

**Report Submitted to the
UN Committee on the Elimination of Racial Discrimination
in Relation to the United States 10th to 12th Periodic Reports on the
International Convention on the Elimination of All Forms of Racial
Discrimination**

**Law Enforcement in the United States Violates
ICERD by Using Racial Profiling, Illegal
Surveillance, and Excessive Force Against Racial
Minorities**

**Submitted by:
The International Human Rights Clinic at
SANTA CLARA UNIVERSITY SCHOOL OF LAW**



**500 El Camino Real
Santa Clara, CA 95053-0424, U.S.A.
Tel: +1 (408) 554-4770
IHRC@scu.edu
<http://law.scu.edu/ihr/>**

**Prepared by:
Brooke Brewer, law student
Christopher Bittel, law student
(under the supervision of Prof. Francisco J. Rivera Juaristi, Director)**

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I. Introduction

1. The [International Human Rights Clinic at Santa Clara University School of Law](#) respectfully submits this “shadow” or “alternative” report to provide information regarding racial profiling, illegal surveillance, and excessive use of force against minorities by law enforcement in the United States of America, in preparation for upcoming review of the combined tenth to twelfth periodic reports submitted by the United States of America, in the context of the 107th session of the Committee on the Elimination of Racial Discrimination (CERD or Committee).

2. This report provides the Committee with updated information and includes suggested questions the Committee may want to ask during its 107th session, as well as recommendations the Committee may consider making to the United States. Substantively, this report highlights how the U.S. is in violation of ICERD because law enforcement continues to engage in racial profiling, illegal surveillance, and excessive use of force against minorities. The report supports pending legislation, such as the George Floyd Justice in Policing Act, as well as increasing the use of pattern-or-practice investigations to address systemic misconduct in police agencies and changing police training to emphasize de-escalation and conflict resolution tactics.

II. ICERD Committee’s observations and recommendations from previous review cycle

A. CERD has expressed concern over law enforcement in the United States often engaging in racial profiling and illegal surveillance

3. In the Committee’s concluding observations on the combined seventh to ninth period reports of the United States, the Committee voiced concern over the practice of racial profiling of racial or ethnic minorities by law enforcement officials.¹ The Committee urged the State party to effectively combat and end the practice of racial profiling by federal, state, and local law enforcement officials by adopting and implementing legislation which specifically prohibits law enforcement officials from engaging in racial profiling, such as the End Racial Profiling Act.²

4. The Committee reiterated its concern that the definition of racial discrimination used in federal and state legislation, as well as in court practice, is not in line with article 1, paragraph 1, of CERD, which requires States parties to prohibit and eliminate racial discrimination in all its

¹ CERD, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America* (CERD/C/USA/CO/7-0), Sept. 25, 2014, para. 8.

² *Id.*

forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect.³

5. Other States, such as Angola, Sri Lanka, and Namibia, have also voiced a concern regarding racial profiling and recommend that the United States enacts measures to eliminate racial profiling by law enforcement officials and effectively combat incidents of racial discrimination.⁴

6. Furthermore, the Committee recommended that the United States revise its policies, including the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies, as they permit racial profiling, illegal surveillance, monitoring, and intelligence gathering.⁵

7. Finally, the Committee recommended that the United States undertake prompt, thorough, and impartial investigations into all allegation of racial profiling, surveillance, monitoring and illegal intelligence-gathering; holding those responsible accountable; and providing effective remedies, including guarantees of non-repetition.⁶

B. The Committee has also recognized that excessive use of force by law enforcement officers has a disproportionate impact on racial minorities

8. In its previous review cycle, the Committee took note of how U.S. law enforcement officials disproportionately use excessive force against members of racial and ethnic minorities, including African Americans and undocumented migrants crossing the United States–Mexico border.⁷ The Committee also noted that impunity for such excessive use of force remains an issue.⁸

9. Many States, including Argentina, Australia, Austria, Belgium, China, Colombia, Costa Rica, Côte d’Ivoire, Cyprus, Germany, Indonesia, Nicaragua, Qatar, Romania, Sudan, Switzerland, Thailand, Togo, and the United Kingdom have recommended that the United States enacts measures to ensure that there is equitable treatment of all citizens against the excessive use of force by police, in compliance with international human rights standards.⁹

10. Various states, including Iraq, Japan, Romania, Turkey, and the State of Palestine, recommended that the United States use these international standards to pursue structural reforms

³ *Id.*, para. 5.

⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review (A/HRC/30/12)*, July 20, 2015, para. 176.

⁵ CERD, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America* (CERD/C/USA/CO/7-0), Sept. 25, 2014, para. 8.

⁶ *Id.*

⁷ *Id.*, para. 17.

⁸ *Id.*

⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review (A/HRC/30/12)*, July 20, 2015, para. 176.

such as training law enforcement agencies on human rights principles on arrest, detention, investigation, and decent treatment, and to reduce the role of police in addressing societal problems.¹⁰

11. In its concluding observations, the Committee asked the United States to ensure that each allegation of excessive use of force by law enforcement officials is promptly and effectively investigated; that the alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; that closed investigations be reopened when new evidence becomes available, and that victims or their families be provided with adequate compensation.¹¹

12. The Committee also recommended that the U.S. prevent excessive use of force by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and ensuring that the Customs and Border Patrol directive on the use of force is applied and enforced in practice.¹²

13. Finally, the Committee recommended that the U.S. improve its reporting mechanisms concerning cases of use of force by law enforcement.¹³

III. Updated Information on Racial Profiling, Illegal Surveillance, and Excessive use of Force Against Minorities by Law Enforcement in the United States

A. Racial Profiling and Illegal Surveillance of Minorities by Law Enforcement in the US

1. Information from U.S. Government's combined tenth to twelfth periodic reports

14. In its Periodic Report, the U.S. responded to the Committee's concerns regarding racial profiling and illegal surveillance by noting that the Department of Justice's (DOJ) Civil Rights Division (CRD) opened 70 pattern-or-practice investigations into police departments between 1994 and January 2021.¹⁴

¹⁰ Human Rights Council, *Report of the Working Group on the Universal Periodic Review (A/HRC/30/12)*, July 20, 2015, para. 176.

¹¹ CERD, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America* (CERD/C/USA/CO/7-0), Sept. 25, 2014, para. 17.

¹² *Id.*

¹³ *Id.*

¹⁴ CERD, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (CERD/C/USA/10-12), Dec. 20, 2021, para 15.

15. The US Report also mentioned that President Biden has called for the enactment of the George Floyd Justice in Policing Act (GFJPA), a bill designed to promote a wide range of policies and issues regarding policing practices and law enforcement accountability, including racial profiling and use of surveillance technology such as facial recognition.¹⁵ The bill was passed by the House of Representatives but is currently stalled in the Senate.¹⁶

2. The United States continues to engage in racial profiling and illegal surveillance of minorities, in violation of its obligations under ICERD

16. Article 2 of ICERD obligates State Parties to ensure that public institutions, both national and local, eliminate racial discrimination in all forms and not engage in discriminatory acts.¹⁷ States must take effective measures by passing legislation, reviewing policies, and nullify existing policies that have the effect of creating racial discrimination.¹⁸

17. In light of its obligations under ICERD, the United States has a duty to engage in more civil and criminal investigations of police departments, such as pattern-or-practice investigations. A pattern-or-practice investigation is initiated by the attorney general in order to investigate law enforcement agencies for a “pattern or practice of conduct ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”¹⁹ Pattern-or-practice investigations focus on widespread or systemic misconduct including routine uses of excessive force, repeated stops, searches, or arrests that are unreasonable, and discrimination based on race, ethnicity, and national origin.²⁰

18. Practice-or-pattern investigations have been proven to be effective tools for the federal government to reign-in use of force abuses. For example, in the City of Seattle, Washington, there

¹⁵ CERD, Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017, (CERD/C/USA/10-12), Dec. 20, 2021, para 15.

¹⁶ H.R.1280 - 117th Congress (2021-2022): George Floyd Justice in Policing Act of 2021, H.R.1280, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1280>.

¹⁷ United Nations. *International Convention on the Elimination of All Forms of Racial Discrimination*. Art 2. Treaty Series, vol. 660, Mar. 1966, p. 195.

¹⁸ United Nations. *International Convention on the Elimination of All Forms of Racial Discrimination*. Art 2. Treaty Series, vol. 660, Mar. 1966, p. 195.

¹⁹ 42 U.S.C. § 14141 (2010).

²⁰ Lo, Kenny. *The Facts on Pattern-or-Practice Investigations, How the U.S. Department of Justice Can Bring About Police Reform and Accountability*, Center for American Progress, (last updated July 8, 2021) <https://www.americanprogress.org/article/facts-pattern-practice-investigations/>

was a 63% decrease in serious use-of-force incidents in Seattle eight years after it went through a pattern-or-practice investigation.²¹

19. Following the conviction of former police officer Derek Chauvin for the murder of George Floyd, U.S. Attorney General Merrick Garland announced that the U.S. Department of Justice had opened an investigation into the city of Minneapolis and the Minneapolis Police Department (MPD).²² Another pattern-or-practice investigation was opened for the Louisville/Jefferson County metro government and the Louisville Metro Police Department, after police officers shot and killed Breonna Taylor in her apartment while executing a no-knock search warrant.²³

20. A few state and local governments recently passed legislation to address racial profiling and illegal surveillance. In California, each law enforcement agency is now required to provide data annually on all police stops to the state Attorney General.²⁴ Another bill recently passed in California would require departments to diversify recruiting, create a fund for officers to pursue higher education and increase required classes on mental health, social services, and other topics.²⁵ In addition, seven states and twenty municipalities have passed laws limiting government use of facial recognition in certain contexts.²⁶

21. While the federal government has used pattern-or-practice investigations to hold some law enforcement agencies accountable and some U.S. states have adopted new legislation related to profiling and surveillance, these steps are woefully inadequate to remedy the problem and prevent future incidents.

22. Racial profiling is pervasive in law enforcement practice around the country. Law enforcement agencies in the past decade used the “Broken Windows” theory on crime to justify stopping and frisking people without individualized suspicion.²⁷ Police stops, including stop-and-frisk programs, are carried out disproportionately against African and Hispanic Americans.²⁸ Additional data collected by the San Francisco Police Department shows police were 10 times as

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Cal. DoJ. *Open Justice Stop Data*. <https://openjustice.doj.ca.gov/exploration/stop-data>

²⁵ Bojorquez, Kim. *New bill seeks to diversify California police departments*, The Sacramento Bee, (Feb. 12, 2021), <https://www.sacbee.com/news/politics-government/capitol-alert/article249193025.html>

²⁶ *Id.*

²⁷ IACHR. *Police Violence Against Afro-Descendants In the United States* (OEA/Ser.L/V/II. Doc. 156) Nov. 26, 2018, para. 75. <http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>

²⁸ *Id.* para. 78-80.

likely to stop black people as white people.²⁹ In a recent lawsuit, a District Court found “substantial evidence” the San Francisco Police Department had engaged in racially selective enforcement of low-level drug offenses.³⁰

23. In one disturbing recent case, the San Francisco Police Department allegedly detained a 13-year-old boy as he was leaving school.³¹ The family of the boy claims that he was singled out because he is black and he was unlawfully detained, with the police deliberately showing indifference towards the boy’s safety.³² The boy, Michael, was a seventh-grade student and was getting into his tutor’s car outside the school when he was approached by an officer investigating a car burglary case.³³ The officer yelled at Michael to get out of the car and put his hands behind his back before grabbing him and holding his arms behind his back until several adults intervened, vouching to the officer that the 13-year-old had been in class all day.³⁴ The officer claimed that the boy fit the description of the burglary suspect, who was seen wearing black pants, a black hoodie and red shoes.³⁵ The boy’s attorney said he was wearing black shoes with red shoelaces and weighed less than 100 pounds.³⁶

24. Likewise, Patrick Lyoyla, a native of the Democratic Republic of Congo, was killed on April 4th, 2022 after being pulled over and chased on foot by a Grand Rapids police officer in Michigan.³⁷ The circumstances of Mr. Lyoyla’s death led his attorney to believe his client was targeted for “driving while Black”.³⁸ Mr. Lyoyla was unarmed and video footage of the stop

²⁹ Cassidy, Megan. *Despite reform efforts, S.F. police stop and search Black people far more than any other race*, The San Francisco Chronicle, (Mar. 21, 2021), <https://www.sfchronicle.com/sf/article/Despite-reform-efforts-S-F-police-stop-and-17019085.php>

³⁰ *U.S. v Mumphrey, et al.* No. 14-cr-00643-EMC-1, 1, (N.C. Cal. May 5, 2016). https://www.aclunc.org/sites/default/files/20160630-order_motion_to_compel.pdf

³¹ Cassidy, Megan., *Family plans to sue S.F. police for allegedly detaining, profiling Black seventh-grader*, The San Francisco Chronicle, (Apr. 5, 2022), <https://www.sfchronicle.com/bayarea/article/Family-plans-to-sue-S-F-police-for-allegedly-17059825.php>

³² Cassidy, Megan. *Despite reform efforts, S.F. police stop and search Black people far more than any other race*, The San Francisco Chronicle, (Mar. 21, 2021), <https://www.sfchronicle.com/sf/article/Despite-reform-efforts-S-F-police-stop-and-17019085.php>

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Nichols, Anna Liz. White, Ed. *Video: Michigan cop on Black man’s back, fatally shot him*. Associated Press. April 13, 2022. <https://apnews.com/article/michigan-grand-rapids-police-shootings-0ee21e134d0c0fdb81da1590b41fb454>

³⁸ Householder, Mike. White, Ed. *Expert: Cop pressed gun to Patrick Lyoyla’s head then fired. Associated Press.* April 19, 2022. <https://apnews.com/article/patrick-lyoyla-shootings-michigan-detroit-police-6684358f9218b32a94a59e9490ba484b>

reveals the officer was kneeling on top of Mr. Lyoyla’s back.³⁹ An independent autopsy reported the officer had his gun pressed against Mr. Lyoyla’s head before he fired the fatal shot.⁴⁰

25. Another issue closely related to racial profiling by law enforcement is illegal surveillance of racial minorities. Widespread surveillance of communities of color without clear standards and guidance dates back decades to the civil rights era in the U.S.⁴¹

26. U.S. law enforcement has relied on drones, airplanes, helicopters, and video footage from “smart streetlights” to monitor anti-racism protests.⁴² The Baltimore Police Department admitted to using aerial surveillance and facial recognition to track protests after Freddy Gray’s death in 2015.⁴³ Six agencies reported using facial recognition technology on images of unrest, riots, or protests following George Floyd’s murder in May 2020.⁴⁴

27. Mass surveillance is not limited to protests over racial injustice. Since the 9/11 attacks, the Transportation and Security Administration and other agencies engaged in widespread surveillance and profiling of Muslims and people perceived to be of Middle Eastern descent.⁴⁵ The Customs and Border Patrol uses planes, boats, and radios to track and identify people along the US-Mexico border, and Immigration and Customs Enforcement uses surveillance technology to track vehicles, taxes, social media, and phone records of undocumented immigrants.⁴⁶ The China Initiative, a mass surveillance program launched in 2018 to prevent espionage and intellectual property theft, led to racial profiling and distrust of Asian-Americans and several false arrests of Asian students and academics.⁴⁷

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Lee, Nicol Turner. Chin, Catlin. *Police surveillance and facial recognition: Why data privacy is imperative for communities of color*. The Brookings Institution. April 12, 2022. <https://www.brookings.edu/research/police-surveillance-and-facial-recognition-why-data-privacy-is-an-imperative-for-communities-of-color/>

⁴² Human Rights Council, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers* (A/HRC/47/CRP.1) June 21- July 9 2021, https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf, para. 4.

⁴³ Lee, Nicol Turner. Chin, Catlin. *Police surveillance and facial recognition: Why data privacy is imperative for communities of color*. The Brookings Institution. April 12, 2022. <https://www.brookings.edu/research/police-surveillance-and-facial-recognition-why-data-privacy-is-an-imperative-for-communities-of-color/>

⁴⁴ U.S. GAO. *Facial Recognition Technology: Federal Law Enforcement Agencies Should Have Better Awareness of Systems Used By Employees*. GAO-21-105309. Jul. 13, 2021. <https://www.gao.gov/products/gao-21-105309>

⁴⁵ U.N., Working Group on People of African Descent. *Report on mission to the U.S.*, Aug. 18, 2016, para. 24; CERD, *Concluding Observations 2014*, Sept. 25, 2014, para. 8.

⁴⁶ Lee, Nicol Turner. Chin, Catlin. *Police surveillance and facial recognition: Why data privacy is imperative for communities of color*. The Brookings Institution. April 12, 2022. <https://www.brookings.edu/research/police-surveillance-and-facial-recognition-why-data-privacy-is-an-imperative-for-communities-of-color/>

⁴⁷ *Id.*

28. The United States therefore continues to engage in racial profiling and illegal surveillance of minorities, in violation of its obligations under ICERD.

3. The United States must adopt additional legislation, such as the George Floyd Justice in Policing Act, to bolster current efforts to eliminate racial profiling and illegal surveillance against minorities.

29. The U.S. has a duty to adopt legislation, such as the Justice in Policing Act, to supplement existing constitutional protections against racial bias in policing.⁴⁸ Courts have previously struck down racial profiling and illegal surveillance in some contexts as violating the 4th Amendment requirement for individualized suspicion⁴⁹ and the 14th Amendment's equal protection clause.⁵⁰ However, police actions based partially on the individual's race and partially on a neutral reason are almost always upheld as constitutional.⁵¹

30. Additional legislation, such as the George Floyd Justice in Policing Act, would bolster current efforts to eliminate racial profiling and illegal surveillance against minorities.⁵² The George Floyd Justice in Policing Act would strengthen existing protections against discrimination by providing a framework to prevent and remedy racial profiling by law enforcement at the federal, state, and local level.⁵³ It increases accountability for law enforcement misconduct, restricts the use of certain policing practices, enhances transparency and data collection, and establishes best practices and training requirements.⁵⁴ The Act further limits qualified immunity as a defense to liability in a private civil action against a law enforcement officer, and grants administrative subpoena power to the Department of Justice in pattern-or-practice investigations.⁵⁵ It would also lower the criminal intent standard required to convict a law enforcement officer for misconduct from willful actions to knowing or reckless conduct.⁵⁶

⁴⁸ CERD, Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017, (CERD/C/USA/10-12), Dec. 20, 2021, para 15.

⁴⁹ United States v. Montero-Camargo, 208 F.3d 1122 (9th Cir. 2000).

⁵⁰ Marshall v. Columbia Lea Regional Hospital, 345 F. 3d 1157 (10th Cir. 2003).

⁵¹ United States v. Martin-Fuerte, 428 U.S. 543, 563 (1976) (upholding a stop based partially on race as reasonable), United States v. Valenzuela, 2001 U.S. Dist. LEXIS 7679 (D. Colo. May 31, 2001) (a stop based partially on race does not violate equal protection).

⁵² H.R.1280 - 117th Congress (2021-2022): George Floyd Justice in Policing Act of 2021, H.R.1280, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1280>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

31. The Act would also limit unnecessary use of force and restrict the use of no-knock warrants, chokeholds, and carotid holds.⁵⁷ The bill would also create a national registry, entitled the National Police Misconduct Registry, to compile data on complaints and records of police misconduct.⁵⁸ This would establish new reporting requirements on the use of force, officer misconduct, and routine police practices.⁵⁹

32. The Act would also mandate Federal law enforcement officers to wear body cameras and prohibits installing facial recognition technology on these cameras or using facial recognition technology on body camera footage.⁶⁰ Finally, the Act would direct the DOJ to create uniform accreditation standards for law enforcement agencies and require law enforcement officers to complete training on racial profiling, implicit bias, and the creates a duty to intervene when another officer uses excessive force.⁶¹

B. Excessive Use of Force Against Minorities by Law Enforcement in the US

1. Information from U.S. Government’s combined tenth to twelfth periodic reports

33. In response to the concerns regarding excessive use of force by U.S. law enforcement officials, the U.S. noted the importance of holding police officers accountable for abuses of power and tackling systemic misconduct and systemic racism in police departments.⁶² The U.S. government noted its concern about excessive use of force and emphasizes measures taken to address such activity when it occurs to persons of all races and ethnicities.⁶³

34. In cases of misconduct that violate the Constitution or a federal statute, DOJ/CRD can investigate and prosecute individual officers under the ‘color of law’ provisions of 18 U.S.C. § 242.⁶⁴ From FY 2017 to FY 2020, CRD charged more than 240 defendants, including individual police officers, with willfully violating constitutionally protected rights (or conspiring to do so)

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² CERD, Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017, (CERD/C/USA/10-12), Dec. 20, 2021, para 77.

⁶³ *Id.*

⁶⁴ *Id.*

while acting under color of law.⁶⁵ In that same time period, CRD obtained convictions of 200 defendants, some of whom were police officers, for these charges.⁶⁶

35. CRD may also investigate and bring civil suits against agencies that engage in a pattern or practice that violates the U.S. Constitution or laws of the United States.⁶⁷ In FY 2019, the DOJ charged 83 defendants, including police officers, with color of law offenses, and obtained convictions of 46 defendants.⁶⁸

2. The United States has a duty to prevent excessive use of force by law enforcement against minorities and to adequately investigate, prosecute, and provide effective remedies when law enforcement uses excessive force.

2. Articles 5(b) and 6 of ICERD require States Parties to create effective protections from acts of racial discrimination that violate human rights, whether committed by the state or private individuals.⁶⁹ States must ensure effective remedies are available, as well as the right to seek just and adequate reparation for damage done by the discriminatory act.⁷⁰ States are obligated to adopt effective prevention policies and implement appropriate and independent accountability mechanisms for police officers who use excessive force.⁷¹

3. While the U.S. has provided some degree of accountability and remedies using pattern-or-practice investigations and color-of-law charges, impunity and lack of remedies are still common. The current system of regulatory and reporting systems makes it impossible to hold police officers and departments fully responsible for excessive use of force, particularly against marginalized communities of color.⁷²

4. Law enforcement agencies across the country use excessive force at a disproportionate rate towards racial minorities. For example, in San Francisco, police used force on Black people twelve

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ United Nations. *International Convention on the Elimination of All Forms of Racial Discrimination*. Article 5(b) and 6. Treaty Series, vol. 660, Mar. 1966, p. 195.

⁷⁰ *Id.*

⁷¹ IACHR. *Police Violence Against Afro-Descendants In the United States* (OEA/Ser.L/V/II. Doc. 156) Nov. 26, 2018, para. 200, available at <http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>

⁷² *Id.* para. 104-106.

times more than white people and five times more than Hispanic people.⁷³ While these figures seem grossly disproportionate, they reflect substantial progress by the San Francisco Police Department. Use-of-force instances have dropped 59% over the last six years and police stops of Black people have fallen over the last three years.⁷⁴ An examination of data from the Minneapolis Police Department by the New York Times revealed while 19% of residents are Black, 58% of the department's use of force incidents were against Blacks.

5. The U.S.'s failure to prevent and hold officers accountable for excessive force has led to a number of civil suits by victims of excessive force. As of April 2022, there were at least 29 pending lawsuits over the excessive use of force by law enforcement during the 2020 protests over George Floyd's murder by police officers in Minneapolis.⁷⁵ The city of Austin, Texas has already agreed to pay a total of \$13 million to four people who were hit in the head with bean bag rounds fired by the police.⁷⁶ In Denver, a jury found police used excessive force against protesters during the 2020 demonstrations by shooting them with pepper balls and lead bags.⁷⁷ The jury awarded \$14 million to the victims.⁷⁸ The cost and shame resulting from this suit led Denver to eliminate the use of 40mm foam rounds for crowd control and change the way officers are permitted to use pepper spray balls.⁷⁹ Large monetary damages awards from current and future lawsuits alleging excessive force may lead departments to improve training and reporting methods and use of force standards to prevent impunity and reign in excessive force.⁸⁰

3. The United States must reform law enforcement training protocols to focus on de-escalation and "soft skills."

6. While the U.S. claims to have made progress in providing better training on use of force, especially for Customs and Border control,⁸¹ current training for police in the U.S. still prioritizes

⁷³ Cassidy, Megan. *Despite reform efforts, S.F. police stop and search Black people far more than any other race*, The San Francisco Chronicle, (Mar. 21, 2021), <https://www.sfchronicle.com/sf/article/Despite-reform-efforts-S-F-police-stop-and-17019085.php>

⁷⁴ *Id.*

⁷⁵ Slevin, Collen. *\$14M jury award for protesters could resonate around US*, AP News, (Apr. 1, 2022), <https://apnews.com/article/death-of-george-floyd-denver-protesters-jury-award-23dff0aa2a476a1cf2a1eb4b267b637d>

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ CERD, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (CERD/C/USA/10-12), Dec. 20, 2021, para 77-82.

firearms training and other forms of force.⁸² Ed Obayashi, a use-of-force consultant to law enforcement agencies and a deputy sheriff and legal advisor in California, has noted that one of the issues that lead to this excessive use-of-force is the lack of police training for protests.⁸³

7. Police training in the United States is inadequate because it places a heavy emphasis on military skills and “warrior” training while under-prioritizing de-escalation and other soft skills.⁸⁴ U.S. police forces even have access to armored vehicles, high caliber weapons, grenades, and other military equipment.⁸⁵

8. This style of training comes at the cost of training officers about crisis-intervention and de-escalation.⁸⁶ De-escalation training teaches officers to “slow down, create space, and use communication techniques to defuse potentially dangerous situations.”⁸⁷ According to the Police Executive Research Forum, the median police recruit receives eight hours of de-escalation training, compared with 58 hours of training in firearms.⁸⁸ It is estimated that more than half of officers who kill a person in the line of duty have not undergone any crisis intervention training,⁸⁹ which instructs officers on de-escalation techniques and effective communication strategies when interacting with persons with mental illnesses.⁹⁰ U.S. law enforcement officers also receive relatively few hours training other “soft skills” such as how to communicate effectively or how to

⁸² Preston, Caroline, “*Police education is broken. Can it be fixed?*”, (June 28, 2020), <https://hechingerreport.org/police-education-is-broken-can-it-be-fixed/>

⁸³ Slevin, Collen. *\$14M jury award for protesters could resonate around US*, AP News, (Apr. 1, 2022), <https://apnews.com/article/death-of-george-floyd-denver-protesters-jury-award-23dff0aa2a476a1cf2a1eb4b267b637d>

⁸⁴ Preston, Caroline, “*Police education is broken. Can it be fixed?*”, (June 28, 2020), <https://hechingerreport.org/police-education-is-broken-can-it-be-fixed/>

⁸⁵ IACHR. *Police Violence Against Afro-Descendants In the United States* (OEA/Ser.L/V/II. Doc. 156) Nov. 26, 2018, para. 90. <http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>

⁸⁶ Khazan, Olga. *American Police Are Inadequately Trained*, The Atlantic, (Apr. 22, 2021), <https://www.theatlantic.com/politics/archive/2021/04/daunte-wright-and-crisis-american-police-training/618649/>

⁸⁷ Curtis Gilbert, *Not Trained to Not Kill*, American Public Media (May 5, 2017), available at <https://www.apmreports.org/story/2017/05/05/police-de-escalation-training>.

⁸⁸ Khazan, Olga. *American Police Are Inadequately Trained*, The Atlantic, (Apr. 22, 2021), <https://www.theatlantic.com/politics/archive/2021/04/daunte-wright-and-crisis-american-police-training/618649/>

⁸⁹ Wesley Lowery et. al., *Distraught People, Deadly Results*, The Washington Post (June 30, 2015), available at http://www.washingtonpost.com/sf/investigative/2015/06/30/distraught-people-deadly-results/?utm_term=.290ee3406da1.

⁹⁰ Natalie Bonfine, Christian Ritter, and Mark R. Munetz, “Police Officer Perceptions of the Impact of Crisis Intervention Team (CIT) Programs,” *International Journal of Law and Psychiatry* 37, no. 4 (July–August 2014): 341–350, doi:10.1016/j.ijlp.2014.02.004. (CIT was first developed in 1988 in Memphis, Tennessee). 50 Id. See also, Nick Selby, Op-Ed: The ‘low-hanging fruit’ of police reform, The Washington Post (June 20, 2016), available at https://www.washingtonpost.com/news/the-watch/wp/2016/06/20/guest-post-the-low-hanging-fruit-of-police-reform/?utm_term=.64f9d63804fd.

use emotional intelligence to clearly perceive a situation before acting, potentially leading to more instances of unnecessary force.⁹¹

9. Police training in the U.S. often leaves officers unprepared for the job they are about to undertake.⁹² In the U.S., the norm is about five months in a classroom and another three or so months in the field compared to many European nations which can take three or four years to complete.⁹³ European countries, unlike the U.S., have national standards for a police officer's job, such as how to search a car and when to use a baton.⁹⁴

10. The U.S. has also deployed National Guard and federal agents to quell protests of racial discrimination, even though these units were not trained on appropriate policing of protests.⁹⁵ Some of these agents allegedly assaulted protestors, indiscriminately fired less-lethal munitions and tear gas into nonviolent crowds and detained individuals without probable cause.⁹⁶

11. Not only is the initial police training insufficient and skewed towards violence, deficits in training are difficult to make up once an officer graduates from police academy training.⁹⁷ This is concerning as officers may pass these bad habits and incorrect techniques onto trainees.⁹⁸ At the Minneapolis police academy, soon-to-be officers are trained for 16 weeks before they are assigned weapons and sent out on the streets as rookie police officers.⁹⁹ Following this training period, rookie police officers are paired with training officers for six months.¹⁰⁰ This style of training may have contributed to George Floyd's murder, when two rookie police officers receiving field training under officer Derek Chauvin held down Floyd's back and legs while officer Chauvin used his knee to choke Floyd for nine minutes.¹⁰¹ Similarly, Kim Potter, the officer who fatally shot

⁹¹ Khazan, Olga. *American Police Are Inadequately Trained*, The Atlantic, (Apr. 22, 2021), <https://www.theatlantic.com/politics/archive/2021/04/daunte-wright-and-crisis-american-police-training/618649/>

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Human Rights Council, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers* (A/HRC/47/CRP.1) June 21- July 9 2021, https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf, para. 206.

⁹⁶ *Id.*

⁹⁷ Khazan, Olga. *American Police Are Inadequately Trained*, The Atlantic, (Apr. 22, 2021), <https://www.theatlantic.com/politics/archive/2021/04/daunte-wright-and-crisis-american-police-training/618649/>

⁹⁸ *Id.*

⁹⁹ Kates, Graham., *Some U.S. police train for just a few weeks, in some countries they train for years*, CBS News, (June 10, 2020), <https://www.cbsnews.com/news/police-training-weeks-united-states/>

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

Daunte Wright in Minnesota after mistaking her pistol for her taser, was also acting as a field-training officer at the time of the shooting.¹⁰²

12. To comply with its obligations under ICERD, the U.S. must therefore reform how law enforcement in the U.S. is trained, particularly on de-escalation tactics and “soft skills.”

IV. Recommended Questions

13. What steps has the federal government taken to ensure local law enforcement agencies engage in de-escalation and crisis-intervention training?

14. What steps has the federal government taken to hold police departments and individual officers accountable for excessive force and racial profiling?

15. What steps have the Biden Administration and leaders in the U.S. Senate taken to pass the George Floyd Justice in Policing Act?

16. What steps has the U.S. taken to ensure adequate remedies are available to racial justice protestors and other people hurt by excessive use of force and illegal surveillance?

V. Suggested Recommendations

17. The United States should adopt legislation to eliminate racial profiling and illegal surveillance and should consider the adoption of the George Floyd Justice in Policing Act.

18. The United States should ensure police departments provide longer, high-quality training that places a heavier emphasis on de-escalation and education on mental health and police-community relations.

19. The United States should engage in more civil and criminal investigations of police departments, such as pattern-or-practice investigations, and remedy the resulting harm by investing in social programs in the affected communities.

¹⁰² *Id.*