



# DEFENDING HUMAN DIGNITY IN CALIFORNIA:

LOCAL LAW ENFORCEMENT'S ONGOING  
DISCRIMINATION, ABUSE, AND IMPUNITY

Report for the 2023 Review of U.S. Compliance with the  
International Covenant on Civil and Political Rights

**alliance**  
SAN DIEGO

# ACKNOWLEDGEMENTS

Alliance San Diego would like to thank Ted Womack, for providing his testimony for this report, and to acknowledge Dr. Yan Li and the countless people who have suffered human rights violations at the hands of local and state law enforcement in California.

## ABOUT ALLIANCE SAN DIEGO

Alliance San Diego is a community based human rights organization in San Diego, California. Our mission is to build collective power to create an inclusive democracy where everyone can participate fully with dignity.

Since 2007, we have mobilized communities to fuel change in San Diego and California so that our government is more reflective of and responsive to our diversity. San Diego is a vibrant and beautiful place. It's made up of people who have been here for generations as well as newcomers who are weaving their stories into the fabric of our region. But not all who live here have the same opportunities. Some people are treated as less than their peers simply because of who they are. Government policies can help or harm, elevate or denigrate our human dignity. Alliance San Diego is working hard to center dignity.

To that end, Alliance San Diego is submitting this report to inform the United Nations of the human rights violations happening at the local and state level in California. The report was prepared by Michelle Celleri, Legal Rights Director, with support from Karen Le, Research Data Analyst, and the communications team at Alliance San Diego.

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# HUMAN RIGHTS IN CALIFORNIA MATTER

Law enforcement agencies in the State of California, and in particular in San Diego, are discriminating, harassing and killing community members with near total impunity. This is a systemic problem across the United States, and this report provides a snapshot of how this happens at the local and state level, undermining our dignity.

The United States has an obligation under the International Covenant on Civil and Political Rights (ICCPR) to uphold the Covenant at all levels of government without exception.<sup>1</sup> The U.S. government must also give effect to the rights recognized by the Covenant.<sup>2</sup> However, the United States has not made any meaningful attempt to protect the rights in the ICCPR at the state and local level, in California and San Diego. Merely maintaining a website with information about the Covenant where states can look up information if they choose to<sup>3</sup> is not meaningful. The ICCPR's provisions must be enforced at every level of government.

In a series of civil society consultations convened by the U.S. Department of State, which Alliance San Diego participated in leading up to the Human Rights Committee review of the United States, the U.S. government failed to consider local and state issues that were raised despite our specific requests to do so.<sup>4</sup> In fact, the U.S. Department of State responded to such requests by saying, "Unfortunately, we will not be able to accommodate your question at this ICCPR consultation. However, we are working to raise a suggestion to the NSC [National Security Council] to hold their own consultation that would allow for

more state specific representation."<sup>5</sup> No such consultation ever occurred, and it's unclear why it would be convened by the NSC. At the civil society consultations, there was not one single state or local government representative to answer for or discuss issues for those subdivisions of government.<sup>6</sup>

The United States cannot ignore treaty obligations and hide behind the 10th Amendment of its Constitution, which reserves policing powers to individual states. In fact, Article VI of the U.S. Constitution makes clear that "all treaties made, or shall be made, under the authority of the United States, shall be the supreme law of the land."

This report highlights the human rights violations by law enforcement in California and in San Diego. In some instances, those are prima facie violations found in deficient laws and policies. In other instances, they are violations in practice that are documented through data and lived experiences of affected community members. This report illustrates how the United States is failing to adhere to the ICCPR with respect to law enforcement in California, and in San Diego specifically, in four core areas:

- Racial and identity discrimination
- Arbitrary warrantless searches
- Excessive force and inhumane policing
- Impunity and lack of effective remedy

# FAILURE OF CALIFORNIA LAW ENFORCEMENT TO COMPLY WITH ICCPR

The United States has failed to adhere to Articles 2, 6, 7, 9, 26 and 50 by allowing local law enforcement in California and San Diego to engage in impermissible racial and identity discrimination, arbitrary enforcement, excessive force and inhumane policing.

## A. Racial and Identity-Based Discrimination (Article 26)

The United States is failing to adhere to Article 26 of the ICCPR by enabling California and San Diego law enforcement to engage in discriminatory profiling and treatment of community members of color, especially Black Californians experience severely disproportionate police actions and abuses as the result of rampant racial profiling. These practices persist despite the Human Rights Committee urging the United States to set up measures that effectively combat and eliminate racial profiling by federal, state, and local law enforcement.<sup>7</sup>

Year after year, we continue to see disparate treatment and discriminatory practices by law enforcement throughout San Diego and California even though the United States Constitution<sup>8</sup> and the California Constitution<sup>9</sup> have long prohibited discrimination. The Human Rights Committee recognized that even if laws are in place to prevent discrimination, the relevant question is whether discrimination by public authorities persists in fact.<sup>10</sup> The Committee points out that the "principle of equality sometimes requires State parties to take

affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant."<sup>11</sup> The United States cannot remain silent to these pervasive and systemic discriminatory practices throughout its 50 states by local and state law enforcement.

In 2015, California passed the Racial and Identity Profiling Act ("RIPA") that explicitly prohibits the use of racial and identity profiling and requires law enforcement agencies to report all vehicle and pedestrian stops.<sup>12</sup> Officers report on the reasons for stopping an individual, what transpires throughout the stop, as well as the perceived race, gender, age, and other characteristics of the individual stopped.<sup>13</sup> RIPA data reveals that discriminatory practices take place at every level of police encounters, from who gets stopped,<sup>14</sup> to who is searched,<sup>15</sup> and who force is used against.<sup>16</sup>

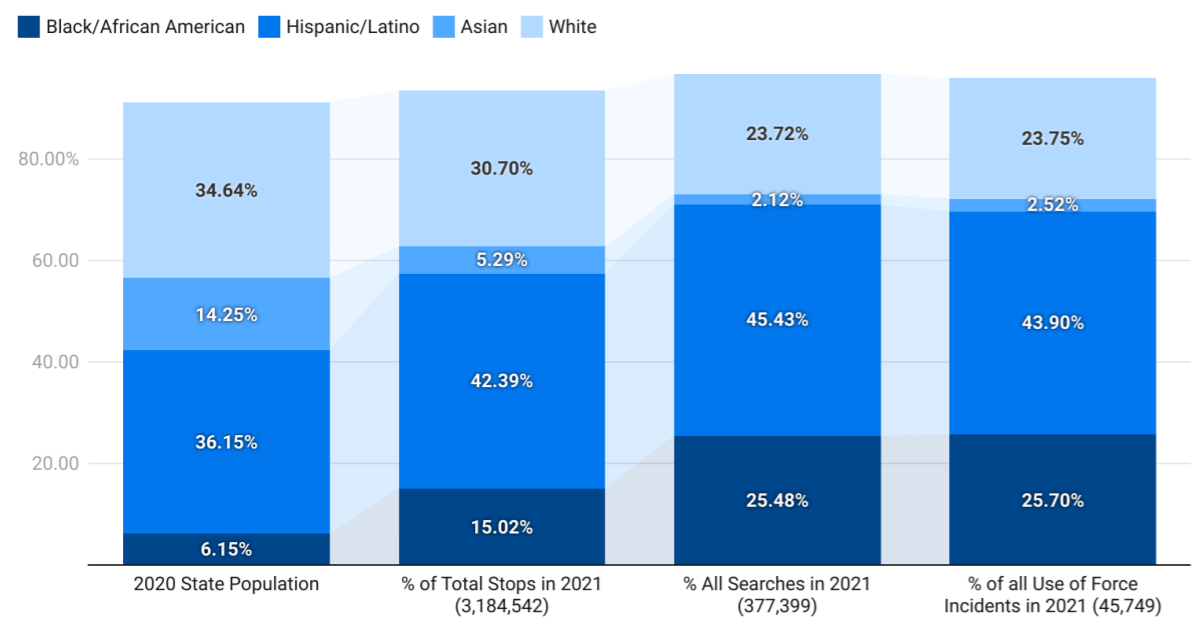
In California as a whole, individuals perceived as Black are 144%<sup>17</sup> more frequently stopped than is expected based on their portion of the population, and they are 243% more frequently stopped by the San Diego Police Department (SDPD).<sup>18</sup> This staggering statistic is derived from widespread discriminatory practices, including pretextual stops carried out by California and San Diego law enforcement. In a pretextual stop, officers stop individuals for minor infractions such as a broken tail light, expired registration, or tinted windows, to investigate a "hunch" regarding a different crime they lack reasonable suspicion or probable cause to investigate.<sup>19</sup> Traffic stops are

so heavily regulated, an officer could easily stop most drivers on technical violations.<sup>20</sup> During pretextual stops, individuals are asked probing questions that have nothing to do with the reason they are stopped.<sup>21</sup>

The 2019 RIPA data shows traffic stops generally are the greatest source of Black-White disparities in routine law enforcement activity, and individuals perceived as Black were searched at more than twice the rate as those

perceived as White.<sup>22</sup> Not only are Black drivers stopped and searched more frequently, research shows they are also more likely to have force used against them during a traffic stop.<sup>23</sup> In fact, “Black Californians are about three times more likely to be seriously injured, shot, or killed by the police relative to their share of the state’s population.”<sup>24</sup> A majority of these killings by law enforcement began as a traffic violation stop or police responding to a non-violent offense.<sup>25</sup>

### Black Californians are Overrepresented in Stops, Searches, and Use of Force Incidents



Numbers in parentheses represent the overall number of stops, searches, and use of force incidents in the 2021 RIPA dataset. Population numbers are RIPA’s analysis of the 2020 American Community Survey by the U.S. Census Bureau. See footnote for further information.  
 Chart: Alliance San Diego • Source: State population and number of stops can be found on the 2023 RIPA Board Annual Report Appendix (pg 50). Searches and use of force incidents are author calculations using 2021 RIPA Stop Data. • Created with Datawrapper

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Discriminatory practices are not confined to traffic stops, but rather every type of encounter including pedestrian<sup>27</sup> and bicycle related violations.<sup>28</sup> The disparate treatment shows up at every phase of a police encounter, and the individual

rights infringed upon only become more severe. Black and Brown communities are singled out through pretextual stops, searched without warrants, and killed by law enforcement with little to no accountability.



### TED WOMACK

“My name is Ted Womack and I am a Black 32 year old male. I was born and raised in Southeast San Diego in a neighborhood that is predominantly people of color. I have personally had at least 100 encounters with law enforcement, ranging from being stopped to talk to having multiple officers pull guns on me. Where I live and grew up, it is normal to feel scared to leave your street. Not because of the people in the neighborhood, but because there might be a lot of police in the neighborhood looking for somebody, and they might choose you to be

that somebody. It is normal for people in my neighborhood to look more in their rearview mirrors to see if police are following them, then looking at the road in front of them.

One time I was at a stoplight and a cop pulled up next to me in the other lane. When the light turned green they turned their lights on and pulled me over. When I asked why they pulled me over they said, “We pulled you over because your music is too loud. It’s a noise violation.” At the time I was driving a 1996 Nissan Sentra and all of my speakers were busted. I could not turn the music on in my car.”<sup>29</sup>

### B. Arbitrary Policing Through Warrantless Searches (Article.9)

The United States is failing to guarantee California residents the right to be free from arbitrary detention under Article 9 by allowing California and San Diego law enforcement to engage in searches without probable cause or a warrant. This right is violated in two ways: (1) through statutory waivers of the Fourth Amendment for people on probation or parole, and (2) through coercive “consent” searches that also are deemed to waive Fourth Amendment protections. In both scenarios, law enforcement engages in arbitrary detention in violation of ICCPR.

The right to be free from unreasonable searches and seizures is a cornerstone of the Fourth Amendment of the United States Constitution and also Article 1 Section 13 of the California State Constitution. The Human Rights Committee underscores that liberty and security of persons are precious, and deprivation of such impairs the enjoyment of other rights.<sup>30</sup>

Individuals in California are deprived

of this fundamental right through arbitrary, state permitted,<sup>31</sup> warrantless searches. The notion of “arbitrariness” is not to be equated with “against the law,” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.<sup>32</sup> California ignores these principles by condoning warrantless searches without probable cause or reasonable suspicion for those on probation/parole<sup>33</sup> and those who “consent”<sup>34</sup> to be searched.

In California as a whole, over 23% of searches are warrantless searches, conducted without probable cause or even reasonable suspicion,<sup>35</sup> which is the standard required for a search under the Fourth Amendment of the U.S. Constitution and Article 1 Section 13 of the California Constitution. The situation is even more extreme in San Diego where 41.5% of all searches by San Diego County Sheriff’s Department<sup>36</sup> and 26.6% of all searches by San Diego Police Department (SDPD)<sup>37</sup> are conducted without the requisite thresholds of suspicion.



Any and all searches without the requisite reasonable suspicion or probable cause is a failure to adhere to Article 9 of the ICCPR.

### **Warrantless Probation and Parole Searches**

California law inappropriately denies Fourth Amendment protections for individuals placed on probation or parole as a condition of their release.<sup>38</sup> This condition subjects parolees and probationers to search and/or seizure by any law enforcement officer at any time of the day or night.<sup>39</sup> According to California law, a probationer has “no reasonable expectation of traditional Fourth Amendment protection.”<sup>40</sup> This is in clear contravention of Article 9 of the ICCPR.

The ability to conduct warrantless searches based on probation and/or parole results in discriminatory over-policing of Black and Brown communities as evidenced by the fact that 71%<sup>41</sup> of those subjected to probation/parole searches conducted in California are Black or Latino even though they are only 42% of the

corresponding state population.<sup>42</sup> Nearly 63%<sup>43</sup> of probation and parole searches conducted by SDPD are of Black and Latino community members even though they are only 32% of the corresponding city population.<sup>44</sup> Despite the clear disparate treatment, SDPD argues that probation and parole searches are “salient to the safety and security of our neighborhoods,” claiming that they “effectively aid in investigations, arrests and in neighborhood policing projects.”<sup>45</sup> Despite these assertions by law enforcement, warrantless searches are less effective than routine administrative searches.<sup>46</sup>

This is particularly problematic as there are no legislative limits to these warrantless and intrusive searches.<sup>47</sup> It has become endemic in neighborhoods of color in San Diego.<sup>48</sup> The prior president of the local San Diego NAACP, Lei-Chala Wilson, insisted “we do not have a stop-and-frisk problem. We have an ‘Are you on probation or parole?’ problem.”<sup>49</sup> This is an ongoing problem and officers conduct these types of searches, irrespective of whether they have any belief there is a crime underway.<sup>50</sup>

### **Warrantless “Consent” Searches**

The U.S. Supreme Court has decided that a search conducted upon the voluntary consent of a person is constitutionally acceptable even in the absence of both a search warrant and probable cause.<sup>52</sup> The problem is that consent is rarely given freely, and more often than not, is coerced.<sup>53</sup> Consent searches can be particularly problematic because the officer does not need to suspect any wrongdoing or have probable cause to search and officers can use their discretion to decide when to request a search.<sup>54</sup>

In 2021, the mayor of San Diego put out a press release on reforms to consent searches stating, “We want to make sure that our officers and the people they serve are protected while also ensuring individuals who are searched know their rights and have them respected.”<sup>55</sup> However, given the power dynamics, these searches are not consensual<sup>56</sup> as demonstrated by the fact that hardly anyone says no — 98.5% of all people asked to consent to search requests during traffic stops say yes.<sup>57</sup>

San Diego Police Chief Nisleit has stated that, “Consent searches remain a valuable tool for officers to proactively address crime in our communities.”<sup>58</sup> However, data shows low rates of discovery of contraband during consent-only searches.<sup>59</sup> While the San Diego Police Department now requires individuals to be advised of their ability to deny consent,<sup>60</sup> studies show that regardless of whether individuals know they have the ability to refuse to consent, they are unlikely to do so.<sup>61</sup>

Not only are these searches ineffective and intrusive, they are deployed in a discriminatory manner where those perceived as Black are subjected to consent-based searches 3.75 times more than those perceived as White, and Latinos are searched 2.5 times more than those perceived as White.<sup>62</sup> In 2021, some members of the California legislature specifically recognized these concerns and attempted to pass a law that would prevent consent from being a lawful basis for a search,<sup>63</sup> but the legislation never came to fruition.



### **TED WOMACK**

“A typical traffic stop in Southeast San Diego happens when you are at a traffic light and a cop happens to pull up behind you. You go through the stoplight once it’s green and then they turn on their lights and sirens, it never fails. Most of the time it’s two officers in the car. Both officers get out of the car and one comes up on each side. The first thing they ask is “Are you on probation or parole? Do you have weapons in the car?” Not license and registration or proof of insurance. I can count on my hand when I’ve been asked for my license, registration and proof of insurance. Instead they ask, are you on probation or parole? Are there weapons in the car? Then you look up and there are three or four more police cars. It happens to me almost every time.”<sup>51</sup>

“Officers frequently ask if they can search my car when they pull me over. When I say no, they respond with comments such as, “if you don’t have anything to hide... or why can’t I search your car?” It makes me angry. Why do I have to have something to hide because I don’t want you to search? Why can’t I be late for work? Why can’t I just want to go through the rest of my day? Why can’t I just not want to be bothered by you? Why does it have to be that I’m guilty because I won’t let you search?”

I have been in the car where people consent to officers searching the vehicle. Most of the time they say yes because they don’t know they can say no. Sometimes it is because of the pressure officers put on people. One pressure tactic police use when someone denies a search, is threatening to bring a dog out to see if it alerts. The officer lets the driver know it will take at least 30 minutes for the dog to arrive. People don’t want to wait 30 minutes, so they consent. Officers have these different tiers of things they do to pressure you to consent to search. That is why a lot of people end up giving them permission.”<sup>64</sup>

## C. Excessive Force and Inhumane Policing (Arts. 6-7)

Year over year Black and Brown communities are subjected to excessive use of force in California<sup>65</sup> despite the Human Rights Committee insisting for decades that the United States address the ongoing fatal encounters with law enforcement and complaints of excessive use of force.<sup>66</sup> In the 2014 Concluding Observations, the Committee urged the United States to adhere to the 1990 Basic Principles of Use of Force and Firearms by Law Enforcement Officials,<sup>67</sup> but the United States blatantly disregarded the Committee, defending its insufficient policies and insisting law enforcement agencies in the United States are not required nor advised to abide by the Basic Principles as a standard for conducting operations.<sup>68</sup>

California and San Diego law enforcement are ignoring international human rights standards on the use of force that are guided by the imperative of protecting the right to life—a supreme, nonderogable right—from arbitrary deprivation by the State.<sup>69</sup> Specifically, California’s use of force laws **do not require** law enforcement to use the minimum amount of force necessary<sup>70</sup>; or force proportionate to the threat posed;<sup>71</sup> to exhaust available less-harmful force alternatives;<sup>72</sup> or to deploy de-escalation tactics.<sup>73</sup> Rather, the law codifies the U.S. Supreme Court’s inadequate interpretation of excessive force, centering the officer’s perspective.<sup>74</sup> This comes despite criticism of *Graham v. Connor*’s limited analytical import, failure to provide operational definitions that can be applied by officers or reviewers, and the *Graham* case being treated as containing an exhaustive list of factors that cause other relevant factors to be overlooked or undervalued.<sup>75</sup>

In 1989, the U.S. Supreme Court attempted to define the contours of the U.S. use of force standard under the 4th Amendment of the U.S. Constitution. The Court in *Graham v. Connor* analyzed use of force by balancing “the nature and quality of the intrusion on the individual’s constitutional rights against the importance of the governmental interest alleged to justify the intrusion.”<sup>76</sup> The Court specifically identified three factors: “[1] the severity of the crime at issue, [(2)] whether the suspect poses an immediate threat to the safety of the officers or others, and [(3)] whether [the individual] is actively resisting arrest or attempting to evade arrest by flight.”<sup>77</sup> The court determined there could be no precise definition or mechanical application<sup>78</sup> of reasonableness and that it should be judged “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”<sup>79</sup>

The *Graham* factors focus on the actions of the individual that lead up to the encounter, but do not actually discuss the weight given to the government interest, the individual’s constitutional rights nor the weight of each of the three specified factors.<sup>80</sup> The *Graham* case and its progeny have been wholly inconsistent in deciding what is considered reasonable force.<sup>81</sup> There is no part of the evaluation that considers the safety, physical integrity and the nonderogable right to life of the individual. The case did not consider de-escalation, necessity nor proportionality as required by international law.<sup>82</sup> The decision is particularly problematic as it has infiltrated California’s use of force laws<sup>83</sup> and police policies in San Diego.

In 2020, California amended its use of force laws to evaluate uses of force from the perspective of an “objectively reasonable officer” instead of a “reasonable officer”<sup>84</sup> which provided

little to no change in the application of the law. The law specifically relies on the “objectively reasonable officer” in the context of both lethal<sup>85</sup> and less lethal force.<sup>86</sup> Despite these reforms, California’s laws still run afoul of international human rights obligations as they do not require necessity in the deployment of force except in the limited context of deadly force. The statute appears to require “necessity” in this limited context, but it severely constrains its operation due to a continued reliance on the flawed concept of objective reasonableness of the officer.<sup>87</sup> The law is silent when it comes to proportionality and only recommends that officers “evaluate carefully and thoroughly” whether force used is consistent with agency policies.<sup>88</sup>

State and local law enforcement agency policies are derived from the California Commission on Peace Officer Standards and Training (POST), which is tasked with creating trainings and guidelines for officers to carry out their duties.<sup>89</sup> POST updated their guidelines on use of force after the updates to California use of force laws.<sup>90</sup> While POST’s guidelines include de-escalation, necessity and proportionality, POST acknowledges their guidelines do not impose any legal obligations.<sup>91</sup> It further discourages agencies from implementing the stricter standards of necessity and proportionality in any meaningful way by warning that individual “agency’s use of force policies and trainings can be introduced in legal proceedings involving officer use of force... to determin[e] the reasonableness of the officer’s actions.”<sup>92</sup>

Both POST<sup>93</sup> and the San Diego Police Department’s policies<sup>94</sup> directly cite to *Graham v. Connor* in defining what “objectively reasonable” means. The San Diego Police Department’s Use of Force policy does not mention necessity nor proportionality and only refers to de-escalation in its background and

definitions sections.<sup>95</sup> The policy negates the necessity of de-escalation tactics by putting the burden of de-escalation on the individual rather than the officer by stating, “resolution of an encounter requires the subject to provide officers with the opportunity to employ deescalation techniques.”<sup>96</sup>

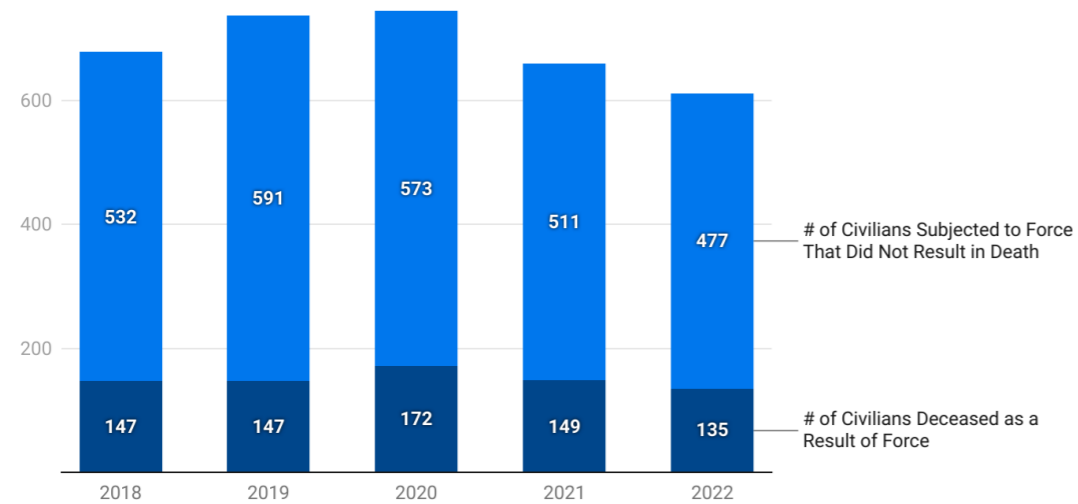
Before it became law, the bill changing the use of deadly force gained a lot of traction, but the law fell short when the definition of necessity that required “no reasonable alternative to deadly force”<sup>97</sup> was removed. California law as it stands is a clear departure from international law that requires deadly force to be strictly necessary in order to protect life from an imminent threat.<sup>98</sup> California does not require de-escalation or “less-lethal” uses of force that would preserve life, but rather uses passive language that encourages de-escalation, but does not require it.<sup>99</sup> Although California’s statute uses the term “necessary,” the statute’s definition is ambiguous and is still bound up in the flawed officer-centered concept of reasonableness. California’s statute does not meet the international standard, nor does it apply to less-lethal uses of force that represent a substantial majority of use of force incidents.<sup>100</sup>

Most telling of the law’s ineffectiveness to preserve the right to life, is the fact that there has been no significant change in the use of force resulting in death or serious injury at the hands of California law enforcement since the law’s passage in 2020.<sup>101</sup>



## Law Enforcement Officers Consistently Use Force Against Californians Despite Change in Lethal Use of Force Standards

2018-2022



Multiple civilians could be involved in a single incident. Therefore, the numbers depicted represent the number of civilians experiencing use of force rather than discrete incidences. See footnote for further methodological details.

Chart: Alliance San Diego • Source: California Department of Justice Criminal Justice Statistics Center Use of Force Incident Reporting 2018-2022 • Created with Datawrapper

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Two years after the law took effect, two San Diego Sheriff deputies and one SDPD officer took the life of Dr. Yan Li at her home, during what should have been a standard serving of an eviction notice. Her tragic death took place after a series of escalations by multiple officers including drawing a gun, entering her home without a warrant, and shooting at her with a beanbag gun multiple times while she was in the middle of a mental health crisis. The culmination of these escalations resulted in her charging at the officers with a knife after they barged into her home. They then shot her 13 times. Yan's death was an avoidable tragedy, like so many others.

The case of Dr. Li is a quintessential example of how California's laws are insufficient and allow for the arbitrary deprivation of life. The officers did not engage in de-escalation as required by international law, but rather engaged in continuous escalations. No officer was charged for her death.<sup>103</sup> Thirteen gunshots fired at one woman with a knife is not necessary nor proportionate. The deprivation of life is considered arbitrary if it is inconsistent with international law and not necessary and proportionate.<sup>104</sup>



## DR. YAN LI

On March 3, 2022, two years after the law took effect, Dr. Yan Li was killed by two San Diego Sheriff's Department deputies and one SDPD officer.<sup>105</sup> A deputy went to her home, served her an eviction notice and then noticed she was holding a knife.<sup>106</sup> The deputy immediately pulled out his gun and said, "Put your knife down now or I'm gonna fucking shoot you."<sup>107</sup> Dr. Li accused the deputy of being an intruder and proceeded to throw the notice on the ground and slam the door shut.<sup>108</sup>

During the next 40 minutes, 9 deputies and two SDPD officers arrived as backup and the Psychiatric Emergency Response Team (PERT) was contacted.<sup>109</sup> Dr. Li continued to yell "intruder" while they were standing outside her door.

During that time the office manager told the officer Dr. Li threatened some plumbers who entered her condo the day before.<sup>110</sup> A neighbor informed the officers that Dr. Li is paranoid schizophrenic and that they needed a psychologist present.<sup>111</sup> Nonetheless, officers entered the home with a key provided by management.<sup>112</sup> They entered with a bean bag shotgun, a pepper shotgun, and a handgun, but no one from the PERT team specifically trained to engage people with psychological conditions was present.<sup>113</sup> Dr. Li was in the back bedroom and proceeded to yell at them.<sup>114</sup> An officer yelled for her to come out, but when she didn't leave the room, the officer yelled "bean bag" and shot the bean bag gun multiple times.<sup>115</sup> After being hit, Dr. Li charged at the officers and stabbed one of them.<sup>116</sup> She attempted to stab another officer and was shot 13 times.<sup>117</sup> All of this arose from an eviction notice that could have simply been left at the door.

The officers escalated the situation throughout every step of the process. The officer drew a gun on Dr. Li when she wasn't threatening him. They entered her home without a warrant and without a psychologist present despite being made aware of her psychological condition and failed to wait for someone from PERT to arrive. When Dr. Li remained in her bedroom, they shot at her with a bean bag gun multiple times. All of this occurred within her home. After all of these escalations, Dr. Li charged at the officers and was killed. No officers were charged for using excessive force at every turn to deliver an eviction notice.

Dr. Yan Li died prematurely at 47 years of age.<sup>118</sup> She was a Yale-educated Ph.D. and a mother.<sup>119</sup>

## D. Impunity and Lack of Effective Remedy (Articles 2, 50)

The United States is responsible for ensuring access to an effective remedy<sup>120</sup> and preventing State actors from working with impunity throughout all levels of government.<sup>121</sup> The Human Rights Committee expressed grave concerns about the lack of effective investigations and prosecutions in cases of excessive use of force in their 2014 concluding observations and reiterated

the concern in their list of issues in 2019.<sup>122</sup> In the January 2021 response to the list of issues, the United States ignores the gravity of the concerns and asserts that "officers are held accountable through... administrative action...or through criminal charges under state law."<sup>123</sup>

International laws have long held that administrative and disciplinary measures are insufficient to account for loss of life.<sup>124</sup> A criminal investigation is generally required and should lead to a criminal prosecution if there is

sufficient evidence.<sup>125</sup> Rather than investigations being conducted to ensure those responsible are brought to justice as required by international law,<sup>126</sup> cards are stacked in favor of the officer as their actions will be judged from the perspective of an “objectively reasonable officer” rather than whether the actions were strictly necessary and proportionate.

While California updated its use of deadly force laws to require force to be necessary, the definition of necessity is

lacking, preventing prosecutors from latching on to this higher standard. Necessity lies strictly in the realm of the objectively reasonable officer. As such, the change in law did little by way of holding law enforcement accountable. In fact, 98% of all killings go unprosecuted in California. In the last 5 years, between 2018 and 2022, there were 754 people killed by law enforcement in California, but only 11 officers prosecuted.<sup>127</sup> That means for every 100 people killed, only 2 officers are prosecuted.

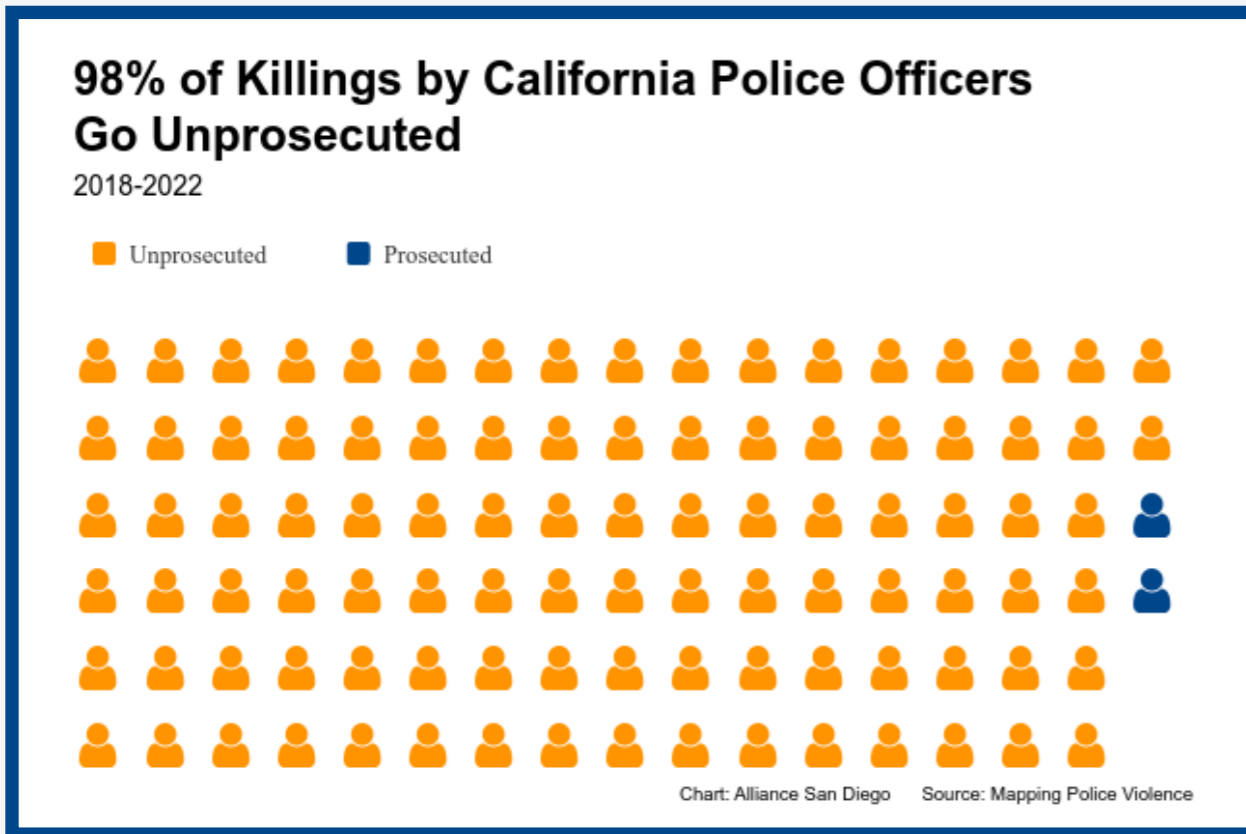
on the scene<sup>132</sup> and allowed a peer support representative prior to making a statement.<sup>133</sup> This level of involvement and access in the investigative process allows the officer and the agency to corroborate their stories, set the narrative for the investigative and prosecuting agencies, and taint public perception through public statements.

Outside of the criminal process there are administrative and internal disciplinary policies in place to address misconduct. However, these investigations are severely limited due to extra protections afforded to police officers through the California law known as the Public Safety Officers Procedural Bill of Rights and through local bargaining agreements.<sup>134</sup> The law requires officers to be given notice, the names and ranks of those who will be present, and the nature of the investigation.<sup>135</sup> If an officer is subject to criminal investigation, the administrative questioning can be tolled.<sup>136</sup> In addition to the rights provided by law, the San Diego Police Officer

Association (POA) requires investigators to provide officers involved in use of force incidents with three working days’ notice prior to questioning them.<sup>137</sup>

There is little transparency about the disciplinary process and outcomes except in the most extreme instances. California’s administrative laws allow POST to investigate and suspend or revoke certification in the event of serious misconduct.<sup>138</sup> POST’s investigations could include among other things, racial and identity bias as well as excessive use of force.<sup>139</sup> To date, however, only one officer has had their certification revoked.<sup>140</sup>

Moreover, administrative and internal disciplinary policies do not provide an effective remedy for the decedent and their family. Without proper laws to hold law enforcement accountable for their actions, California law enforcement will continue to act with impunity and deprive residents of an effective remedy.



Not only were as few as 11 officers prosecuted in the last five years, only two were convicted.<sup>128</sup> This impunity is enabled by a deficient use of force standard that favors the perspective of the officer rather than the life taken. Until and unless that standard changes, law enforcement in California will continue to kill people and get away with it.

Impunity is exacerbated by compromised investigations. In officer related shootings in San Diego, the agency involved in the shooting is permitted to attend the initial investigative briefing,<sup>129</sup> conduct their own parallel investigation,<sup>130</sup> and provide public statements regarding the incident.<sup>131</sup> The officer involved is also permitted to speak to other officers





# SUGGESTED QUESTIONS & RECOMMENDATIONS FOR THE UNITED STATES

We respectfully request that the United National Human Rights Committee ask questions and make recommendations that engage the United States to effectively implement the treaty protections against discrimination, arbitrary policing, and excessive use of force, and enforce the treaty obligations to provide an effective remedy, including independent and impartial investigation of incidents involving violence by U.S. law enforcement.

## ENDING DISCRIMINATION (ART. 26):

**QUESTION:** How will California ensure their laws and policies to prevent discrimination by local and state law enforcement are carried out in practice?

**RECOMMENDATION:** Pass legislation to eliminate the use of highly discretionary police stops known as 'pretext stops' that are susceptible to bias and used as fishing expeditions to find reason to escalate police engagement.

## ENDING ARBITRARY POLICING (ART. 9):

**QUESTION:** How will California change its laws and policies to prohibit arbitrary policing with respect to warrantless searches?

**RECOMMENDATION:** Adopt legislation that prohibits the use of warrantless searches so that officers may not ask for "consent" or ask about probation, parole or supervision status in order to justify a search without articulable facts establishing probable cause that a crime has been committed.

## ENDING EXCESSIVE FORCE (ART. 6, 7):

**QUESTION:** How will California change its use of force standard to limit force to that which is 'necessary and proportional' rather than 'objectively reasonable' in order to protect life and prevent inhumane treatment pursuant to the ICCPR, the U.N. Code of Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials?

**RECOMMENDATION:** (1) Incorporate international law on use of force into California jurisprudence. (2) Adopt legislation in California that limits use of force to 'necessary and proportional'. (3) Require the California Peace Officer Standards and Training (POST) Commission to train officers on the Basic Principles on Use of Force.

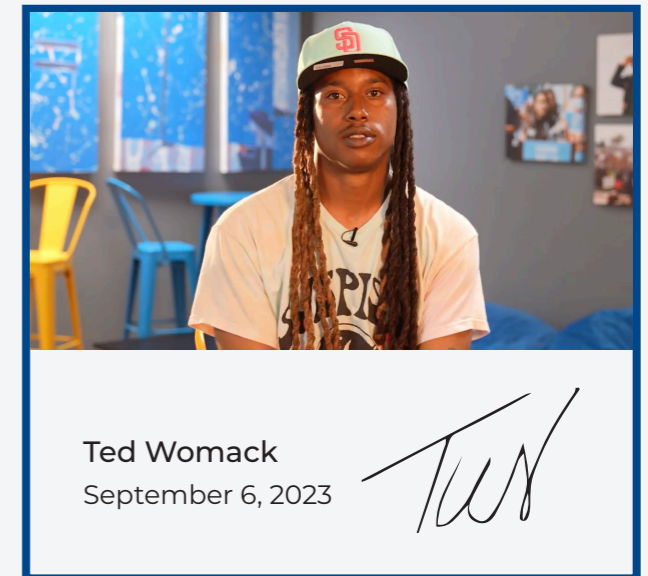
## ENDING IMPUNITY AND ENSURING NON-REPETITION (ART. 2, 50):

**QUESTION:** How will California change its laws, policies, and practices to ensure criminal investigations are independent and impartial and lead to prosecution, conviction and decertification of officers who violate human rights?

**RECOMMENDATION:** Adopt laws and policies in California, and in San Diego, that prohibit an officer in a use of force incident from any involvement in the investigation of that incident. In addition, so that justice can be served, eliminate the exceptions that allow officers to delay investigations into an incident.

# APPENDIX — DECLARATION OF TED WOMACK

1. My name is Ted Womack and I am a Black 32 year old male. I was born and raised in Southeast San Diego in a neighborhood that is predominantly people of color. I have personally had at least 100 encounters with law enforcement, ranging from being stopped to talk to having multiple officers pull guns on me. Where I live and grew up, it is normal to feel scared to leave your street. Not because of the people in the neighborhood, but because there might be a lot of police in the neighborhood looking for somebody, and they might choose you to be that somebody. It is normal for people in my neighborhood to look more in their rearview mirrors to see if police are following them, then looking at the road in front of them.



2. I had to learn from a young age to protect myself from law enforcement. I know that when I see an officer, I have to look him straight on. I can't look too shaky, or in distress, or too excited, but also not too lurky. I have to be in this weird middle space so they don't see me as anything. Growing up, the police went out their way to mess with me and as I came of age, it created this space inside of me where I can't look at the police with respect or expect they are going to protect me. I can't look to a police officer and expect they're going to make a good judgment. In my experience that does not happen.

3. Throughout all of my encounters with law enforcement, I think most of my experiences consist of officers abusing the powers of their job. Acting as if the powers of their job made them unable to be wrong.

4. Growing up, cops would approach me and my friends wherever we were hanging out. For instance, we could be playing 2 hand touch at a park and cops would walk up and say, "Hey you and you, you on probation or parole? What gang are you from?" Completely unprovoked. Even after we say no, they don't leave. They stay for another 10-30 minutes depending on the officer.

5. They ask more questions like where do we live? What are you doing? Why are you hanging out here? Do you have drugs? Are you selling? They try to find something to mess with us about. It is just a never ending cycle of questions. Sometimes they'll come with their notepad and write down everybody's names and check them in their system one by one. So it could take a while.

6. In Southeast San Diego, police assume that most Black people in that area are part of a gang. They assume we are on the "Gang Injunction List." If you are on

that list, it makes it so you can't be around certain people. Police use the list as a reason to approach you or whoever else may be around you. It doesn't matter if you are hanging out in the neighborhood, at a football game, buying groceries, at a car wash - police can approach you and ask, who are you?

7. A typical traffic stop in Southeast San Diego happens when you are at a traffic light and a cop happens to pull up behind you. You go through the stoplight once it's green and then they turn on their lights and sirens, it never fails. Most of the time it's two officers in the car. Both officers get out of the car and one comes up on each side. The first thing they ask is "Are you on probation or parole? Do you have weapons in the car?" Not license and registration or proof of insurance. I can count on my hand when I've been asked for my license, registration and proof of insurance. Instead they ask, are you on probation or parole? Are there weapons in the car? Then you look up and there are three or four more police cars. It happens to me almost every time.
8. One time I was at a stoplight and a cop pulled up next to me in the other lane. When the light turned green they turned their lights on and pulled me over. When I asked why they pulled me over they said, "We pulled you over because your music is too loud. It's a noise violation." At the time I was driving a 1996 Nissan Sentra and all of my speakers were busted. I could not turn the music on in my car.
9. If you're a person of color driving a nice car in my neighborhood, you are going to be pulled over. I remember my mom and dad bought me a brand new Mustang for getting a new job. Two or three days later my dad and I woke up and went to get gas around 7AM. As soon as I drove off my street, I got pulled over. The cop comes up and says, "we have a report of a stolen car with this description."
10. I am usually cordial with officers, but I was instantly angry. I said, "ma'am, look at the paper plate. It has my name on it. Look at my ID." She said, "We just wanted to make sure. If you could hang tight for a second, let me verify that this isn't a stolen car." I repeated myself, "ma'am, are you reading the paper plate? This is my ID and this is the registration from the DMV. What else do you need to see for you to realize this car isn't stolen? What are we doing? You have me outside of my vehicle in front of a preschool with a whole bunch of little Black kids watching me get pulled over and you saying my car is stolen and it's a brand new car. What are we doing?"
11. I remember my dad telling me I need to calm down. The officer came back and eventually said it was a mistake. Afterwards my dad cautioned me that I can't get mad like that, if it was another officer it could have been really bad.
12. If I'm in southeast San Diego, and officers approach me, nine times out of ten they are going to detain me. Sometimes it is because I don't want officers to search my car, so they detain me until they figure out whether I'm on probation or parole. I've been detained in situations where I don't want to allow officers to take photos of me or lift my shirt up to see if I have gang tattoos. It doesn't matter where I am, it happens. It has happened to me when I've been walking down the street, in front of a family member's house or literally sitting on a park bench and eating.
13. For example, recently, I was walking from my house to 7-Eleven maybe 50 yards

away. On the way, I saw a cop look me dead in the eyes from his car. I wondered what they were doing. On my way back I hear a weird sound behind me, I look back and it's the cop car creeping slowly behind me. I asked the officer what's up and he asked if he could talk to me. I said, yeah, what's up?

14. He asked for my name. I told him my name was Ted and asked, "Are you investigating something? Are you looking for somebody? What's up?" He responded, "I'm gonna detain you." When I asked why, he told me it was because they were looking for somebody in the neighborhood. I asked again, "Why are you detaining me? Who are you looking for?" The officer said they were looking for some kid. I told him, "I'm not a kid. I'm 32. Who are you looking for?" The officer proceeded to put me in handcuffs and dumped everything I bought from the store on the ground.
15. Shortly after, a higher ranking officer who I believe was a sergeant appeared. I asked him what was going on. He informed me they were responding to a domestic violence call in the neighborhood. I told the sergeant that his officers watched me walk to the store and back and decided to stop me and put me in handcuffs. The sergeant defended his officers and said it seemed like I fit the description. When I asked for the description of the individual, they described someone with completely different clothing than what I had on.
16. I insisted that I didn't match the clothing description and I'm not a kid and asked again why they were detaining me. The sergeant responded, "this is just our practice. This is just how we have to be." They ended up letting me go and I asked for each of their cards. I immediately contacted the precinct right after they left and asked to file a complaint. When I described what happened, the person on the phone began to tell me how the same thing happened to him the week before when he was at the beach with his family. Despite this having happened to him, he defended the officers actions and said this is normal and how they operate. He refused to take my complaint.
17. Officers frequently ask if they can search my car when they pull me over. When I say no, they respond with comments such as, "if you don't have anything to hide... or why can't I search your car?" It makes me angry. Why do I have to have something to hide because I don't want you to search? Why can't I be late for work? Why can't I just want to go through the rest of my day? Why can't I just not want to be bothered by you? Why does it have to be that I'm guilty because I won't let you search?
18. I have been in the car where people consent to officers searching the vehicle. Most of the time they say yes because they don't know they can say no. Sometimes it is because of the pressure officers put on people. One pressure tactic police use when someone denies a search, is threatening to bring a dog out to see if it alerts. The officer lets the driver know it will take at least 30 minutes for the dog to arrive. People don't want to wait 30 minutes, so they consent. Officers have these different tiers of things they do to pressure you to consent to search. That is why a lot of people end up giving them permission.
19. One day I walked by Lincoln High School and waved hello to my father who worked there as a security guard. By the time I got to the alley behind Lincoln High School, there were three or four cop cars with cops getting out of their



vehicles and drawing guns on me. I was confused, upset, and didn't know what was happening. My dad rolled up because he was getting security calls on his walkie talkie that something was going on in the alley behind the school.

20. When my dad gets there, he sees me and my friend standing there and police pointing guns at us. The police tell him they received a report that somebody was making threats at the school. I told them, this is my dad and I was just waving hello. How am I a threat to the school? My dad asked the same question and they looked at each other and said, well, somebody called it in. When I asked what was called in, they told me the caller said somebody was walking past the school making threats. You could tell the police were confused because they knew they should follow the call, but were also realizing the situation they were in.
21. So they're confused. I'm confused, I'm upset, my dad's upset, but the guns are still drawn on me this whole time. The security and administration from Lincoln High School talk to the police, a sergeant pulls up and then the officers dispersed. Nobody apologized. They just left.
22. I felt like no matter what, I was always going to be at the mercy of these people who have the authority to make people safe, but they're putting me in danger. I was 19 or 20 years old. The people who pointed guns at me were the people who were supposed to be protecting me. I cried all the way home and started hyperventilating. I tried to tell my mom what happened, but I couldn't even get words out. I was mad and frustrated that I was left feeling like a victim.
23. The majority of police officers, in neighborhoods like mine, do not show people dignity because they are in places where people don't know them and they feel like they cannot be held accountable. That's it. And that's all. If they were in their own neighborhoods policing their neighbors, they wouldn't do the same thing. They wouldn't treat their neighbors kids the same way they treat kids from across town that they have never seen before.
24. I have decided to provide my statement because I want to change what interactions look like for the safety of my little cousins and son. My son is autistic non-verbal and would not listen to a police command. I know that police harm those who do not take their commands. I have to do what I can to make it better so he is never in a situation where he is harmed for just being him.

## ENDNOTES

1. ICCPR Article 50
2. ICCPR Article 2
3. Gov't of the United States, Fifth Periodic Report of the United States of America to the United Nations Comm. on Human Rights Concerning the International Covenant on Civil and Political Rights, para. 10 (Nov. 11, 2021) [hereinafter Fifth Periodic Report of the USA], available at <https://www.state.gov/fifth-periodic-report-by-the-united-states-of-america-under-the-international-covenant-on-civil-and-political-rights/#:~:text=The%20United%20States%20is%20undergoing,society%20and%20the%20American%20public>.
4. Civil Society Consultation questions submitted by michelle@alliancesd.org on March 23, 2023, May 18, 2023 and June 20, 2023
5. Email correspondence between michelle@alliancesd.org and ICCPR2023@state.gov dated March 23rd and April 18th respectively
6. Contemporaneous notes taken from civil society consultations on April 19, 2023, June 7, 2023, and July 12, 2023
7. U.N. Human Rights Committee, Concluding Observations: United States of America, Sec. C. ("Racial Profiling"), U.N. Doc. CCPR/C/USA/CO/4 (2014), ("The State party should continue and step up measures to effectively combat and eliminate racial profiling by federal, state and local law enforcement officials, inter alia, by:(a) Pursuing the review of its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies and expanding protection against profiling on the basis of religion, religious appearance or national origin; (b) Continuing to train state and local law enforcement personnel on cultural awareness and the inadmissibility of racial profiling; and(c) Abolishing all "stop and frisk" practices.") <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrI-CAqhKb7yhsijKy20sgGcLSyqccX0g1nnMFNOUOQBx7X%2B155yh1wkDk6CF00Adiqu2L8SNxDB4%2BVRPkf5g-ZFbTQO3y9dLrUeUaTbSORrNO7VHzbyxGDJ%2F>
8. 14th Amendment of the United States Constitution
9. California Constitution Article 1 Section 7
10. U.N. Human Rights Committee, General Comment No. 18 Paragraph 9 (37th Sess...1989)(stating "When reporting on articles 2 (1), 3 and 26 of the Covenant, States parties usually cite provisions of their constitution or equal opportunity laws with respect to equality of persons. While such information is of course useful, the Committee wishes to know if there remain any problems of discrimination in fact, which may be practiced either by public authorities, by the community, or by private persons or bodies. The Committee wishes to be informed about legal provisions and administrative measures directed at diminishing or eliminating such discrimination.") <<https://www.refworld.org/docid/453883fa8.html>>
11. U.N. Human Rights Committee, General Comment No. 18 Paragraph 10 (37th Sess., 1989). <https://www.refworld.org/docid/453883fa8.html>
12. California Government Code Section 12525.5(b)(1)-(7) [https://codes.findlaw.com/ca/government-code/gov-sect-12525-5/#:~:text=\(a\)\(1\)%20Each%20state,for%20the%20preceding%20calendar%20year](https://codes.findlaw.com/ca/government-code/gov-sect-12525-5/#:~:text=(a)(1)%20Each%20state,for%20the%20preceding%20calendar%20year)
13. California Government Code Section 12525.5(a)(1) [https://codes.findlaw.com/ca/government-code/gov-sect-12525-5/#:~:text=\(a\)\(1\)%20Each%20state,for%20the%20preceding%20calendar%20year](https://codes.findlaw.com/ca/government-code/gov-sect-12525-5/#:~:text=(a)(1)%20Each%20state,for%20the%20preceding%20calendar%20year).
14. Racial and Identity Profiling Accountability (RIPA) Board Annual Report 2023 page 8 [hereinafter RIPA Report] The 2023 RIPA Board report utilizes stop data collected in 2021 from 58 law enforcement agencies in California, including the 23 largest agencies in the state. <https://oag.ca.gov/ab953/board/reports#current>
15. RIPA Report Pg. 42
16. *Id.* at 58
17. *Id.* at 51 and RIPA Appendix, pg. 50. Numbers expressed are relative percent differences. Thus, if a group is stopped at an equal proportion of their population, the number would be 0%. For relative % difference calculation, see Appendix pg. 50, column D. For further details about how RIPA performs residential population comparison, see Appendix Pg. 43-45. <https://oag.ca.gov/system/files/media/ripa-appendix-2023.pdf>
18. RIPA Report Appendix, Pg. 66. Numbers expressed are relative percent differences. Thus, if group is stopped at an equal proportion of their population, the number would be 0%. For relative % difference calculation, see column D on page cited. And for further details about how RIPA performs residential population comparison, see Appendix Pg. 43-45 <https://oag.ca.gov/system/files/media/ripa-appendix-2023.pdf>
19. RIPA Report Pg. 61
20. See *Whren v. United States* 517 U.S. 806, 810 (1996).
21. RIPA Report Pg. 61
22. RIPA Report Pg. 63, citing to Lofstrom et al., Racial Disparities in Law Enforcement Stops ("Law Enforcement Stops") (Oct. 2021) Public Policy Inst. of Cal. (PPIC) Pg. 12 <https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/> - PPIC analysis gathered from the 2019 dataset.
23. RIPA Report Pg. 63, citing to Lofstrom et al., Racial Disparities in Traffic Stops ("Traffic Stops") (Oct. 2022) PPIC <https://www.ppic.org/publication/racial-disparities-in-traffic-stops/> [as of Nov. 29, 2022]; Washington Post Police Shooting Database: Fatal Force ("Fatal Police Shooting Database") <https://www.washingtonpost.com/graphics/investigations/police-shootingsdatabase/> [as of Nov. 29, 2022].
24. *Id.*

25. *Id.* at 162 citing to Mapping Police Violence <https://mappingpoliceviolence.us/> [as of Nov. 29, 2022].
26. As stated, numbers of stops, searches, and use of force incidents are author calculations of 2021 RIPA Data. <https://openjustice.doj.ca.gov/data> Search numbers represent searches of both person and property. Use of force incidents are calculated using RIPA's Use of Force Continuum (RIPA Report pg.57). While the 2023 RIPA Board Report was released in 2023, the stop data that RIPA analyzes was collected in 2021. The 2023 report was also written before 2021 demographic data was made available to the public by the Census Bureau so all population calculations performed by RIPA are 2020 counts. For more methodological details about RIPA population counts please see the 2023 RIPA Board Annual Report Appendix (pgs 43-45). Additionally, only the top four racial groups in California were included in the chart for ease of interpretation. Other racial groups make up approximately 8.5% of the state population: Multiracial individuals 7.87%, Pacific Islander individuals 0.33% and Native American individuals 0.29%.
27. See RIPA Report at Pgs. 79-80 Finding that pedestrians stopped for violations who were perceived as Black were stopped nearly the same amount of times as those perceived as White despite Black individuals comprising less than 7% of the population and whites comprising nearly 38% of the population.
28. See RIPA Board Annual Report 2023 Pgs. 74-78 finding that people of color not only were stopped more frequently for bicycle related infractions, but were also more likely to be searched, handcuffed and put in custodial arrest.
29. Declaration of Ted Womack ¶ 1 and 8
30. U.N. Human Rights Committee, General Comment No. 35, para. 2, U.N. Doc. CCPR/C/GC/35 (2014), ("Liberty and security of person are precious for their own sake, and also because the deprivation of liberty and security of person have historically been principal means for impairing the enjoyment of other rights.") <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement>
31. See California Penal Code §§ 3067(a)(3) and *Schneekloth v. Bustamonte* 412 U.S. 218, 227 (1973).
32. General Comment 35 Paragraph 12 citing to 1134/2002, *Gorji-Dinka v. Cameroon*, para. 5.1; 305/1988, *Van Alphen v. Netherlands*, para. 5.8.
33. See California Penal Code §§ 3067(a)(3); Substantiated by *Samson v. California*, 126 S. Ct. 2193 (2006).
34. *Schneekloth v. Bustamonte* (1973) 412 U.S. 218, 227.
35. 2021 RIPA "Stop Data" retrieved from <https://openjustice.doj.ca.gov/data> Statistics drawn by adding all "consent only" and "supervision only" searches for the entire state and dividing that total by the total number of searches statewide.
36. RIPA "Stop Data" retrieved from <https://openjustice.doj.ca.gov/data>. Consent and supervision-only search percentages are calculated by adding all "consent only" and "supervision only" searches conducted by SD County Sheriff and dividing that total by the total number of searches performed by SD County Sheriff.
37. RIPA "Stop Data" retrieved from <https://openjustice.doj.ca.gov/data>. Consent and supervision-only search percentages are calculated by adding all "consent only" and "supervision only" searches in San Diego and dividing that total by the total number of searches performed by SDDP.
38. See California Penal Code §§ 3067(a)(3) and 3465 - removing 4th Amendment protections from individuals released on probation or parole.
39. *Id.*
40. *People v. Garcia* 44 Cal. App. 3d 1029, 1032 (1975)
41. 2021 RIPA Stop Data retrieved from <<https://openjustice.doj.ca.gov/data>> Statistics drawn by adding all Black and Latino California "supervision only" searches and dividing by the total number of "Supervision only searches."
42. Population size is determined by RIPA on Appendix pg. 50. Only a selected number of law enforcement agencies submitted stop data. Therefore, RIPA has weighted their population counts accordingly. See Appendix pg. 43-45 for further methodological details. <<https://oag.ca.gov/system/files/media/ripa-appendix-2023.pdf>>
43. 2021 RIPA Stop Data retrieved from <https://openjustice.doj.ca.gov/data> Statistics drawn by adding all Black and Latino SDDP "supervision only" searches and dividing by total number of "Supervision only searches" conducted by SDDP
44. Population size of SDDP jurisdiction is determined by RIPA on Appendix pg. 66. See Appendix pg. 43-45 for further methodological details. <https://oag.ca.gov/system/files/media/ripa-appendix-2023.pdf>
45. San Diego Police Department Procedures 4.15: Probation, parole, and knock and talk searches including high-risk entries and outside assistance <https://www.sandiego.gov/sites/default/files/415.pdf>
46. RIPA Report Pg. 56 contraband is discovered in a higher percentage of searches conducted under appropriate protocol as opposed to searches conducted without a warrant.
47. *People v. Constanancio*, 42 Cal. App. 3d 533, 542, 116 (1974)
48. Megan Burkes, "What it Means When Police Ask if You Are on Probation or Parole" Dated January 30, 2014 <https://www.kpbs.org/news/public-safety/2014/01/30/what-it-means-when-police-ask-are-you-probation>
49. *Id.*
50. San Diego Police Department Procedures 4.15: Probation, parole, and knock and talk searches including high-risk entries and outside assistance <https://www.sandiego.gov/sites/default/files/415.pdf>
51. Decl. of Ted Womack ¶ 7
52. *Schneekloth v. Bustamonte* 412 U.S. 218, 222 (1973)
53. Roseanna Sommers and Vanessa K. Bohns, "The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance." Yale L.J 128, no. 7 (2019): 1962-2033
54. *Id.*
55. San Diego Mayor's press release, "UPDATES ENHANCE TRANSPARENCY AND ACCOUNTABILITY FOR BOTH CONSTITUENTS AND LAW ENFORCEMENT" dated August 27, 2021
56. Roseanna Sommers and Vanessa K. Bohns, "The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance." Yale L.J 128, no. 7 (2019): 1962-2033
57. RIPA Report Pg. 71
58. San Diego Mayor's press release *supra*
59. RIPA Report Pg. 72
60. San Diego Police Department Procedural manual 4.01 on Stop/Detention and Pat Down Procedures <https://www.sandiego.gov/sites/default/files/401-stopdetentionandpatdownprocedures.pdf>
61. Roseanna Sommers and Vanessa K. Bohns, "The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance." Yale L.J 128, no. 7 (2019): 1962-2033
62. RIPA Report Pgs. 71-72
63. California Assembly Bill 93 preventing consent searches [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240AB93](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB93)
64. Decl. Ted Womack ¶¶ 17 and 18
65. RIPA Report Pgs. 57-59
66. See U.N. Human Rights Committee, Concluding Observations: United States of America, Sec. C. ("Excessive use of force by law enforcement officials"), U.N. Doc. CCPR/C/USA/CO/4 (2014), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsijKy20sgGcLSyqccX0g1nnMFNOUOQBx7X%2BI55yh1wkDk6C-F00Adiqu2L8SNxDB4%2BVRPkf5gZFbTQO3y9dLrUeUaTbS0RrNO7VHzbyxGDJ%2F>, U.N. Human Rights Committee, Concluding observations on the initial report of the United States of America, U.N. Doc. CCPR/C/79/Add.50 (Apr. 7, 1995) at ¶¶ 282, 297
- U.N. Human Rights Committee, Concluding observations on the second and third reports of the United States of America, U.N. Doc. CCPR/C/USA/CO/3/Rev.1, ¶ 30 (Dec. 18, 2006) (noting concern about excessive use of force by U.S. law enforcement officials and recommending that the United States "bring its policies into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials");
- U.N. Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, U.N. Doc. CCPR/C/USA/CO/4, ¶ 6 (Apr. 23, 2014) (noting concern about excessive use of force by U.S. law enforcement officials and recommending that the United States "step up its efforts to prevent the excessive use of force by law enforcement officers by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials").
67. U.N. Human Rights Committee, Concluding Observations: United States of America, Sec. C. ("Excessive use of force by law enforcement officials"), U.N. Doc. CCPR/C/USA/CO/4 (2014), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsijKy20sgGcLSyqccX0g1nnMFNOUOQBx7X%2BI55yh1wkDk6C-F00Adiqu2L8SNxDB4%2BVRPkf5gZFbTQO3y9dLrUeUaTbS0RrNO7VHzbyxGDJ%2F>
68. Fifth Periodic Report of the USA para 56.
69. U.N. Human Rights Committee, General Comment No. 36, para 12, U.N. Doc. CCPR/C/GC/36 (2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement>
70. 835a.(b) In the case of deadly force it must be necessary (not the minimum amount of force necessary) just from the view of an "objectively reasonable officer."
71. California Penal Code Section 835a.(b) requires force to be "objectively reasonable"
72. California Penal Code Section 835a(a)(2) does not require officers to exhaust less-harmful force alternatives, but rather states an officer "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer."
73. See California Penal Code Section 835a(a)(2) Does not require de-escalation, but rather states an officer "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer."
74. California Penal Code Section 835a(a)(2)
75. See Seth W. Stoughton, How the Fourth Amendment Frustrates the Regulation of Police, 70.3 Emory L.J Journal 521, 546 (2021) See also Rachel A. Harmon, When Is Police Violence Justified?, 102 Nw. U. L. Rev. 1119
76. *Scott v. Harris*, 550 U.S. 372, 383 (2007) (quoting *United States v. Place*, 462 U.S. 696, 703 (1983)
77. *Graham v. Connor*, 490 U.S. 386, 396
78. *Id.*
79. *Id.*
80. See e.g., Rachel A. Harmon, When Is Police Violence Justified?, 102 Nw. U. L. Rev. 1119, 1131, 1179-80 (2008) (arguing that "the Graham factors fail to specify how to evaluate whether an officer's actions were justified in a particular situation, including whether they were reasonable given the spectrum of possible responses"); Jeffrey Fagan & Alexis D. Campbell, Race and Reasonableness in Police Killings, 100 B.U. L. Rev. 951, 964 (2020) (observing that constitutional law allows "police to set their own reasonableness standard based on how the 'average' police officer would react in a rapidly evolving situation").
81. *Id.*
82. See United Nations, Code of Conduct for Law Enforcement Officials, General Assembly Resolution 34/169 (Dec. 17, 1979), <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials>
83. California Penal Code Section 835a.
84. See California Penal Code Section 835a.
85. California Penal Code Section 835a(c)(2)
86. California Penal Code Section 835a(b)
87. See California Penal Code Section 835a.(a)(2) ("In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.").



88. See California Penal Code Section 835a.(a)(3)
89. California Penal Code Section 13503
90. Commission on Police Standards and Training 2021 Use of Force Standards and Guidelines Pg. 11 [https://post.ca.gov/Portals/0/post\\_docs/publications/Use\\_Of\\_Force\\_Standards\\_Guidelines.pdf](https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf)
91. *Id.*
92. *Id.* at 12
93. *Id.*
94. *Id.* at 3
95. See San Diego Police Department Procedure 1.04 Use of Force updated 2/28/2020 <https://www.sandiego.gov/sites/default/files/sdpd-use-of-force.pdf>
96. *Id.*
97. AB 392: Police Officers and Deadly Force - Lawmakers took out the definition of necessity prior to the law's passage. See *Draft history* [https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill\\_id=20190AB392&cversion=20190AB39299INT](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=20190AB392&cversion=20190AB39299INT)
98. U.N. Human Rights Committee, General Comment No. 36, para 12, U.N. Doc. CCPR/C/GC/36 (2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement>
99. See Cal. Penal Code Section 835a.(a)(2) that an officer "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer."
100. There is not currently a singular source for understanding less lethal use of force. One source is RIPA data which shows that 99% of use of force is "less-lethal" (RIPA Board Report 2023 Pg. 57). Another source is Use of Force Incident Reporting by the California Department of Justice's (CA DOJ) Criminal Justice Statistics Center (CJSC). It is important to note that the data from the CA DOJ is limited and only represents force statistics in cases that resulted in death or serious bodily injury and does not represent the entirety of use of force cases in the state. Even with the limited scope of the CA DOJ data, "less-lethal" force is still used the majority of the time. See table 8B in 2018-2022 reports <https://oag.ca.gov/cjsc/pubs#ursus>.
101. See *Id.*
102. The California Department of Justice's (CA DOJ) Criminal Justice Statistics Center (CJSC) releases an annual Use of Force Incident Reporting document. The following statement by the CA DOJ CJSC explains the scope of the data collected: "The data contained in the Use of Force database is narrowly defined and does not represent the totality of use of force incidents that occur in California. LEAs are only required to report use of force incidents that result in serious bodily injury or death of either the civilian or the officer and all incidents where there is a discharge of a firearm. As such, caution must be used when using the data for comparisons or in calculating rates". Additionally, the dataset records the type of injury sustained (death, serious bodily injury, injury, or none) by a civilian which was utilized for this visualization. For more information, please see the following document: [https://data-openjustice.doj.ca.gov/sites/default/files/dataset/2022-08/UseofForce\\_Context\\_2021.pdf](https://data-openjustice.doj.ca.gov/sites/default/files/dataset/2022-08/UseofForce_Context_2021.pdf) And to view the reports, please see: <https://oag.ca.gov/cjsc/pubs#ursus>
103. See District Attorney Summer Stephan's written opinion not to press charges Dated May 9, 2023 <https://www.sdc-da.org/content/MediaRelease/2023/Li%20OIS%20Letter.pdf>
104. U.N. Human Rights Committee, General Comment No. 36, para 12, U.N. Doc. CCPR/C/GC/36 (2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement>
105. District Attorney Summer Stephan's written opinion *supra*
106. *Id.* at 20
107. Sheriff's released video footage from body worn cameras <https://vimeo.com/686122232>
108. District Attorney Summer Stephan's *supra* at 21
109. *Id.* at 20
110. *Id.* at 19
111. *Id.* at 21
112. *Id.*
113. *Id.* at 26
114. *Id.* at 21
115. *Id.*
116. *Id.*
117. *Id.* at 23
118. <https://www.sandiegouniontribune.com/news/courts/story/2023-03-14/son-of-yale-trained-scientist-fatally-shot-in-little-italy-suing-san-diego-city-county>
119. *Id.*
120. Article 2 of the International Covenant on Civil and Political Rights
121. Article 50 of the International Covenant on Civil and Political Rights
122. U.N. Human Rights Committee, Concluding Observations: United States of America, Sec. C. ("Accountability for past human rights violations"), U.N. Doc. CCPR/C/USA/CO/4 (2014), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsijKy20sgGcLSyqccX0g1nnMFNOUOQBx7X%2BI55yhIwIkDk6C-F00Adiqu2L8SNxDB4%2BVRpkf5gZfBtQO3y9dLrUeUaTbS0RrNO7VHzbyxGDJ%2F> Stating " 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 re-opened when new evidence becomes available ; and that victims or their families are provided with adequate compensation." See Also U.N. Human Rights Committee List of issues prior to submission of the fifth periodic report of the United States of America para. 14 \*<https://digitallibrary.un.org/record/3868876?ln=en>
123. Fifth Periodic Report of the USA Paragraph 51.
124. U.N. Human Rights Committee, General Comment No. 36, para 27, U.N. Doc. CCPR/C/GC/36 (2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement> Citing to Andreu v. Colombia (CCPR/C/55/D/563/1993), para. 8.2; Marcellana and Gumanjoy v. Philippines, para. 7.2.
125. *Id.*
126. *Id.*
127. Mapping Police Violence <<https://mappingpoliceviolence.us/>> [as of August 25, 2023] Mapping police violence is a crowd-sourced database and is the only open database that tracks prosecutions in use of force cases.
128. *Id.*
129. *Id.* at 6
130. *Id.* at 1
131. *Id.*
132. MOU Countywide Protocol for the Investigation and Review of Officer-Involved Shootings and Other Deadly Force Incidents (March 7, 2022). Pgs. 4-5 stating "Officers are required to brief the first responding supervisor or officer responsible for securing the scene with the general facts of the incident and other matters as they relate to public safety."
133. *Id.* at 5
134. See Public Safety Officers Procedural Bill of Rights Cal. Gov. Code Section 3300; Rushin and DeProspo, Interrogating Police Officers (2019) 87 Geo. Wash. L.Rev. 646, 657.
135. Cal. Gov. Code 3303
136. Cal. Gov. Code 3304(2)(a)
137. Memorandum of Understanding between the City of San Diego and San Diego Police Officers Association (July 1, 2012) Pg. 50 <https://www.sandiego.gov/sites/default/files/legacy/humanresources/pdf/fy13poamou.pdf>
138. California Penal Code Section 13510.8(a)(1)&(2)
139. 11 CCR Section 1205 - Defines Serious Misconduct
140. POST published Peace Officer Certification Actions are updated weekly. [Accessed September 5, 2023] <https://post.ca.gov/Peace-Officer-Certification-Actions>

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