



Through evidence,  
change is possible.

Physicians for  
Human Rights

256 West 38th Street  
9th Floor  
New York, NY  
10018

+1.646.564.3720  
phr.org

**Physicians for Human Rights Shadow Report to the UN Committee on the  
Elimination of Racial Discrimination**  
Periodic Report on the United States of America  
July 15, 2022

**Introduction**

Physicians for Human Rights (PHR) is a global human rights organization that works at the intersection of medicine, science, and law. For more than 35 years, PHR has used science and the voices of medical professionals to document and call attention to severe human rights violations around the world.

PHR submits the following information, proposed questions, and recommendations related to the upcoming review of the United States of America (U.S.) by the UN Committee on the Elimination of Racial Discrimination (CERD). The submission addresses the following issues/areas of concern:

- Racial Discrimination in Use of Force and Deaths in Custody
- Discriminatory Treatment of Asylum Seekers and Foreign Nationals

**(1) Theme #9-10: Racial Discrimination in Use of Force and Deaths in Custody**

**Since the Committee's last review of the U.S., PHR has published several reports highlighting continued, systemic racial bias in the U.S. criminal justice system, including the persistent use of excessive force by law enforcement and disproportionate deaths in custody amongst people of color.**

In March 2022, PHR published its report, [‘Excited Delirium’ and Deaths in Police Custody: The Deadly Impact of a Baseless Diagnosis.](#) which evaluated the origins, history, current use, and validity of the concept of “excited delirium” as a diagnosis and cause of death. The report traces the evolution of the term from the 1980s, when it was first coined by Dr. Charles Wetli in case reports on cocaine intoxication and then later wrongly used to explain the deaths of more than 17 Black women sex workers in Miami, Florida. Wetli’s grave mischaracterization of these murders – and the racism and misogyny that informed his continued promotion of Black male death from cocaine-related delirium – should have discredited this theory, but instead the use of the term “excited delirium” grew. It has since become a catch-all explanation for many deaths occurring in the context of law enforcement restraint, often coinciding with substance use or mental illness, and disproportionately used to explain the deaths of Black men in police encounters. Indeed, according to one study, nearly 60 percent of deaths that occur in police custody that are attributed to “excited delirium” involve Black and Latinx victims. The report makes a range of recommendations, including:

- instructing state attorneys general to review the use of the term “excited delirium” in all instances by police and correctional services to understand how and when it is applied;
- calling on police associations and first responders to stop disseminating “excited delirium” protocols and collect data on how the term has been applied, including racial disparities in its use;
- establishing independent oversight systems and mandate independent investigations of deaths in law enforcement custody and
- if a death is indicated on a death certificate as a death in custody, instituting rigorous death-in-custody fatality reviews with explicit guidelines

In the summer of 2020, PHR investigated widespread police misuse of crowd control weapons against the public in the context of Black Lives Matter demonstrations following George Floyd's murder. Our multimedia exposé [“Shot in the Head.”](#) produced with partners at the University of California, Berkeley, documented 115 cases of injuries to the head and neck from police using kinetic impact projectiles (KIPs) against protestors across the country. Similarly, in July 2020, when the Trump administration sent federal forces to Portland, Oregon against the wishes of the state government, PHR deployed a rapid response team to document local and federal forces' brutal violence against largely peaceful protestors, as well as those who came to their aid. Our report, “Now they seem to just want to hurt us,': Dangerous Use of Crowd-control Weapons against Protestors and Medics in Portland, Oregon,” found that law enforcement's use of crowd-control weapons and obstruction of medical care at the protests caused severe injuries and psychological trauma to both medics and protestors.

After New York City police trapped and attacked demonstrators at a June 2020 protest in the Mott Haven neighborhood of the Bronx, PHR produced a case study showing how police used unlawful and excessive force against peaceful protestors, medics, and others, published as [“A Targeted Attack on the Bronx: Police Violence and Arrests of Health Workers at a New York City Protest.”](#) PHR found that four health workers' accounts corroborated reports of police violence, including NYPD officers employing unlawful and excessive force against peaceful protestors, medics, and others, and created dangerously crowded conditions by “kettling” – or trapping – the protestors and medics in the setting of a pandemic. They arrested volunteer medics in violation of New York City's curfew regulations, human rights law, and respect for the ethical duties of health care workers and the rights of the injured to receive medical care.

PHR worked with the Bronx Defenders, a legal assistance nonprofit organization representing 23 protestors who were detained and arrested by the NYPD at the same June 2020 protest in the Bronx, to conduct an [independent assessment](#) of the physical and psychological impact of the police violence on individual and community levels. In April 2021, PHR's findings were published in an expert statement. This statement was later used as evidence in the Bronx Defenders' innovative advocacy campaign for the New York City Comptroller, which resulted in the establishment of a community reparations fund to address physical and mental harms and community trauma in Mott Haven.

### **Recommendations**

- Police associations and first responders should stop disseminating “excited delirium” protocols and collect data on how the term has been applied, including racial disparities in its use;
- State and local governments should improve official responses to people experiencing mental and behavioral health challenges by:
  - Bolstering resources and social services to address community needs, including mental health and harm reduction;
  - Taking steps to ensure that medically trained professionals are the primary responders and decision-makers in the management of acute medical emergencies, including mental health and substance use disorder crises; and
  - Investing in alternative models of mental and behavioral health crisis response, led by health professionals and/or social workers, rather than law enforcement; and
- Congress should allocate funding for new or expanded non-law-enforcement emergency mental health services and social services response programs on the state and local levels.
- The Department of Homeland Security (DHS) should provide training for any federal agent involved in crowd control on best practices in de-escalation, mediation, and other crowd-control measures, as well as human rights standards for facilitating protests, lawful use of force and of crowd-control weapons, and the necessity to ensure access to emergency medical services for those affected by use of force.

### **Questions**

- What measures will the State party take to address racism and racial bias in law enforcement response to mental health and substance use disorder crises?
- What measures will the State party take to ensure that in-custody deaths across the United States – as well as racial disparities in such deaths – are tracked and investigated at the federal level?

## **(2) Theme #26: Mistreatment of non-citizens: Discriminatory Treatment of Asylum Seekers and Foreign Nationals**

**Discriminatory treatment of asylum seekers and foreign nationals is an ongoing issue of concern in the U.S., as documented by several reports by PHR. There is a persistent trend of using public health “protection” as a pretext to justify racist and xenophobic U.S. immigration policies, dating back to typhus, trachoma and HIV, and now Covid-19. The inhumane and degrading conditions facing those in immigration detention in the U.S. has also been documented extensively by PHR.**

In March 2020, the Trump administration invoked a public health order known as Title 42 U.S.C. section 265 of the 1944 Public Health and Service Act, which closed the U.S.-Mexico border to migrants and asylum seekers. It used the pretext of stemming the spread of the coronavirus to keep out immigrants, while the administration allowed many other types of travelers to continue to cross the border, and no testing or quarantine requirements for these travelers were instituted. Since that time, PHR has called out the spurious justifications for the use of Title 42 as well as the profound health and human rights tolls of the border expulsions. A [series of letters](#) to the Trump and Biden administrations from top medical and public health experts at Columbia University, Johns Hopkins University, George Washington University, PHR, Human Rights First, and other organizations have repeatedly explained how there is no evidence that the Title 42 order does anything to protect public health. These experts offered common sense, evidence-based, rights respecting [recommendations](#) for the safe processing of people who arrive at the U.S.-Mexico border.

In May 2021, a PHR research team conducted interviews in Tijuana and Ciudad Juárez, Mexico, with 28 asylum seekers who had been expelled under the Title 42 order, and with six health care workers providing services to migrants. The team sought to document people’s experiences during expulsion, including family separation, the actions of U.S. and Mexican government officials during the expulsion process, and the physical and mental health impacts of expulsion and family separation. PHR researchers used validated Spanish-language tools to screen participants for mental health symptoms, including the PCL-5 Civilian scale for post-traumatic stress disorder (PTSD) symptoms, and the Hopkins Symptom Checklist (HSCL25) for anxiety and depression symptoms.

As documented in PHR’s report, [Neither Safety nor Health: How Title 42 Expulsions Harm Health and Violate Rights](#), interviewees reported that U.S. officials rebuffed all their attempts to seek asylum in the United States. Furthermore, all the asylum seekers interviewed described gratuitously cruel and inhumane treatment at the hands of the U.S. government, including physical and verbal abuse by U.S. officials, inhumane detention conditions, active deception about their expulsion and the whereabouts of their family members, and unsafe returns that put people at heightened risk of harm.

Although the Title 42 order was characterized by the Biden administration as a public health policy, every aspect of the expulsion process, such as holding people in crowded conditions for days without testing and then transporting them in crowded vehicles, actually increases the risk of spreading and being exposed to COVID-19. Now, a May 2022 ruling by the U.S. District Court in Lafayette, Louisiana, has blocked efforts by the Centers for Disease Control and Prevention (CDC) to lift the Title 42 expulsion order, effectively condemning thousands of people seeking asylum to continued persecution, danger, and inhumane conditions. Title 42 expulsions were never about safeguarding public health during the pandemic, but are instead a draconian immigration control measure that shreds U.S. legal obligations under domestic and international law to respect the right to seek asylum. PHR condemned this ruling, which was announced in a Louisiana courtroom some 500 miles from the U.S.-Mexico border, a result of ‘court shopping’ by anti-immigrant activists. PHR calls on the CDC and Congress to end Title 42 expulsions for good and advance a safe, humane, and rights-respecting asylum system for all foreign nationals, without discrimination.

In April 2020, the United States held more than 56,000 people in 220 immigration detention facilities across the country in what became the largest immigration detention system in the world. Xenophobia and discrimination against Black and brown immigrants have been driving factors in the increase in the U.S. immigration detention population, a manifestation of the systemic racism that has also driven mass

incarceration in the United States. There has since been an overall reduction in the detention population due to expulsions, border closures, and deportation. However, ICE has also continued large-scale arrests of immigrants, including people with no criminal record, continuing intake of new people into detention during the pandemic. Physical and psychological abuse and inadequate medical care have long been documented in U.S. Immigration and Customs Enforcement (ICE) facilities, where previous infectious disease outbreaks were poorly contained. From July 13 to October 3, 2020, Physicians for Human Rights conducted 50 interviews of immigrants, mainly from Mexico, Venezuela, El Salvador, Cuba, and Uganda, formerly detained by ICE using a standardized questionnaire.

The harsh and punitive conditions reported in this show that ICE practices did not comply with Centers for Disease Control and Prevention guidance or with ICE's own Pandemic Response Requirements, creating unacceptable health risks that violated the constitutional and human rights of detainees. Information reported by the interviewees uncovered significant shortcomings in ICE's response to the virus. Staff efforts to inform people about COVID-19 were limited and inconsistent. Nearly all immigrants interviewed were unable to maintain social distance throughout the detention center; 96 percent reported that they were less than six feet from their nearest neighbor when sleeping. Forty-two percent of participants reported not having access to soap at some point during their detention. 83 percent of people interviewed who reported their symptoms to facility staff members did not get tested for COVID-19 and were not isolated.

In June 2020, PHR and the American Civil Liberties Union released the report [“Behind Closed Doors: Abuse and Retaliation Against Hunger Strikers in U.S. Immigration Detention.”](#) finding that ICE has weaponized an array of punitive and egregious practices against hunger strikers, in violation of international human rights law and medical ethics. These practices included force-feeding, forced hydration, forced urinary catheterization, and other involuntary and invasive medical procedures; solitary confinement without medical justification, endangering detainees' health; retaliatory deportations and transfers of hunger strikers, despite clear medical risks; excessive force; denial of basic privileges; and mistreatment of hunger striking parents, including plans to separate parents from their children in family detention facilities.

### **Recommendations**

- The U.S. administration must do all that is within its power to restore asylum access and mitigate the harms of Title 42 while it remains in effect;
- DHS must end the misuse of Title 42 public health authority immediately and restore asylum processing in line with U.S. refugee laws and treaties for all asylum seekers, without exceptions, including at U.S. ports of entry;
  - implement the Public Health Recommendations for Processing Families, Children and Adults Seeking Asylum or Other Protection at the Border published by public health experts, while re-opening the border;
  - reorient border processing to swiftly and humanely transport people, including children, seeking asylum from Customs and Border Protection (CBP) custody to community-based shelters or reception locations, while permitting access to CBP facilities for attorneys, the United Nations Refugee Agency (UNHCR), non-governmental organizations, and rights monitors in CBP facilities; and
  - provide adequate independent and trained health, humanitarian, interpretation, and child welfare specialists for border processing.

### **Questions**

- What measures is the State party taking to ensure that its use of immigration detention is in compliance with international human rights standards, including prohibiting prolonged solitary confinement, limiting restrictions on freedom of movement of asylum seekers, and upholding reasonableness, necessity, and proportionality in detention?