

CHILLING PUBLIC DISSENT

Highlighting the concerning rise in repressive legislation and the implications for the rights of Black and brown people to peacefully assemble and associate in Florida and across the United States

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COMMUNITY
JUSTICE
PROJECT



CHILLING PUBLIC DISSENT

Arts. 2, 3, &5(d)(1)

I. Introduction and Brief Summary

In the summer of 2020, approximately 26 million people participated in demonstrations for racial justice across the United States, including in the U.S. state of Florida.¹ These demonstrations were organized in response to widely publicized killings of unarmed Black people by police, in a context of centuries of police violence against Black communities in the country.² The country experienced an urgent public reckoning on the role of its carceral system, militarized policing, and racially discriminatory policies in systematically depriving Black people and other people of color of their basic human rights. Demonstrators called for accountability for police killings, for reducing or “defunding” police budgets to allow for greater investment in services, community intervention mechanisms and the wellness of Black communities.³ The majority of demonstrations in Florida were organized by Black-led organizations. Although the demonstrations were overwhelmingly non-violent, all over the United States and in the state of Florida, unarmed protestors were confronted by police in riot gear⁴ and white supremacist counter protestors,⁵ turning violent otherwise peaceful protests.

In the months following the peak of the demonstrations for racial justice, 22 U.S. states considered legislation that would inhibit the right to protest.⁶ In Florida, the anti-protest law

¹ Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. Times, (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

² Laurin-Whitney Gottbrath, *In 2020, the Black Lives Matter movement shook the world*, Aljazeera (Dec. 31, 2020), <https://www.aljazeera.com/features/2020/12/31/2020-the-year-black-lives-matter-shook-the-world>.

³ *Id.*

⁴ *A Year of Racial Justice Protests: Key Trends in Demonstrations Supporting the BLM Movement*, The Armed Conflict Location & Event Data Project (May 2021), https://acleddata.com/acleddatanew/wp-content/uploads/2021/05/ACLED_Report_A-Year-of-Racial-Justice-Protests-May2021.pdf; see, e.g., James Tutton, *George Floyd protests: DeSantis deploys 700 more Florida National Guard soldiers to aid law enforcement*, WFTV (June 1, 2020), <https://www.wftv.com/news/local/george-floyd-protests-desantis-deploys-additions-florida-national-guard-aid-law-enforcement/FCHKOKJTOFAERMJDLVP4FNABDA/>; Sarah Blaskey, *She Returns to Where She Was Struck in The Eye by Police. Her New Cause: Fight ‘Jim Crow’ Bills*, Mia. Herald, (Feb. 26, 2021), <https://www.miamiherald.com/news/local/community/broward/article249526205.html>

⁵ Danielle Wallace, *Fla. Man Who Brandished Gun at BLM Protest Was ‘Lawfully Defending Himself;’ No Charges Filed: Police*, Fox News, (Aug. 31 2020), <https://www.foxnews.com/us/florida-tallahassee-blm-protest-gun-lawfully-defending-himself>; Tim Craig, *Proud Boys and Black Lives Matter Activists Clashed in A Fla. Suburb. Only one Side Was Charged*, Wash. Post, (Feb. 4, 2021), https://www.washingtonpost.com/national/florida-protest-bill-unequal-treatment/2021/02/01/415d1b02-6240-11eb-9061-07abcc1f9229_story.html.

⁶ *Anti-Protest Laws in the United States*, First Amendment Watch (Apr. 20, 2021), <https://firstamendmentwatch.org/deep-dive/states-rush-to-pass-anti-protestor-laws/>; Sophie Quinton, *Republicans Respond to Black Lives Matter with Anti-Protest Bills* (Feb. 4, 2021),

known as HB 1 was first introduced three months after the height of the demonstrations and swiftly passed on April 19, 2021, the eve of the verdict in the murder trial of a police officer who killed George Floyd, an unarmed Black man.⁷ Among other provisions, the law increased penalties for non-violent activity during protests such as peacefully blocking roads,⁸ allowed police to arrest peaceful protestors for being in proximity to acts of violence or property destruction caused by others,⁹ inhibited municipalities from tempering police response to protests,¹⁰ and allowed anyone to harm and even kill protestors without fear of civil repercussions.¹¹ This chilling effect comes out of fear of both the consequences of being charged with a crime, and the consequences of having a criminal record in Florida. In the state of Florida, having a criminal record makes it harder to find employment, renders a person potentially ineligible for certain public benefits like public housing, and can strip an individual of their ability to participate in the political process through voting. This reality places a burden on entities like The Black Collective and Dream Defenders, who have had to balance representing the interests of their members against protecting them from potential criminal consequences.

In addition to this piece of legislation, Florida legislators have proposed bills¹² that would criminalize witnesses filming police interactions with citizens, further repressing civic activity and hampering efforts for transparency and accountability. A similar law has recently been passed in Arizona.¹³ These efforts place significant barriers to investigating harassment and violence by police against Black communities.

<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/02/04/republicans-respond-to-black-lives-matter-with-anti-protest-bills>.

⁷ *CS/HB 1: Combating Public Disorder*, The Florida Senate, <https://flsenate.gov/Session/Bill/2021/1> (last visited June 28, 2022); Arek Sarkissian, *DeSantis calls for 'ton of bricks' penalties on protesters who commit illegal acts*, Politico (Sept. 21, 2020),

<https://www.politico.com/states/florida/story/2020/09/21/desantis-calls-for-ton-of-bricks-penalties-on-protesters-who-commit-illegal-acts-9424199>; Mike Hayes et al, *Derek Chauvin guilty in death of George Floyd*, CNN (Apr. 21, 2021), <https://www.cnn.com/us/live-news/derek-chauvin-trial-04-20-21/index.html>.

⁸ H.B. 1, 2021 Leg. § 2 (Fla. 2021) (making it a criminal offense to stand on a road in a manner that “willfully obstruct[s] the free, convenient, and normal use of a public street, highway, or road.”).

⁹ *Id.* § 15 (defining participation in a riot broadly and exposing peaceful protestors in close proximity to property damage or injury inflicted by others to harsh criminal penalties).

¹⁰ *Id.* § 1 (greatly inhibiting the ability of municipalities to reduce police budgets by providing an opportunity for an appeal to the Governor); *id.* § 3 (exposing municipalities to civil liability for injuries and property damage during demonstrations, incentivizing strict policing of protests).

¹¹ *Id.* § 18 (creating an affirmative defense to civil liability for damages for property damage, personal injury, and wrongful death, if “such action arose from an injury or damage sustained by a participant acting in furtherance of a riot.”).

¹² Joshua Ceballos, *Filming Police Might be a Crime under New Florida Bill*, <https://www.miaminewtimes.com/news/filming-police-might-be-a-crime-under-new-florida-bill-12661806>, (August 3, 2021).

¹³ Amanda Holpuch, *Arizona Law Bans People From Recording Police Within Eight Feet*, NY Times, <https://www.nytimes.com/2022/07/09/us/arizona-recording-police-8-feet.html>, (July 9, 2022).

II. Testimony from Directly Impacted Communities

As one advocate put it, HB 1 is an “open assault on the rights of Florida’s Black and Brown families and should be contextualized and reckoned with as such.”¹⁴ Several Black-led organizations have worked to bring attention to the chilling impact and threats of violence this anti-protest law has created. In declarations submitted to a United States Federal Court, Dream Defenders and Black Collective shared the following:

“The Black Collective is a Florida nonprofit ... focused on promoting political participation and economic empowerment of Black communities. ...The Black Collective regularly organizes canvassing programs, trainings and events where people gather.

Several folks in The Black Collective, our constituents and collaborators, have experienced police violence. They have also been threatened for speaking out against police violence, including in 2016, when organizing after Charles Kinsey and Philando Castile were shot by police. At that time, we received threats and pressure to stop. I have been in protest spaces where things escalated. As peace keepers, we never had concerns about being charged, arrested, or held accountable for actions of someone else until HB1. Now we are afraid of precisely these things.”¹⁵

“Dream Defenders is a Florida-based organization that was established in 2012 following the killing of Black teenager Trayvon Martin. Dream Defenders is a chapter- and membership-based organization led by Black and Latinx youth who focus on promoting civic engagement and organizing young people and students against structural inequality.

Because HB1 was announced in response to racial justice protests, Dream Defenders as an organization understood this bill...to be a direct attack on its work and the work of similarly aligned groups, including the Movement for Black Lives. This is because the bill specifically focuses on protests and on efforts to reallocate funds from police spending to social programs—two objectives that are critical to Dream Defenders’ work.

In the past, Dream Defenders has witnessed agitators enter political demonstrations and engage against police in order to draw police into the crowds.

¹⁴ Nancy Metayer, *Gov. Ron DeSantis’ HB1 is un-American*, Fla. Pol., <https://floridapolitics.com/archives/410912-nancy-metayer-gov-ron-desantis-hb1-is-un-american> (Mar. 10, 2021).

¹⁵ Declaration of Valencia Gunder, *The Dream Defenders, The Black Collective, et al v. Ron DeSantis, et al.* (Gunder Dec. 4:21-cv-00191, July 14, 2021, ECF No. 65-2).

We have also witnessed violence against protestors by white supremacist and other counter-protestors, including members of the Proud Boys and other organized groups. For example, in Tallahassee and Gainesville, cars attempted to run through crowds at protests we organized or our members participated in. In June 2020, a pickup truck violently peeled away from traffic and ran through a protest blocking an intersection in Tampa, striking and injuring a protest leader, a Black woman, and a veteran.

On June 27, 2020, a car ran through a crowd of protestors during a moment of silence in Tampa. Police arrested the protestor who had been hit by the car. On or about September 26, 2020 in St. Petersburg, a counter-protestor assaulted and later pulled a gun out and threatened our members as they marched in the street. Rather than arresting this agitator, police arrested two Black protestors. The Tampa Bay Times described the incident: “As the march reached a boiling point, a white man named Laurence Davis ran up to protestors, looking to disrupt them. He shoved one so hard, she ended up in the hospital for head trauma. Then, he drew a gun on Cloud, who is Black. When an officer arrived, Davis was not stopped. He walked back into the crowd, where he shoved others. All of it was captured on video. St. Petersburg Police Chief Anthony Holloway would later say that failing to detain Davis was a mistake. But Davis will face no criminal charges for his actions that night. Instead, police relied on blurry images to blame Cloud and another Black protester for provoking Davis.”

Under ...HB1, Dream Defenders fears when disruptions by agitators happen again, rather than protect those exercising their First Amendment Rights, police will be emboldened to respond with mass arrests of protestors or even physical force. This has made members afraid to participate in demonstrations. Similarly, Dream Defenders fears police will be emboldened to provoke demonstrators or to respond with extreme force or mass arrests to anyone allegedly inciting a riot, even if they are not associated with the demonstration.

Dream Defenders has witnessed disproportionate reactions from police in the past. For example, on September 5, 2020, while organizers reminded protestors not to engage with counter protestors and to move onto the sidewalk when directed to do so by police, police stopped a protestor following along by car, eventually pulling her out of the vehicle and inciting chaos. Nineteen protestors were arrested, many were beaten and three were sent to the hospital due to their

injuries. Protestors in Orlando were met with tear gas and kettled by law enforcement.”¹⁶

III. Applicable ICERD Provisions

Florida’s anti-protest law, like other such laws suppressing different forms of assembly and association across the United States, directly contravenes provisions of the International Convention on the Elimination of Racial Discrimination, namely Article 2’s prohibition on racial discrimination, Article 5’s “guarantee [of] the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... (d)(ix) [t]he right to freedom of peaceful assembly and association,” and Article 3’s admonition to “undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

This Committee included this issue as 12th in its list of themes in relation to the combined tenth to twelfth reports of the United States of America, situation of people of African descent, Hispanic/Latino and other ethnic minorities (arts. 2-5).¹⁷

While the Committee has not addressed this issue directly before, previous positions of the CERD Committee may relate to addressing HB 1 and similar anti-protest legislation:

- Racial and ethnic profiling in law enforcement remains “inconsistent with [the] commitment to fairness and justice in the systems.” Moreover, the Committee noted ongoing concerns regarding the practices of racial and ethnic profiling by law enforcement in the U.S., including, but not limited to, “the Federal Bureau of Investigation (FBI), Transportation Security Administration, border immigration officials and local police.” In effort to have the State party address these concerns, the Committee urged the State party to (1) adopt legislation that would explicitly prohibit law enforcement officials from engaging in racial profiling (e.g. the End Racial Profiling Act), and (2) swiftly revise policies that would “permit racial profiling, illegal surveillance, monitoring and intelligence gathering.”
- The Committee, while acknowledging the efforts by the State party to “intensify the enforcement of relevant laws,” reiterated its concern regarding the prevalence of brutality and excessive use of force by law enforcement against racial and ethnic minorities,

¹⁶ Declaration of Rachel Gilmer, *The Dream Defenders, The Black Collective, et al v. Ron DeSantis, et al.* (Gilmer Dec. 4:21-cv-00191, July 14, 2021, ECF No. 65-1.)

¹⁷ “Measures to guarantee the exercise of the right to freedom of peaceful assembly of individuals belonging to racial and ethnic minorities, in light of reports of increasing legislative initiatives adopted in some states restricting and criminalizing protest activities following anti-racism protests in recent years, as well as allegations of disproportionate use of force during anti-racism protests, more permissive treatment towards counter-protests and militarized responses to some of these protests. Measures to prevent and investigate allegations of harassment, surveillance and threats to the safety, including online, of human rights defenders of African descent and other ethnic minorities.”

notably African-Americans and undocumented migrants crossing the U.S.-Mexico border. The Committee also noted that while the State party has made efforts to “prosecute law enforcement officials for criminal misconduct,” criminal misconduct by law enforcement officials persists as a widespread problem. The Committee urged the state party to do the following:

“[1] 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 investigations are re-opened when new evidence becomes available; and that victims or their families are provided with adequate compensation; [2] Intensify its efforts to prevent the excessive use of force by law enforcement officials by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and ensure that the new CBP directive on the use of force is applied and enforced in practice; [3] Improve the reporting of cases involving the excessive use of force and strengthen oversight of, and accountability for, inappropriate use of force; [4] Provide, in its next periodic report, detailed information concerning investigations undertaken into allegations of excessive use of force by law enforcement officials, including the CBP, as well as their outcomes, including disciplinary or prosecutorial action taken against the perpetrator and remedies provided to victims or their families.”

IV. U.S. Government Response

The U.S. Government response to these issues has been wholly inadequate. The wave of state and local legislation that has been proposed across the country is thinly-veiled retaliation against racial justice protests and a serious threat to the rights of citizens to peacefully assemble and associate. The U.S. Government must take stronger steps to respond and defend these fundamental rights.

As legislation in response to racial justice protest has not come before the committee previously, there has not been a formal response in this forum from the U.S.. Previous issues, including racial profiling and police violence against Black communities may be useful here. In those responses, the State party noted that the Department of Justice’s (DOJ) Civil Rights Division has the authority to conduct investigations and bring lawsuits against law enforcement agencies that may have a pattern or practice of racial profiling, in violation of the U.S. Constitution. The State party cited 17 active settlement agreements it is enforcing. It also cited an agreement reached with the city of Ferguson Missouri to settle allegations of discriminatory policing against African-Americans. As part of that agreement, the city of Ferguson

demanded additional training for officers and “enhanced data collection.” The State party also pointed to an agreement reached with the city of Baltimore, Maryland in 2017 which prohibited police to “revise its impartial police policy and other policies, and mandated training for officers.”

V. Other UN and Regional Human Rights Bodies Recommendations

The UN Special Rapporteur on the rights to peaceful assembly and of association condemned the law for being “part of an ongoing effort to curtail peaceful protest and the racial justice protests” in a statement endorsed by the Working Group of Experts of People of African Descent.¹⁸

VI. Recommended Questions

1. Will the U.S. Federal government—in accordance with its own Constitutional protections and its obligations under CERD—issue a clear denunciation of anti-protest legislation in Florida and across the country?
2. Will the U.S. Federal government affirmatively protect the freedom of expression and the freedom of peaceful assembly of Black people across the United States and especially in U.S. states with anti-protest laws such as the Florida HB1 law?

VII. Suggested Recommendations

Because the treaty applies to all levels of government, we are making the following suggestions:

- Florida’s legislature and/or courts should take immediate action to repeal and/or strike down laws that hinder non-violent protest and encourage violence from counter-protesters and police.
- State legislatures and local governments should reject any efforts to criminalize non-violent protest and/or prevent citizens from recording interactions with police.
- The U.S. Department of Justice should publicly condemn such legislation or any targeted enforcement thereof, and must use the full weight of their office to oppose such laws.
- The U.S. Federal government should consult with and follow the lead of Black-led community organizations in efforts to prevent the rise of white supremacist violence.

¹⁸ “An Urgent Submission to the United Nations Special Rapporteur on the rights of peaceful assembly and association Regarding Florida's HB 1,” <https://dreamdefenders.org/1102-2/>, (April 9, 2021).