spare her daughters if she can prove her worth. ... When he seems pleased at her 'performance', Yuuko thinks she has won her daughters [sic] freedom. Instead he reveals that he will never change his mind and that they are all there to stay. Yuuko breaks down in the end, Manaka breaks next, and finally Aoi as well. The game ends with the ominous title card that as a new day starts the Kiryu family horror has 'only just begun'.

...

In the "Red ending" just before breaking Aoi ... [she] would take a knife and stab the character many times. The scene will shift into black...")

Further Reading/Viewing/Listening Specifically Regarding the Human Pesticide Experiments:

- http://youtu.be/G8cZxurfgIY

"Similarly, the HUMAN PESTICIDE EXPERIMENTS report (June 2005, caps from original report), also of non-consensual human experimentation, has gone missing from U.S. Senator Barbara Boxer's official site (http://www.boxer.senate.gov), although related reference to human pesticide experiments still appears at her official site in the 1/23d/2006 press release, "Sen. Boxer, Rep. Waxman, and Rep. Solis Denounce Leaked Bush Administration Plan to Promote Human Pesticide Experiments": http://www.boxer.senate.gov/en/press/releases/012306.cfm"

(From the Description of my video, "Human Pesticide Report Disappeared From Official Oversight Site – recorded 4-25th-2013")

- http://www.epa.gov/scipoly/sap/meetings/1998/december/english.pdf

("The English Patients: Human Experiments and Pesticide Policy", Environmental Working Group, 7/1998)

- http://democrats.oversight.house.gov/index.php?option=com_content&view=article&id=2314:waxman-and-boxer-release-report-on-human-pesticide-experiments&catid=43:investigations

("WAXMAN AND BOXER RELEASE REPORT ON HUMAN PESTICIDE EXPERIMENTS", Committee on Oversight and Government Reform; NOTE: Missing report is from 6/2005)

(5 of 9 pgs. of additional links)

12/15/2014 10:58 269--342-9377 FEDEX OFFICE 0410 PAGE 01

To U.S. Senate Judiciary Subcommittee on The Constitution, Civil Rights and Human Rights
Hearing on The State of Civil and Human Rights in the U.S. December 9, 2014
Chairman Senator Richard Durbin

STATEMENT FOR THE RECORD

The most important civil rights issues for Congress today include:

1.Improve the capacity and will of the DOJ to prosecute criminal civil rights offenses. The DOJ has long declined to prosecute greater than 99% of 18 USC 241, 242 cases reported.

2.Compensate victims of unconstitutional and discriminatory state forced psychiatric drugging policies and practices (including out-patient commitment laws) with appropriate money damages to uphold and vindicate the 14th Amendment. And ensure that psychiatrists and others engaging in this fraudulent, harmful, assaultive criminal abuse of persons with mental disabilities are criminally prosecuted. Congress should prohibit by law state non-emergency, non-consensual psychiatric drugging statutes, rather than give money to create them.

3.Reform the US Supreme Court's obstruction of justice and denial of the equal protection of the laws (through the creation and expansion of absolute immunity) for victims of Constitutional torts in the judicial process. Indemnity/insurance and a qualified immunity should protect innocent officials, while also protecting innocent citizens against guilty officials who betray the constitution and public trust, and abuse state powers to inflict injury. The judicial reasoning creating absolute immunity for prosecutors, judges, psychiatrists, and other officials involved in the judicial process is contrary to public policy, contrary to law, and contrary to history. The great challenge of history has always been keeping those wielding government powers under the laws, not keeping officials "free and fearless" to violate the laws. Congress should amend 42 USC 1983 to end absolute immunity for all state and local government officials, and reject the judicial reasoning that accountability to law will worsen the conduct of public officials.

Thank you. Sincerely, (2 pages)

Sean Bennett
1011 Crown St. Kal. Mich. 49006
734-239-3541

STATEMENT FOR HEARING page 2

FEDERAL CIVIL RIGHTS LAWS SHOULD BE AMENDED BY CONGRESS TO MODIFY AND TO QUALIFY THE JUDGE-CREATED ABSOLUTE IMMUNITY FOR JUDGES, PROSECUTORS, AND PSYCHIATRISTS

I request Congress correct the U.S. Supreme Court's erroneous, inequitable, and unconstitutional interpretation of 42 USC 1983 (1871 Civil Rights Act to enforce the 14th Amendment), which bestows absolute immunity from civil liability on judges, prosecutors, psychiatrists, and others acting under color of law, when they deprive citizens of Constitutional rights, privileges or immunities. The rule of absolute immunity proclaimed by the Court in Pierson v Ray, 386 US 547, Stump v Sparkman, 435 US 349, Yaselli v Goff, 275 US 503, is an anachronism from the British monarchy which the Supreme Court and federal judiciary continue to expand and expand. Absolute immunity is exactly contrary to the language of 42 USC 1983, and the historical record surrounding passage of the 1871 Act clearly shows judges and prosecutors were not to receive absolute immunity under the Act, and there is not a scintilla of historical evidence showing otherwise. The simple solution and obvious answer to most of the policy arguments courts have advanced for absolute immunity is a qualified immunity and indemnification by government- a common practice when officials are sued. Where states have not granted absolute immunity to judges, prosecutors, or psychiatrists, the speculated fears used by the federal judiciary to justify absolute immunity have proven false. The real policy problem has long been that civil rights plaintiffs are quite challenged and disadvantaged to obtain justice against public officials, and their governmental employers, no matter how meritorious their claims. In addition to bogus reasons, and one-sided reasoning used to deny justice to victims of constitutional abuses, is the fact that this policy debate belongs in Congress, not in the Supreme Court. The judiciary should intercede only if an immunity is created which infringes upon constitutional rights, the Courts have no legitimate power to veto statutory and constitutional rights with their public policy preferences, especially where there is the appearance of partiality and the obstruction of justice. Absolute immunity is not only bad policy, (taking from the injured to give to the guilty, so that constitutional transgressions go unremedied), and the result of judicial overreach, absolute immunity invades the citizen's Constitutional guarantees of the equal protection of the laws, due process, access to the courts for a remedy, the right to jury trial, and yes, the Privileges or Immunites clause of the 14th Amendment.

CONGRESS SHOULD COMPENSATE VICTIMS OF STATE FORCED PSYCHIATRIC DRUGGING POLICIES AND PRACTICES (INCLUDING OUT-PATIENT COMMITTMENT LAWS) AND ACT IMMEDIATELY TO PROHIBIT BY LAW THIS UNCONSTITIONAL, DISCRIMINATORY, FRAUDULENT, HARMFUL, CRIMINAL ABUSE OF VULNERABLE PERSONS

Psychiatry needs to be brought to justice but not in the way HR 3717 proposes. Congress has a highest duty to uphold and enforce the 14th Amendment and Bill of Rights. The 60 million dollars Congress would spend supporting state AOT laws should instead be used to pay money damages to the victims of state AOT and civil commitment assaultive drugging laws. Granted justice cannot be secured for many because they have died from the forced drugging. In fact, far more persons die from non-consensual psychiatric drugging in the US than die from legal executions. America's worst criminals typically get 20 years of appeals (due process), while those labeled mentally ill get only the protection of expert psychiatric judgment. Psychiatric drugs, and especially the most lucrative antipsychotic drugs, are far more harmful and counter-therapeutic than represented by psychiatry. Most persons with mental illnesses do know they have an ailment, and if the drugs were safe and effective then they would consume them like candy. APD's often worsen mental and physical health. Psychiatrists who declare in court that objection to the drugs means incompetence or insanity commit perjury. Evidence-based medicine exposes forced drugging to be malpractice. Congress needs to know the medical facts desperately. PAIMI's throughout the US are shockingly guilty of not doing enough to protect persons fundamental right, privilege, immunity to refuse psychiatric drugs. It is now known that APDs damage the brain. Does the 1st Amendment permit forced brain damage? HR 3717 might appear to be a " law to remedy the distress of the people and the state", however, state AOT laws and other laws which force persons to consume psychiatric drugs against their informed consent (beyond emergency 1-2 day chemical restraints) are unconstitutional, fraudulent, criminal abuse of a vulnerable and legally disenfranchised group of people. These laws are "a nullity as absolute and palpable as if Congress had ordered us to fall down and worship a golden image." Congress should move swiftly to bring psychiatry's reign of terror to an end.

muslim advocates
PROMOTING FREEDOM & JUSTICE FOR ALL

Statement Submitted by Muslim Advocates

Hearing on
The State of Civil and Human Rights in the United States

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

December 9, 2014

I. Introduction

Muslim Advocates welcomes the opportunity to submit this written statement for the record of the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights hearing on "The State of Civil and Human Rights in the United States."

Muslim Advocates (www.muslimadvocates.org) is a national legal advocacy and educational organization dedicated to promoting equality, liberty, and justice for all by providing leadership through legal advocacy, policy engagement, and civic education, and by serving as a legal resource to promote the full and meaningful participation of Muslims in American public life. Founded in 2005, Muslim Advocates is a sister entity to the National Association of Muslim Lawyers, a network of American Muslim legal professionals.

Our nation has a unique, long-cherished commitment to freedom, particularly religious freedom. It was founded by those fleeing religious persecution. As a result, the free exercise of religion regardless of one's religious beliefs, as well as the rights to express oneself, to associate, and to assemble, became fundamental rights guaranteed to all Americans and were embodied in the First Amendment to our Constitution. Indeed, according to the Manuscript Division of the Library of Congress, far from fearing Islam, ". . . it is clear that the Founding Fathers thought about the relationship of Islam to the new nation and were prepared to make a place for it in the republic."[1]

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[1] James H. Hutson, *"The Founding Fathers & Islam: Library Papers Find Early Tolerance for Muslim Faith,"* Library of Congress, May 2002, available at http://www.loc.gov/loc/lcib/0205/tolerance.html.

Muslims have been an integral part of America since the first slave ships arrived on its shores. Today, American Muslims reflect every race and ethnicity that comprise our nation's rich heritage. Muslims serve our nation as teachers, business owners, factory workers, cab drivers, doctors, lawyers, law enforcement officers, firefighters, members of Congress, and members of the armed forces. They contribute to every aspect of our nation's economy and society. The essence of our country is *e pluribus unum*: "out of many, one." Out of many Americans practicing their faith freely and each contributing in their own way, comes a strong, unified one.

In addition to the First Amendment freedoms described above, Americans enjoy the safeguards of the Equal Protection Clause of the Fourteenth Amendment, added to our Constitution following the Civil War, to ensure the equal treatment of African-Americans. The U.S. Supreme Court has interpreted the clause to protect additional categories of Americans against discrimination, such race, religion, ethnicity, and gender. Current law enforcement practices that target Muslims for monitoring or other scrutiny based upon their faith, some of which are described in more detail below, run afoul of this basic principle of equal protection under the law.

This statement describes some of the most prevalent ways in which the religious freedom and equal protection rights of American Muslims are being threatened and in some cases violated by federal, state, and local law enforcement and by a climate of anti-Muslim hate that has infected many communities, the media, and even government officials. We submit that preserving these rights is vital to the fundamental values of our nation.

II. Law Enforcement Mapping of Muslim Communities

The FBI is mapping the activities and locations of American Muslims and certain racial and ethnic groups throughout the country. This massive surveillance program not only violates the fundamental principle of equal protection under the law by targeting people based upon their racial, religious, and ethnic identities, but it has never been shown to be effective in serving any legitimate law enforcement purpose. According to the FBI's Domestic Investigations and Operations Guide (DIOG), the Bureau is authorized to "identify locations of concentrated ethnic communities in the Field Office's domain, if these locations will reasonably aid in the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness for the purpose of performing intelligence analysis . . . Similarly, the locations of ethnically-oriented businesses and other facilities may be collected."[2]

An example of how the FBI's mapping program equates ethnicity and religion with a propensity toward violence can be found in a Detroit FBI field office memorandum proclaiming that "[b]ecause Michigan has a large Middle-Eastern and

[2] DIOGs available at http://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20(DIOG).

Muslim population, it is prime territory for attempted radicalization and reeruitment"[3] by State Department-designated terrorist groups.

Similarly, the NYPD's infamous Muslim spying program has mapped the Muslim communities in and around New York City, including Long Island and parts of New Jersey. It has identified places of worship, restaurants, cafes, and other establishments that are believed to be owned or frequented by Muslims. The NYPD's own reports make clear that the Department's focus is on Muslims, expressly excluding from surveillance and mapping non-Muslim members of Egyptian and Syrian communities. The program has neither generated a single lead to criminal activity nor has the NYPD cited its use for any successful intelligence operation.

Thus, the FBI and NYPD are investing untold resources into programs that, while sophisticated in the information they collect, are premised upon crude stereotypes that constitute the very definition of racial profiling and are anathema to our democracy.

III. Countering Violent Extremism

The U.S. Departments of Homeland Security and Justice conduct extensive programming in Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities under the auspices of countering violent extremism (CVE). They often coordinate these programs with federal prosecutors, FBI field offices, and state and local law enforcement agencies. Study after study has shown that acts of violent extremism in the United States are motivated by a variety of ideologies and that only a small percentage are committed by American Muslims. For example, according to the FBI, only 6% of acts of terrorism on American soil between 1980 and 2005 were committed by those who identify (or were identified) as Muslim. Similarly, the Triangle Center on Terrorism and Homeland Security has found that of the more than 300 American deaths from political violence and mass shootings since 9/11, only 33 have come at the hands of American Muslims. Yet all or virtually all public CVE programing and communications are directed to AMEMSA communities.

The aggressive outreach to AMEMSA communities to counter violent extremism conveys the message that they pose a special threat. Secretary Johnson has recently made several visits to those communities to discuss CVE, and at such an event last month told a group of Muslim religious leaders in Southern California: "This is as much your homeland, your country, your public safety as anybody else's," indicating that they needed to be reminded of their identity and responsibility as Americans. Notably, Johnson has not publicly addressed CVE with any other groups. Furthermore, a DOJ-funded program "to provide preincident terrorism and criminal extremism education for law enforcement professionals" actually equates "Arab culture" with "criminal extremist

[3] https://www.aclu.org/files/fbimappingfoia/20111019/ACLURM011609.pdf.

groups," through its training sessions on topics such as "preincident indicators, terrorist/criminal extremist groups, Arabic culture, intelligence issues, and case studies."[4]

As a result, DHS and DOJ are not only inaccurately conveying the message to AMEMSA communities and the broader American public that these communities pose a special threat of violence, but they are wasting valuable resources and neglecting other potential threats—thereby making Americans less safe.

IV. Divisive Rhetoric and Fear-Mongering by Public Officials

Many will recall that a few years ago, Rep. Peter King, then-chairman of the U.S. House Committee on Homeland Security, convened a series of hearings to discuss the so-called radicalization of Muslims in America. Two years after the hearings began, Rep. Michele Bachmann and some of her colleagues questioned the loyalty of American Muslims holding positions at the White House and the Department of Homeland Security. Even now, nearly four years after the beginning of Rep. King's anti-Muslim hearings, public officials continue to use divisive rhetoric all over the country. A county commissioner in Coffee County, Tennessee, posted on his public Facebook page an image of a man peering into the sight of a shotgun with the caption "How to Wink at a Muslim." In Villa Park, California, City Councilwoman Deborah Pauly attended a protest outside of an event for local American Muslims and publicly stated that she knew "quite a few marines who [would] be very happy to help these terrorists to an early meeting in paradise," when referring to the community members attending the event. These are not rare occurrences, but in fact, reflect a broader trend of government officials who chose to publicly share their bigoted views. For example, just a few months ago, a state senator in Oklahoma, John Bennett, said that American Muslims are a "cancer in our nation that needs cutting out," and a GOP county chairman in Minnesota, Jack Whitley, called Muslims "parasites." This type of fear mongering and hate endangers the religious freedom that all Americans should enjoy and sends dangerous cues to the American public about religious minorities. Public officials have a responsibility to lead by example and must be held accountable when they breach the public's trust.

V. Hate Crimes Targeting American Muslims

On Thursday, December 4, 2014, a 15-year old Somali boy was deliberately run over in Kansas City, Missouri. Police say that a man with a long history of threatening the local Muslim community deliberately drove his vehicle into the boy as he was leaving a local mosque; the boy's legs were severed and he bled to death. This incident is being investigated as a hate crime, but it is just one example of a disturbing number of hate crimes targeting American Muslims in the United States. In fact, the number of such crimes increased by nearly 50% between 2009 and 2010 and remained high in subsequent years. However, given that states are not required to report hate crimes statistics there are likely many incidents unaccounted for in annual hate crimes statistics published by the

[4] https://www.slatt.org/SLATT/Online_Training.

FBI. In fact, Attorney General Eric Holder has pointed out the gaps in relying solely on current FBI hate crime statistics:

> "Many police agencies throughout the country, including in major cities, do not participate in the FBI's reporting system, and many victims do not report the hate crimes perpetuated against them. In fact, the Bureau of Justice Statistics puts the actual annual number of hate crimes in the tens of thousands. This fact is enough to make one's blood run cold."[5]

Furthermore, American Muslims are expected to report incidents of hate crimes to the very same law enforcement agencies that are conducting unconstitutional surveillance of their communities. This fact alone may often prevent community members from seeking assistance. Without accurate data regarding the number of hate crimes taking place, police, government agencies, and advocacy groups are unable to address the needs of these communities. Federal government data collection has improved over the last few years—particularly after the tragic shooting at a Sikh gurdwara in Oak Creek, Wisconsin—but much work remains to make federal hate crimes statistics robust, comprehensive, and accurate.

VI. Increasing Opposition to Mosques & Islamic Schools

Local governments regularly abuse their zoning and land use authorities to prevent Muslim community groups from establishing houses of worship or otherwise freely exercise their religious beliefs. Zoning and land use permit denials do not occur in a vacuum. They are often a function of sustained and widespread anti-Muslim animus, and numerous cases brought under the Religious Land Use and Institutionalized Persons Act (RLUIPA) highlight the explicit anti-Muslim sentiments underlying many of these denials. In addition, there are a number of cases in which pretextual reasons are offered to justify a permit denial. For example, local governments will often deny a mosque (or an Islamic school) a permit because of spurious traffic flow or noise issues.

Perhaps the most egregious example of anti-Muslim animus in the mosque zoning context occurred in Murfreesboro, Tennessee. Staunchly opposed to a local Muslim community's proposed development of a mosque, a number of residents brought suit seeking to enjoin its construction, arguing, among other things, that Islam is not a religion, and therefore not deserving of First Amendment protection. As Eric Treene, Special Counsel for the Department of Justice's Civil Rights Division has explained, the proposed mosque "met with vociferous community opposition, including the spray-painting of 'not welcome' on a construction sign, the destruction of a second sign, a firebombing of construction equipment at the site, and . . . a bomb threat."[6] During one hearing in the case, an attorney for the plaintiffs said of the Murfreesboro Muslim community, "these are the same people who flew jets into the World Trade Center on

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[5] U.S. Attorney General Eric Holder, Remarks to the Anti-Defamation League, October 17, 2009, available at http://www.adl.org/Civil_Rights/speech_Eric_Holder.asp.

[6] Eric Treene, *RLUIPA and Mosques: Enforcing a Fundamental Right in Challenging Times*, 10 FIRST AMENDMENT L. REV. 330, 350.

9/11."[7] The Justice Department filed an *amicus* brief in opposition to the plaintiffs' claims, and the court eventually dismissed the suit.

However, the plaintiffs filed a second suit arguing that the county had failed to issue sufficient notice for the hearings on the mosque's application for a permit, thereby violating the state's open meeting laws. Following a trial, the court found in the plaintiffs' favor, voiding the planning commission's approval of the proposed mosque site. The Justice Department responded by filing suit against the county in federal court, arguing that the court's order violated RLUIPA and thus should be enjoined. The court granted the injunction, finally allowing the Murfreesboro mosque to complete construction.

Of the 51 land-use investigations the Department of Justice initiated in the first decade since RLUIPA became law, a full 14% involved mosques or other Muslim-community-associated structures. And recent figures suggest opposition has grown dramatically since 2010. Writing in 2012, Special Counsel Treene stated that the Department "has opened twenty-seven RLUIPA matters involving mosques and Muslim schools since RLUIPA passed. Of these, seventeen have been opened since May of 2010."[8] Sadly, opposition to mosques and Islamic schools is clearly increasing.

VII. Conclusion

This nation falls short of its promise of religious freedom and equal protection under the law so long as the government continues to target people based upon their faith, whether for surveillance, mapping, or even seemingly innocuous activities such as programs to counter violent extremism. In the absence of individualized suspicion, law enforcement's use of religion to fight crime or gather intelligence will be ineffective and abusive. In addition, our nation's institutions and leaders must be vigilant in the fight against those who purvey hate against religious groups and individuals, to ensure that members of religious minorities are truly able to partake in the religious freedom that is vital to our democracy.

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[7] Rachel Slajda, *TN Mosque Trial Continues: 'Your Honor, This Is A Circus,'* TALKING POINTS MEMO, Oct. 21, 2010, available at http://talkingpointsmemo.com/muckraker/tn-mosque-trial-continues-yourhonor-this-is-a-circus.

[8] Treene, *supra* note 6, at 332.

How many police shootings a year? No one knows

By Wesley Lowery September 8

People march in Washington on Sept. 6 to protest the killing of Michael Brown. (Nicholas Kamm/AFP/Getty Images)

A summer of high-profile police shootings, most notably the Aug. 9 shooting of 18-year-old Michael Brown in Ferguson, Mo., has rekindled a decades-long debate over law enforcement's use of lethal force.

Police unions and some law-and-order conservatives insist that shootings by officers are rare and even more rarely unjustified. Civil rights groups and some on the left have just as quickly prescribed racial motives to the shootings, declaring that black and brown men are being "executed" by officers.

And, like all previous incarnations of the clash over police force, the debate remains absent access to a crucial, fundamental fact.

Criminal justice experts note that, while the federal government and national research groups keep scads of data and statistics— on topics ranging from how many people were victims of unprovoked shark attacks (53 in 2013) to the number of hogs and pigs living on farms in the U.S. (upwards of 64,000,000 according to 2010 numbers) — there is no reliable national data on how many people are shot by police officers each year.

The government does, however, keep a database of how many officers are killed in the line of duty. In 2012, the most recent year for which FBI data is available, it was 48 – 44 of them killed with firearms.

But how many people in the United States were shot, or killed, by law enforcement officers during that year? No one knows.

Officials with the Justice Department keep no comprehensive database or record of police shootings, instead allowing the nation's more than 17,000 law enforcement agencies to self-report officer-involved shootings as part of the FBI's annual data on "justifiable homicides" by law enforcement.

That number – which only includes self-reported information from about 750 law enforcement agencies – hovers around 400 "justifiable homicides" by police officers each year. The DOJ's Bureau of Justice Statistics also tracks "arrest-related deaths." But the department stopped releasing those numbers after 2009, because, like the FBI data, they were widely regarded as unreliable.

"What's there is crappy data," said David A. Klinger, a former police officer and criminal justice professor at the University of Missouri who studies police use of force.

Several independent trackers, primarily journalists and academics who study criminal justice, insist the accurate number of people shot and killed by police officers each year is consistently upwards of 1,000 each year.

"The FBI's justifiable homicides and the estimates from (arrest-related deaths) both have significant limitations in terms of coverage and reliability that are

primarily due to agency participation and measurement issues," said Michael Planty, one of the Justice Department's chief statisticians, in an email.

Even less data exists for officer-involved shootings that do not result in fatalities.

"We do not have information at the national level for police shootings that result in non-fatal injury or no injury to a civilian," Planty said.

Comprehensive statistics on officer-involved shootings are also not kept by any of the nation's leading gun violence and police research groups and think tanks.

In fact, prior to the Brown's shooting, the only person attempting to keep track of the number of police shootings was D. Brian Burghart, the editor and publisher of the 29,000-circulation Reno News & Review, who launched his "Fatal Encounters" project in 2012.

"Don't you find it spookey? This is information, this is the government's job," Burghart said. "One of the government's major jobs is to protect us. How can it protect us if it doesn't know what the best practices are? If it doesn't know if one local department is killing people at a higher rate than others? When it can't make decisions based on real numbers to come up with best practices? That to me is an abdication of responsibilities."

Burghart has enlisted a team of volunteers to search news clips as well as file records requests for data, with the goal of collecting a database that will chronicle several years-worth of police shootings.

As of September 1, according to Burghart's estimates, 83 other people had been killed by police officers in the United States since Michael Brown's death.

Law enforcement watchdog groups and think tanks say that the lack of comprehensive data on police shootings hampers the ability of departments to develop best practices and cut down on unnecessary shootings.

The way we improve practices is to take information about what's happening in the field to make those improvements," said Chuck Wexler, executive director of the Police Executive Research Forum, a nonpartisan think tank in D.C. that produces reports on police tactics. "The more we know about (the number of officer-involved shootings) the better off we'll be."

Other than basic statistical analysis, Wexler said, a comprehensive database of police shootings would allow departments to better analyze when officers are drawing and using their guns – potentially leading to policy changes that could save lives.

He noted a shift in policy by the New York Police Department in 1972, in which the department instructed its officers to no longer shoot at moving vehicles.

"When they made that change the number of NYPD shootings plummeted," he said.

James O. Pasco, the national executive director of the Fraternal Order of Police, believes that an accurate database would require Congress to pass a law requiring police departments to report their shooting data to a federal agency, presumably the FBI.

"Otherwise it's an unfunded mandate," Pasco said. "About 80 percent of police departments have fewer than 10 officers. They don't have huge data collecting

operations. They don't even have a single person in some of these departments who are dedicated to all the statistical work they have to do now."

Pasco said he doesn't know what the union's position would be on a legal requirement to report shootings and the result of shooting investigations.

"It would depend on what the law looked like," he said. "Clearly, if it's just a function of collecting the data, I can't see that we would have a problem with that. Our issues are with due process for officers."

The most detailed analysis of police shootings to date was conducted by Jim Fisher, a former FBI agent and criminal justice professor who now authors true crime books.

"I was rather surprised to find there are no statistics," Fisher said. "The answer to me is pretty obvious: the government just doesn't want us to know how many people are shot by the police every year."

In 2011, he scoured the Internet several times a day every day, compiling a database of every officer-involved shooting he could find. Ultimately, he tracked 1,146 shootings by police officers, 607 of them fatal shootings.

"I was surprised at how many shootings, a reasonable person would conclude, were unnecessary," Fisher said.

Earlier this year, the Gawker Media-owned sports Web site Deadspin launched a project to crowd-source a definitive list of police shootings by analyzing local media reports – a system modelled off of Fisher's 2011 effort.

"Having that data would be extremely helpful, in more ways than one," said Adolphus M. Pruitt, president of the St. Louis chapter of the NAACP, who has

been one of those most vocal about allegations of police brutality in light of Brown's shooting. "We track everything. There is no reason in the world for us to not be able to know just how many people the police are shooting in any given year."

In the absence of reliable data, the FBI's "justifiable homicides" statistics continues to be widely cited in academic studies, media reports, and other examinations of the use of lethal force by law enforcement despite being decried as unreliable by officials inside the Justice Department and other officials outside of the government.

As they do, criminal justice experts note that even compiling accurate numbers of people shot and killed by the police would be just a start.

"Every study that I'm aware of shows that most of the people who are shot by the cops survive and most of the time when cops shoot the bullets don't hit," said Klinger, who will soon publish a new study analyzing police shootings in St. Louis.

That study, prepared with several other academics, found that there were 230 instances in the City of St. Louis between 2003 and 2012 when officers fired their weapons. Only 37 of those fired upon were killed.

"If your statistics look just at dead bodies you'd be under-counting it by 85 percent," Klinger said. "If the cops are shooting, we need to now when they are shooting, not just when they kill somebody with the bullets."

Hundreds of Police Killings Are Uncounted in Federal Stats

FBI Data Differs from Local Counts on Justifiable Homicides

A WSJ analysis finds hundreds of homicides by law enforcement agencies in the U.S. between 2007 and 2012 are not included in FBI records. WSJ's Rob Barry reports. Photo: iStock/Juanmonino

By ROB BARRY and COULTER JONES

Updated Dec. 3, 2014 11:26 a.m. ET

WASHINGTON—When 24-year-old Albert Jermaine Payton wielded a knife in front of the police in this city's southeast corner, officers opened fire and killed him.

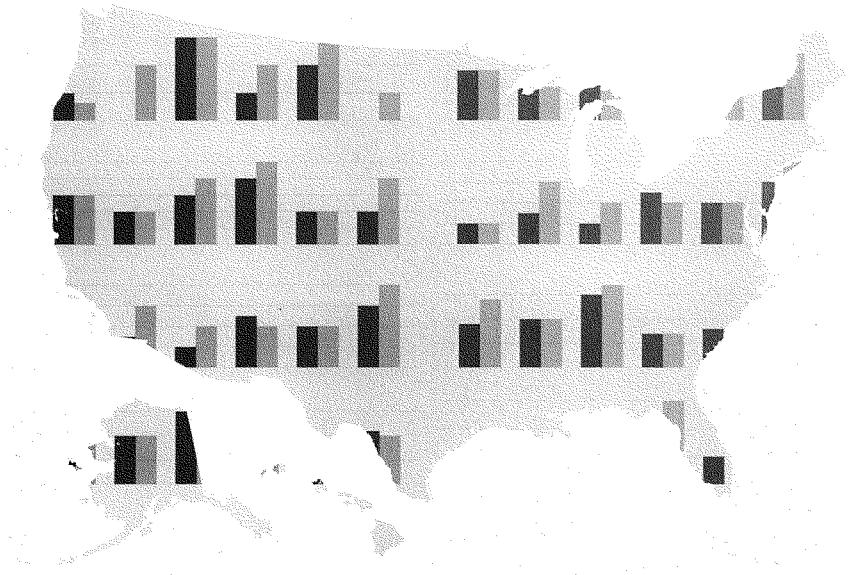
Yet according to national statistics intended to track police killings, Mr. Payton's death in August 2012 never happened. It is one of hundreds of homicides by law-enforcement agencies between 2007 and 2012 that aren't included in records kept by the Federal Bureau of Investigation.

A Wall Street Journal analysis of the latest data from 105 of the country's largest police agencies found more than 550 police killings during those years were missing from the national tally or, in a few dozen cases, not attributed to the agency involved. The result: It is nearly impossible to determine how many people are killed by the police each year.

Public demands for transparency on such killings have increased since the August shooting death of 18-year-old Michael Brown by police in Ferguson, Mo. The Ferguson Police Department has reported to the FBI one justifiable homicide by police between 1976 and 2012.

Law-enforcement experts long have lamented the lack of information about killings by police. "When cops are killed, there is a very careful account and there's a national database," said Jeffrey Fagan, a law professor at Columbia University. "Why not the other side of the ledger?"

Interactive: Justifiable Homicides by Law Enforcement



Police can use data about killings to improve tactics, particularly when dealing with people who are mentally ill, said Paco Balderrama, a spokesman for the Oklahoma City Police Department. "It's great to recognize that, because 30 years ago we used to not do that. We used to just show up and handle the situation."

Three sources of information about deaths caused by police—the FBI numbers, figures from the Centers for Disease Control and data at the Bureau of Justice Statistics—differ from one another widely in any given year or state, according to a 2012 report by David Klinger, a criminologist with the University of Missouri-St. Louis and a onetime police officer.

To analyze the accuracy of the FBI data, the Journal requested internal records on killings by officers from the nation's 110 largest police departments. One-hundred-five of them provided figures.

Those internal figures show at least 1,800 police killings in those 105 departments between 2007 and 2012, about 45% more than the FBI's tally for justifiable homicides in those departments' jurisdictions, which was 1,242, according to the Journal's analysis. Nearly all police killings are deemed by the departments or other authorities to be justifiable.

The full national scope of the underreporting can't be quantified. In the period analyzed by the Journal, 753 police entities reported about 2,400 killings by police. The large majority of the nation's roughly 18,000 law-enforcement agencies didn't report any.

"Does the FBI know every agency in the U.S. that could report but has chosen not to? The answer is no," said Alexia Cooper, a statistician with the Bureau of Justice Statistics who studies the FBI's data. "What we know is that some places have chosen not to report these, for whatever reason."

FBI spokesman Stephen G. Fischer said the agency uses "established statistical methodologies and norms" when reviewing data submitted by agencies. FBI staffers check the information, then ask agencies "to correct or verify questionable data," he said.

The reports to the FBI are part of its uniform crime reporting program. Local law-enforcement agencies aren't required to participate. Some localities turn over crime statistics, but not detailed records describing each homicide, which is the only way particular kinds of killings, including those by police, are tracked by the FBI. The records, which are supposed to document every homicide, are sent from local police agencies to state reporting bodies, which forward the data to the FBI.

The Journal's analysis identified several holes in the FBI data.

Justifiable police homicides from 35 of the 105 large agencies contacted by the Journal didn't appear in the FBI records at all. Some agencies said they didn't view justifiable homicides by law-enforcement officers as events that should be reported. The Fairfax County Police Department in Virginia, for example, said it didn't consider such cases to be an "actual offense," and thus doesn't report them to the FBI.

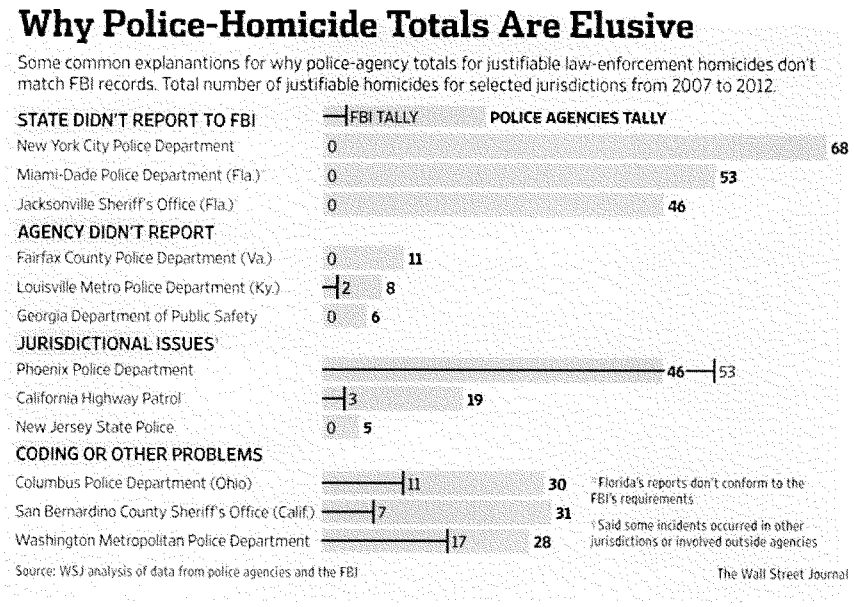
For 28 of the remaining 70 agencies, the FBI was missing records of police killings in at least one year. Two departments said their officers didn't kill anyone during the period analyzed by the Journal.

About a dozen agencies said their police-homicides tallies didn't match the FBI's because of a quirk in the reporting requirements: Incidents are supposed to be reported by the jurisdiction where the event occurred, even if the officer involved was from elsewhere. For example, the California Highway Patrol said there were 16 instances in which one of its officers killed someone in a city or other local jurisdiction responsible for reporting the death to the FBI. In some instances reviewed by the Journal, an agency believed its officers' justifiable homicides had been reported by other departments, but they hadn't.

Also missing from the FBI data are killings involving federal officers.

Police in Washington, D.C., didn't report to the FBI details about any homicides for an entire decade beginning with 1998—the year the Washington Post found the city had one of the highest rates of officer-involved killings in the country. In 2011, the agency reported five killings by police. In 2012, the year Mr. Payton was killed, there are again no records on homicides from the agency.

D.C. Metropolitan Police Chief Cathy Lanier said she doesn't know why the agency stopped reporting the numbers in 1998. "I wasn't the chief and had no role in decision making" back then, said Ms. Lanier, who was a captain at the time. When she took over in 2007, she said, reporting the statistics "was a nightmare and a very tedious process."



Ms. Lanier said her agency resumed its reports in 2009. In 2012, the agency turned over the detailed homicide records, she said, but the data had an error in it and was rejected by the FBI. She referred questions about why the department stopped reporting homicides in 1998 to former Chief Charles H. Ramsey, now head of the Philadelphia Police Department. Mr. Ramsey declined to comment.

In recent years, police departments have tried to rely more on statistics to develop better tactics. "You want to get the data right," said Mike McCabe, the undersheriff of the Oakland County Sheriff's Office in Michigan. It is "really important in terms of how you deploy your resources."

A total of 100 agencies provided the Journal with numbers of people killed by police each year from 2007 through 2012; five more provided statistics for some years. Several, including the

police departments in New York City, Los Angeles, Philadelphia and Austin, Texas, post detailed use-of-force reports online.

Five of the 110 agencies the Journal contacted, including the Michigan State Police, didn't provide internal figures. A spokeswoman for the Michigan State Police said the agency had records of police shootings, but "not in tally form."

Big increases in the numbers of officer-involved killings can be a red flag about problems inside a police department, said Mike White, a criminologist at Arizona State University. "Sometimes that can be tied to poor leadership and problems with accountability," he said.

The FBI has almost no records of police shootings from departments in three of the most populous states in the country—Florida, New York and Illinois.

In Florida, available reports from the Florida Department of Law Enforcement don't conform to FBI requirements and haven't been included in the national tally since 1996. A spokeswoman for the state agency said in an email that Florida was "unable" to meet the FBI's reporting requirements because its tracking software was outdated.

New York revamped its reporting system in 2002 and 2006, but isn't able to track information about justifiable police homicides, said a spokeswoman for the New York State Division of Criminal Justice Services. She said the agency was "looking to modify our technology so we can reflect these numbers."

In 1987, a commission created by then-Governor Mario Cuomo to investigate abuse of force by police found that New York's reports to the FBI were "inadequate and incomplete," and urged reforms to "hold government accountable for the use of force." The spokeswoman for the state criminal-justice agency said it isn't clear what the agency did in response back then.

Illinois only began reporting crime statistics to the FBI in 2010 and hasn't phased in the detailed homicide reports. "We cannot begin adding additional pieces because we are newcomers to the federal program," said Terri Hickman, director of the Illinois State Police's crime-reporting program. Two agencies in Illinois deliver data to the FBI: Chicago and Rockford.

In Washington, D.C., councilman Tommy Wells held two hearings this fall on police oversight. He said he was surprised that the department hadn't reported details of police killings to the FBI. "That should not be a challenge," he said.

More than two years after the knife-carrying Mr. Payton was shot and killed by D.C. police, his mother, who witnessed the killing, said she is still looking for answers. Helena Payton, 59, said her son had many interactions with local police because of what she said was his mental illness. "All the cops in the Seventh District knew him, just about," she said.

The officers who arrived that Friday afternoon in August, in response to a call from Mr. Payton's girlfriend, had never dealt with her son, she said. According to Ms. Payton, her son walked outside holding a small utility knife. As he approached the officers, they fired dozens of bullets at him, she said. He died soon after.

The U.S. attorney's office is reviewing the incident, as is customary in all police shootings in Washington. A spokesman for the office declined to comment on the status of the case. The Washington police department, citing the continuing investigation, declined to provide the officers' names, a narrative of what happened, or basic information usually included in the reports to the FBI, such as the number of officers involved in the shooting.

The officers involved are back on duty, according to D.C. authorities, but the case isn't closed.

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