

RACISM, TORTURE & DEATHS AT THE ST. LOUIS CITY JAIL

A Report Submitted to
the U.N. Human Rights Committee
in its 139th Session
Reviewing the United States' Fifth Periodic Report of the United States

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I. EXECUTIVE SUMMARY

For at least half a decade, individuals detained at the jail in the City of St. Louis, Missouri, have lived under the near-constant threat of torturous attacks by means of chemical agents, prolonged water shutoffs, and solitary confinement. Chemical agents¹ are used to punish detainees at the jail and are often used in response to harmless things like detainees daring to ask a correctional officer a question. They are used on detainees while they are in their cells, locked in visiting rooms, and in handcuffs, presenting no physical threat to officers. They are used on detainees trapped in cells who are trying to get the attention of correctional officers because they are suffering and in need of help. The chemical agents are used in large quantities; officers deploy multiple bursts on individual detainees, or they attack an individual with the type of chemical agent meant for riots or crowds. Further, there is no consideration for the impact of the chemicals on someone already in a vulnerable condition; these agents are regularly used on detainees who are on suicide watch or otherwise in need of health care. In essence, chemical agents are used by CJC correctional officers reflexively and indifferently, in response to any disruption or perceived inconvenience.² This atmosphere of abuse is amplified by prolific and prolonged water shutoffs, depriving detainees of a basic life necessity and forcing detainees to live under the threat of serious injury or even death. Moreover, detainees are subject to twenty-three and twenty-four hour lockdowns, 7 days per week, almost all the time, since 2020. During the short window of time detainees are allowed out of their cells, they must choose between calling family, taking a shower, or exercising. Detainee deaths at the jail have accordingly increased at an alarming rate, with 9 deaths at the jail since February 2022.³ What is more, the detainees at the jail in the City of St. Louis are predominately Black.⁴ This overrepresentation of Black persons detained in the City of St. Louis translates into an increased risk of discriminatory treatment, racially disparate impacts, and the violations of the right to freedom from torture described above.

The U.N. Human Rights Committee has previously made recommendations to the U.S. government regarding reducing the use of pretrial detention, detention conditions, use of force, eliminating racial disparities in the criminal justice system, and imposing strict limits on the use of solitary confinement. Yet, the City of St. Louis is permitted to continue to engage in these racist, cruel, inhumane, and tortuous acts with impunity, violating detainees' rights under Articles 2, 6, 7, 10, and 26 of the International Covenant on Civil and Political Rights. The focus of this report, on the conditions of pretrial detention for Black persons in the City of St. Louis, Missouri, provides ongoing examples of the worsening racial discrimination and tortuous treatment of pretrial detainees in the United States.

¹ The most commonly used chemical agent at the jail St. Louis is oleoresin capsicum, also known as "OC Spray" "mace" and "pepper spray". See Alysia Santo, *Adding Pepper Spray to the Prison Arsenal*, THE MARSHALL PROJECT (May 12, 2015), <https://www.themarshallproject.org/2015/05/12/adding-pepper-spray-to-the-prison-arsenal>.

² See RIGHTS BEHIND BARS, EXCESSIVE MACE USE IN CJC, https://www.rightsbehindbars.org/excessive-mace-use-in-cjc?mc_cid=07ba48a7a3&mc_eid=962b2c9e6c.

³ Ryan Krull, *Troubled St. Louis City Justice Center Sees Another Death*, RIVERFRONT TIMES (Sept. 1, 2023), <https://www.riverfronttimes.com/news/deaths-at-st-louis-city-justice-center-leave-big-questions-39122990>.

⁴ In the City of St. Louis, Missouri, the 2020 census found the City's Black population is 45.7%. Yet, the jail population in the City of St. Louis is over 95% Black. U.S. CENSUS BUREAU, QUICK FACTS, ST. LOUIS CITY, MISSOURI (2021), <https://www.census.gov/quickfacts/stlouiscitymissouri>; CITY OF ST. LOUIS, MISSOURI, INMATE POPULATION DATA BY YEAR, STLOUIS-MO.GOV, 2023, <https://www.stlouis-mo.gov/data/dashboards/inmates/index.cfm?startYear=2010&endYear=2022&measure=dailyPopulation&attribute=race#byYear/>.

II. TESTIMONIALS BY PRETRIAL DETAINED BLACK PERSONS IN ST. LOUIS

My name is **Jerome Jones**. I was detained at the City Justice Center in St. Louis, Missouri, for 2 ½ years until I was acquitted of all charges. It was my first time being incarcerated that long. While I was there, I was brutally attacked with chemical agents and left in cell without water for days. On February 5 of 2021 officers removed me from my cell because I didn't immediately comply with what they were asking me to do which was remove from my cell. I was handcuffed and not physically resisting. Once I was in the room, the lieutenant sprayed me with a large amount of chemical agents in my face and in the room, shut the door, and left. I was trapped in a room filled with the chemicals for a half an hour. I was terrified and I couldn't breathe and my entire body was burning from the chemical agents. I yelled and asked for help and nobody came. In order to get fresh air I had to lay down on the floor to breath and get fresh air from under the door. After I was finally let out and put in my cell without water even though the water was off for several days they never took me to seek medical attention either. It took three days for me to stop feeling like I was burning from the chemicals. I would wake up for weeks afterwards panicked because I couldn't breathe due to the mace. Also in February 2021, the water was shut off in the cell including mine to punish us for the protest that had occurred earlier. They kept the water shut off for days which meant I had no access to the water to drink and no ability to flush the water. I was forced to sleep next to a toilet bowl full of standing feces and urine. I was left there like that for three days. I really don't like talking about this really. Due to what happened to me at jail I'm traumatized from these experiences and I still have nightmares and wake up in cold sweats. I lost everything I worked hard to build and I'm emotionally exhausted.⁵

"While I was in the common area of unit 4C a male CO maced me with a riot size can of mace 4-5 times. I was maced in my face, chest, and back of my head. They put me in my cell and turned the water off until I went to medical about an hour or so later."⁶ – Declarant in *Jones* case

"[The COs were] spraying into locked cells...People were trying to get treatment. I was coughing up a storm, throwing up. I was moved to the bullpen and not given a shower or treatment. I did not shower for four days."⁶ – Declarant in *Jones* case

"I have been maced multiple times. I have been maced directly and indirectly. I was maced directly when my cellmate did not leave the cell as told...COs maced my cellmate, then maced me. Next, they closed our chuckhole and left. I have asthma and screamed for water and help; but I received no help. I filed a grievance and never received a response..."⁶ – Declarant in *Jones*

"Sometimes they shut off the water to our cells and I'm not sure why. Sometimes the water stays off for over an hour. This happens in all different housing units as punishment or during searches. Mace gets through the vents and fills the whole area."⁶ – Declarant in *Jones* case

⁵ Recording of Jerome Jones' statement available at <https://drive.google.com/drive/u/2/folders/14y9MB2NNI3WXQO4gEOas1104jsaBzPLG>.

⁶ Declarations filed in *Jones et al., v. City of St. Louis*, Case No. 4:21-cv-600, https://www.rightsbehindbars.org/excessive-mace-use-in-cjc?mc_cid=07ba48a7a3&mc_eid=962b2c9e6c.

III. TORTUROUS USE OF CHEMICAL AGENTS

The City's use of force through chemical agents against pretrial detainees at the jail is excessive and almost constant. A can of chemical agents is included as part of Correctional Officers' (COs) utility belt, which they can freely use to punish detainees for perceived infractions. Chemical agents are too often sprayed through the food hole (also known as a "chuckhole") of a locked jail cell or sprayed on detainees who are restrained in handcuffs and pose no physical threat.⁷ Officers at the St. Louis jail also mace without any consideration of the mental or physical condition of a detainee.⁸ In addition, despite knowing that detainees have asthma or are on suicide watch, officers mace those individuals excessively and punitively. The City of St. Louis has no policies regarding providing medical or mental health services to detainees before COs use force, resulting in routinely avoidable attacks on medically vulnerable detainees. When chemical agents are sprayed in one cell, it often spreads through the cell air vents and causes respiratory issues, rashes, and eye problems for dozens of detainees at a time. The City of St. Louis' use of chemical agents on pretrial detainees is in direct violation of both the prohibition on torture and cruel, inhuman or degrading treatment and punishment in Article 7 and the right for all persons deprived of liberty to be treated with humanity and respect for the inherent dignity of the human person in Article 10 of the International Covenant on Civil and Political Rights.

The excessive use of chemical agents in pretrial detention in the United States is not specific to St. Louis, Missouri. In 2009, at the Lee County jail in Fort Meyers, Florida, Nick Christie, who was being held in the jail's mental health unit, died after being sprayed at least 10 times over the course of two days.⁹ Mr. Christie was placed in a restraining chair, unable to move his arms and legs, and sprayed with chemical agents. He went into respiratory distress, suffered two heart attacks after that and died. An emergency room physician testified in the case that Mr. Christie was "entirely covered in pepper spray" and a coroner ruled the death as a homicide.¹⁰ In 2010, Rommel Johnson—an asthmatic and paranoid schizophrenic—was sprayed in the face, chest, and torso in a Northwestern Florida correctional facility. He died later that night of an asthma attack, his body "saturated" in chemical residue.¹¹ In 2021, Ismail Thompson had just returned to the jail in Harrisburg, Pennsylvania, after being released from the psychiatric unit at the local hospital. He ran away from officers during a strip search at the jail and was pepper-sprayed in the face. Ishmael fought back and he was handcuffed and shackled. An officer then covered Ishmael's head with a hood and put him in a restraint chair, strapping down his arms and legs. About 20 minutes later, an officer noticed something wrong with Ishmael's breathing. He died shortly after.¹² The United States has failed to protect detainees against excessive, inappropriate, and

⁷ See Ryan Krull, *Corrections Officer Charged in Beating Previously Led Training on Mace*, RIVERFRONT TIMES (Aug. 11, 2023), <https://www.riverfronttimes.com/news/corrections-officer-charged-in-beating-previously-led-training-on-mace-40643088>.

⁸ See RIGHTS BEHIND BARS, *supra* note 2.

⁹ *Christie ex rel. Estate of Christie v. Scott*, 923 F. Supp. 2d 1308 (M.D. Fla. 2013).

¹⁰ *Id.*; See Santo, *supra* note 1.

¹¹ Natasha Bertrand, *Florida corrections officers caught arbitrarily spraying inmates with pepper spray and tear gas*, BUSINESS INSIDER (Mar. 23, 2015), <https://www.businessinsider.com/florida-corrections-officers-caught-spraying-inmates-with-pepper-spray-and-tear-gas-2015-3>.

¹² Brett Sholtis, *In county jails, guards use pepper spray, stun guns to subdue people in mental crisis*, NPR (Jan. 2, 2023), <https://www.npr.org/sections/health-shots/2023/01/02/1137208190/in-county-jails-guards-use-pepper-spray-and-stun-guns-to-subdue-people-in-mental>.

discriminatory use of chemical agents, which is a violation of the prohibition on discrimination on the basis of race in Article 2 and the right to equal protection before the law in Article 26 of the International Covenant on Civil and Political Rights.

IV. INHUMANE WATER SHUTOFFS TO JAIL CELLS

At the jail in the City of St. Louis, officers deliberately and punitively shut off water access to detainees' cells, depriving them of potable water and water to flush the toilets in their cells. Often, these water shutoffs are used in combination with chemical agents; a correctional officer may shut off the water to a detainee's jail cell and then spray mace into the cell and leave the detainee to "marinate" for hours or days at a time.¹³ Indeed this continues to happen countless times and detainees are forced to suffer through the ill-effects of the mace without the ability to wash it off. Many detainees in the St. Louis City jail have experienced water deprivation for *multiple days* and even *weeks* at a time. Additionally, correctional officers in St. Louis use water deprivation as discipline for perceived 'misconduct', including when detainees 'ask too many questions' or 'have a bad attitude'.¹⁴ The City of St. Louis' use of water shutoffs as punishment for pretrial detainees is in direct violation of Articles 7 and 10 of the International Covenant on Civil and Political Rights.

It is widely accepted that deprivation of water, or dehydration, causes severe ailments and developmental issues. The U.S. National Academies of Sciences, Engineering, and Medicine have determined that an adequate daily intake of water is roughly 125 ounces (3.7 liters) of water for men, and 91 ounces (2.7 liters) of water for women.¹⁵ When persons do not have access to drinking water, symptoms of severe dehydration can occur, including, but not limited to: fatigue, confusion or short-term memory loss, depression or mood changes, constipation, migraine headaches, and in severe cases—death.¹⁶ Medically vulnerable individuals often have trouble taking medication without water and are in great danger of long-lasting harm from deprivation of water.¹⁷

Within the jail and prison systems in the United States, there is no minimum standard for access to potable water and access to adequate sanitation for persons detained. However, the Association for The Prevention of Torture (APT), has explicitly stated that detainees should have access to a sufficient quantity of clean water *at all times*.¹⁸ Further, APT takes the position that the deprivation and restriction of water should be prohibited in all circumstances, including as a form of disciplinary action.

¹³ See RIGHTS BEHIND BARS, *supra* note 2.

¹⁴ Moreover, detainees who take medication and have health issues that can be affected by water dehydration are given no accommodations when water is shut off. *See id.*

¹⁵ MAYO CLINIC STAFF, WATER: HOW MUCH SHOULD YOU DRINK EVERY DAY?, <https://www.mayoclinic.org/healthy-lifestyle/nutrition-and-healthy-eating/in-depth/water/art-20044256>.

¹⁶ HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, WATER, <https://www.hsph.harvard.edu/nutritionsource/water/>.

¹⁷ MAYO CLINIC, DEHYDRATION, <https://www.mayoclinic.org/diseases-conditions/dehydration/symptoms-causes/syc-20354086>.

¹⁸ ASSOCIATION FOR THE PREVENTION OF TORTURE, FOOD AND WATER, <https://www.ap.t.ch/en/knowledge-hub/detention-focus-database/material-conditions-detention/food-and-water>.

The use of water shutoffs on pretrial detainee as a punitive measure is not limited to the City of St. Louis. In 2016, Terrill Thomas died of dehydration in a Milwaukee, Wisconsin, jail after the water was shut off to his cell for seven days.¹⁹ The correctional officers forced Thomas to spend the last week of his life locked in his cell for 24 hours a day with no drinking water, no edible food, no working toilet, no ability to communicate with anyone on the outside, and no meaningful access to urgently needed medical or mental health care. In 2017, five named Plaintiffs from the Lake County Adult Correctional Facility in the City of Waukegan, Illinois, filed a Class Action against the Lake County Adult Correctional Facility for intentionally shutting of water at the correctional facility, depriving Plaintiffs of potable water and subjecting them to inhumane and unsanitary conditions.²⁰ The detainees were limited to one barrel of water for each cluster of cells to bathe, clean their cells, and flush toilets, and the facility limited each detainee to five water bottles a day.²¹ Punitive water shutoffs to jail cells also violate detained persons' human rights to water, sanitation, an adequate standard of living, health, privacy, and rights to be free from torture and discrimination.

V. SOLITARY CONFINEMENT IN PRETRIAL DETENTION

The entire population of detainees at the jail in St. Louis (~500-800 detainees on any given day) has been on twenty-three and twenty-four hour lockdowns at almost all times since 2020. The City has made lousy excuses for these practices, such as the coronavirus pandemic, staff shortages, and construction in the jail. Detainees in St. Louis have been fed up and have gotten desperate, using protests and other actions to try to get the attention of people on the outside.²²

The City of St. Louis' official position is that no detainees are held in solitary confinement despite subjecting detainees to conditions that match the definition of "solitary confinement." In addition to the ongoing regular lockdowns, when detained persons are held in a St. Louis jail in both Administrative Segregation (Ad Seg) and on Mass Assault Status (MAS) at the St. Louis City jails, they are held without a roommate and they are not allowed out of their cell but for a maximum of one hour per day.²³ Often detainees on Ad Seg or MAS status are not allowed out of their cells more than once per week and there have been instances when detainees have been forced to remain

¹⁹ Merrit Kennedy, *\$6.75 Million Settlement Paid to Family of Milwaukee Inmate Who Died of Dehydration*, NPR (May 29, 2019), <https://www.npr.org/2019/05/29/728023455/-6-75-million-settlement-paid-to-family-of-milwaukee-inmate-who-died-from-dehydr>.

²⁰ See *Hardeman v. Curran*, 933 F.3d 816 (7th Cir. 2019).

²¹ Matt Reynolds, *Inmates Say Jailers Deprived Them of Drinking Water*, COURTHOUSE NEWS SERVICE (Dec. 5, 2017), <https://www.courthousenews.com/inmates-say-jailers-deprived-them-of-drinking-water/>.

²² See Eric Berger and Mark Berman, *After St. Louis jail unrest, inmates' advocates allege desperate conditions while officials defend pandemic response*, WASHINGTON POST (Feb. 8, 2021), https://www.washingtonpost.com/national/after-st-louis-jail-unrest-inmates-advocates-allege-desperate-conditions-while-officials-defend-pandemic-response/2021/02/08/3acfbc52-6a53-11eb-9f80-3d7646ce1bc0_story.html; Dana Rieck, *St. Louis guard freed after being taken hostage, but officials release few details*, ST. LOUIS DISPATCH (Aug. 22, 2023), https://www.stltoday.com/news/local/crime-courts/st-louis-jail-guard-freed-after-being-taken-hostage-but-officials-release-few-details/article_335ea41e-4134-11ee-a1a0-7f3653df4bf1.html; Krull, *supra* note 3.

²³ CITY OF ST. LOUIS, MISSOURI, INMATE HANDBOOK 9 (2019), <https://www.stlouis-mo.gov/government/departments/public-safety/corrections/documents/upload/INMATE-HANDBOOK-2019-ENGLISH.pdf> (noting that inmates in Ad Seg have the right to one hour of recreation, five days a week *and* access to outside recreation).

in their cell for far more than a week at a time—without access to baths, recreation, or the opportunity to call their family or lawyer.²⁴ Regardless of what the City of St. Louis calls it, its customs and practices amount to solitary confinement and amount to a violation of Articles 7 and 10 of the International Covenant on Civil and Political Rights.

The City’s use of solitary confinement is consistent with practices across the United States, where over 80,000 people are held in solitary confinement per day.²⁵ Detained persons of color in the United States are disproportionately placed in solitary at higher rates than their white counterparts.²⁶ U.S. correctional departments argue that the practice is necessary in order to isolate detainees who threaten the operation of the facility and pose safety risks to themselves, other detainees, or staff members. However, the wide discretion afforded to detention facilitates lends itself to the abusive treatment of marginalized minorities. Moreover, once put in solitary confinement, many detainees are deprived of regular classification reviews of their placement in segregation, causing them to be detained in solitary confinement far longer than any official institutional justification. Correctional officers’ risk assessments of detainees are directly linked to racial bias and stereotypes. While solitary confinement may have originally been intended to address and deter violent and dangerous behavior in jails, it has overwhelmingly become a commonly used punishment even for the most minor nonviolent rule violations.²⁷ Despite guidance from this Committee, the United States continues to fail to protect detainees against the use of solitary confinement as a punitive measure, which is a violation of Articles 2 and 26 of the International Covenant on Civil and Political Rights.

VI. JAIL DEATHS

In less than two weeks, from August 20 to August 31, 2023, two detainees at the St. Louis City jail died in custody.²⁸ The cause of their deaths is still unknown. Since February of 2022, a total of nine detainees have died at the jail.²⁹ St. Louis officials have released very little information about the deaths of the inmates in custody and their families have been denied the truth about their deaths and justice.³⁰

Unfortunately, investigations of inmate deaths in the custody of jails across the United States rarely occur. According to a report that analyzed over 500 U.S. jails from 2008 to 2019, there were more than 7,500 documented inmate deaths, with Black women being

²⁴ Melinda Tasca and Jillian Turnavoic, *Examining Race and Gender Disparities in Restrictive Housing Placements*, OFFICE OF JUSTICE PROGRAMS (Sept. 2018), <https://www.ojp.gov/pdffiles1/nij/grants/252062.pdf>.

²⁵ Andrea Fenster, *New data: Solitary Confinement increases risk of premature death after release*, PRISON POLICY (Oct. 13, 2020), https://www.prisonpolicy.org/blog/2020/10/13/solitary_mortality_risk/.

²⁶ Tasca and Turnavoic, *supra* note 24.

²⁷ Kayla James & Elena Vanko, *The Impacts of Solitary Confinement*, VERA INSTITUTE (Apr. 2021), <https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf>.

²⁸ Krull, *supra* note 3.

²⁹ *Id.*

³⁰ See Ryan Krull, *Deaths at St. Louis City Justice Center Leave Big Questions*, RIVERFRONT TIMES (Dec. 21, 2022), <https://www.riverfronttimes.com/news/deaths-at-st-louis-city-justice-center-leave-big-questions-39122990>.

disproportionately affected.³¹ That report revealed a variety of intersecting factors leading to detainee deaths including lack of oversight, unenforceable standards for their operation or the healthcare they provide, and sicker inmate populations.³² The United States fails to protect detainees' rights to life under Article 6 and their families' rights to a remedy under Article 2.

VII. HUMAN RIGHTS COMMITTEE POSITIONS

i. Racial Discrimination in the Criminal Justice System

The U.N. Human Rights Committee has repeatedly expressed concern about and recommended that the United States address racial disparities in the criminal justice system at the federal, state, and local level, including the overrepresentation of individuals belonging to racial minorities in prisons and jails.³³ The City of St. Louis has failed to comply with those recommendations.

ii. Chemical Agents & Water Shutoffs in Pretrial Detention

This Committee has not addressed chemical agents and punitive water-shutoffs as specific examples of use of force on those deprived of liberty. However, this Committee has made its position clear on use of force—the United States should eliminate police brutality and the excessive use of force by law enforcement officials. This Committee has also recommended the United States bring its policies into line with the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.³⁴ This Committee has recognized that less-lethal weapons must be employed by law enforcement, and that those less-lethal weapons must only be employed under strict requirements of necessity and proportionality, in situations where other less harmful measures have proven to be or are clearly ineffective to address the threat.³⁵

iii. Solitary Confinement in Pretrial Detention

This Committee has expressed concerns about prolonged solitary confinement, especially for juveniles and persons with mental disabilities.³⁶ In addition, this Committee has recommended that the United States ensure that persons deprived of their liberty are treated in accordance with the Standard Minimum Rules for the Treatment of Prisoners, including placing strict limits on the use of solitary confinement. This Committee specifically recommends abolishing the practice of solitary confinement for prisoners with serious mental illness. The City of St. Louis has not abided by those recommendations.

iv. Jail Deaths

This Committee has not expressed concerns to the United States specifically about detainee deaths in jails, but has expressed concerns about deaths in custody at U.S. Military sites.³⁷ In

³¹ REUTERS, DYING INSIDE (2020), <https://www.reuters.com/investigates/special-report/usa-jails-deaths/> (“Blacks comprise less than 14% of the U.S. population, but at least 24% of the female victims identified by Reuters were Black.”).

³² *Id.*

³³ CCPR/C/USA/CO/4, ¶6.

³⁴ CCPR/C/USA/CO/3/Rev.1, ¶30; CCPR/C/US/CO/4, ¶11.

³⁵ CCPR/C/GC/36, ¶14.

³⁶ CCPR/C/US/CO/4, ¶20.

³⁷ CCPR/C/US/CO/3/Rev.1, ¶14.

addition, this Committee has expressed concerns about the excessive use of force by law enforcement and use of lethal force by Customs and Border Protection officers.³⁸ This Committee recommended that the State party improve reporting of violations involving the excessive use of force and ensure that cases are investigated, perpetrators are prosecuted, and if convicted, punished, and that families are provided with adequate compensation.

VIII. U.S. GOVERNMENT RESPONSES

i. Racial Discrimination in the Criminal Justice System

The U.S. government noted that federal actions have been taken to address racial discrimination, but noted few state and local actions in its responses to this Committee. For example, in its Fifth Periodic Report the U.S. government merely described the facts and outcome of the *Flowers v. Mississippi* case.³⁹ The U.S. government has not responded to the Committee's concerns regarding the disproportionate number of black persons in jail or prison at the state level. The federal Department of Justice and state courts have held officers accountable in cases such as that of George Floyd and Breonna Taylor, but there continues to be ongoing racial discrimination in the criminal justice system.⁴⁰

ii. Chemical Agents & Water Shutoffs in Pretrial Detention

The U.S. government has noted that the use of force by state officials is subject to the U.S. Constitution, federal laws, and some state laws.⁴¹ Moreover, the U.S. government has acknowledged patterns and practices of unconstitutional conditions of confinement at local jails.⁴² However, it also noted that the U.S. government does not advise officials to use the 1990 U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, let alone require them to do so.⁴³ Moreover, the U.S. government has not recognized the necessity and proportionality standard for use of force as described in this Committee's General Comment No. 36. The U.S. government also stated in its Fifth Periodic Report that it "disagrees with any suggestion that access to health care, to housing, or to safe drinking water and sanitation is inextricably related to or otherwise essential to the enjoyment of the right to life as properly understood under the Covenant."⁴⁴ Moreover, it stated (wrongly) that "the right to safe drinking water and sanitation, as derived from the right to an adequate standard of living in Article 11 of the ICESCR, and matters related to climate change, are outside the scope of the Covenant."⁴⁵

iii. Solitary Confinement in Pretrial Detention

The U.S. government has not responded to this Committee's concerns regarding its use of solitary confinement in pretrial detention. In addition, the U.S. government did not include any mention of the Standard Minimum Rules for the Treatment of Prisoners in its Fifth Periodic Report. In its Fourth Periodic report, it stated that the "United States Constitution, along with

³⁸ CCPR/C/US/CO/4, ¶11.

³⁹ CCPR/C/USA/5, ¶21.

⁴⁰ A/HRC/54/66, ¶41.

⁴¹ CCPR/C/USA/5, ¶56.

⁴² CCPR/C/USA/3, ¶136.

⁴³ CCPR/C/USA/5, ¶56.

⁴⁴ CCPR/C/USA/5, ¶6.

⁴⁵ CCPR/C/USA/5, ¶58.

federal and state laws, establishes standards of care to which all inmates are entitled, which are consistent with...good principles and practices set forth in the U.N. Standard Minimum Rules for the Treatment of Prisoners.”⁴⁶ However, in both its combined Second and Third Periodic and Fourth reports, it reminded this Committee that the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials are non-binding recommendations.⁴⁷

iv. Jail Deaths

The only direct response the U.S. government has given regarding deaths in custody was regarding the death of a child in Border Patrol custody, which the U.S. stated that they had completed an investigation and found no misconduct or malfeasance.

IX. OTHER HUMAN RIGHTS BODIES RECOMMENDATIONS

- The U.N. High Commissioner for Human Rights in its Annual Report for Human Rights in September 2023 stated in its conclusions and recommendations that even though some accountability for criminal justice workers is present little progress towards accountability and redress has been seen, with wider patterns of impunity and protracted struggles by families [of victims of the criminal justice system] in similar circumstances prevailing in various countries.⁴⁸
- The U.N. High Commissioner for Human Rights in its Annual Report for Human Rights in September 2023 stated in its conclusions and recommendations that States must take firm and prompt action towards accountability and redress in all cases and to guarantee non-repetition. This includes strengthening independent oversight mechanisms and examining the role that racial discrimination, stereotypes and biases may play in law enforcement and accountability processes.⁴⁹
- The U.N. Committee on the Elimination of Racial Discrimination in its September 2022 Concluding Observations on the combined tenth to twelfth reports of the United States, stated that it remains concerned that persons belonging to racial and ethnic minorities, including women, are overrepresented in the criminal justice system and are disproportionately arrested, incarcerated, held in solitary confinement for very long periods, subjected to the use of chemical agents such as pepper spray, and subjected to harsher sentences, including life imprisonment without parole and the death penalty.⁵⁰
- The U.N. Committee on the Elimination of Racial Discrimination in September 2022 recommended that the U.S. government impose

⁴⁶ CCPR/C/USA/4, ¶671; CCPR/C/USA/3, ¶476.

⁴⁷ CCPR/C/USA/3, ¶476.

⁴⁸ A/HRC/54/66, ¶6.

⁴⁹ A/HRC/54/66, ¶64.

⁵⁰ CERD/C/USA/CO/10-12, ¶26.

strict restrictions on the use of solitary confinement and of chemical agents such as pepper spray, and ensuring that such use does not have a disproportionate impact on racial and ethnic minorities, and that the practices of the State party are in conformity with international law and international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).⁵¹

- In 2020, in response to the killing of George Floyd and deaths of other people of African descent in the United States by law enforcement officers, the U.N. Human Rights Council condemned racially discriminatory and violent practices perpetrated by law enforcement agencies against Africans and people of African descent including excessive use of force and other human rights violations.⁵²
- The U.N. Special Rapporteur on the human rights to safe drinking water and sanitation stated in 2019 that
human right to safe drinking water entitles everyone [in all spheres of life]...to have access to water and...sanitation—including prisons and detention facilities.⁵³
- According to multiple international treaty bodies and human rights experts, including the U.N. Human Rights Committee, the U.N. Committee against Torture, and the U.N. Special Rapporteur on torture, prolonged solitary confinement may amount to torture or cruel, inhuman, or degrading treatment prohibited by international human rights treaties.⁵⁴
- The U.N. Special Rapporteur on torture has stated that solitary confinement must *only* be used in exceptional circumstances and must be as short as possible, for specified term that is communicated properly.⁵⁵
- In 2014, the U.N. Committee against Torture stated in its Concluding observations on the United States that it remains concerned about its practices of solitary confinement.⁵⁶ The Committee against Torture recommended that the U.S. government ensure that solitary confinement should be limited to a measure of last resort, for as short a time as possible, under strict supervision, and with the possibility of judicial review. The Committee against Torture also recommended that facilities should compile and regularly publish data reflecting the use of solitary and related suicide attempts and self-harm as a result of such practices.

⁵¹ CERD/C/USA/CO/10-12, ¶28.

⁵² A/HRC/RES/43/1, ¶ 1-2.

⁵³ A/HRC/42/47, ¶7.

⁵⁴ CCPR/C/USA/CO/3; CAT/C/USA/CO/2; A/66/ 268.

⁵⁵ A/66/ 268, ¶75.

⁵⁶ CAT/C/USA/CO/3-5, ¶ 20.

- The U.N. Human Rights Guidance on Less-Lethal Weapons in Law Enforcement provides guidelines outlining the risks, effects, and proper use of chemical agents that should apply to correctional facilities.⁵⁷
- The U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, has stated that
Every death in custody must be investigated... There must be transparency in investigations and responses to findings.⁵⁸

X. SUGGESTED RECOMMENDATIONS

- **The State Party must immediately take steps to prohibit the torturous use of chemical agents on detained persons.**
 - The State Party must take steps to ensure that chemical agents are never used on detainees who are restrained, in handcuffs and/or in a cell, or otherwise posing no threat to safety or property.
 - The State Party must take steps to identify and protect medically vulnerable detainees from the use of any and all chemical agents.
 - The State Party must take steps to ensure that non-chemical medical and/or psychological interventions are first tried before resorting to the use of chemical agents on detained persons.
 - The State Party must develop and implement a procedure for ongoing and periodic monitoring, reviewing, and auditing the use of chemical agents in its detention facilities, including on the disproportionate impact of chemical agents on Black detainees.
 - The State Party must require any use of chemical agents to be promptly and fully documented, including the events leading up to the use of chemical agents that, in the officer's opinion, warrant such use of force.
 - The State Party must restrict officers who have been found to have used force inappropriately or excessively from carrying and having unrestricted latitude to use chemical agents.
 - The State Party must cease the use of "riot-sized" cans of mace, MK-9 Cellbusters or chemical agents of similar strength on individual detainees.
- **The State Party should immediately stop shutting off water to jail cells except in instances of mechanical failures or flooding of jail cells.**
 - In the event of flooding of a jail cell by an inmate, water must only be shut off to the flooded cell.
 - In the event of mechanical failures, the water should be shut off for the shortest period possible to fix the mechanical issue.

⁵⁷ OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, GUIDANCE ON LESS-LETHAL WEAPONS IN LAW ENFORCEMENT (2020), https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/LLW_Guidance.pdf.

⁵⁸ A/HRC/53/29, ¶73.

- Detainees should be moved to another location where drinking water and a functioning toilet are accessible if the water shutoff should occur for more than 30 minutes.
- The State Party must develop and implement a procedure for ongoing and periodic monitoring, reviewing, and auditing of the use of water shutoffs at detention centers, including on the disproportionate impact on Black detainees.
- **The State Party should immediately prohibit the use of solitary confinement for pretrial detainees.**
 - The State Party must develop and implement a procedure to compile and regularly publish data reflecting the use of solitary and related suicide attempts and self-harm as a result of such practice in federal, state and local jail facilities, including on the disproportionate impact on Black detainees.
- **The State Party should immediately improve the mechanisms for reporting and investigating any detainee deaths to ensure accountability.**
 - The State Party must take steps to thoroughly investigate all detainee deaths to adequately determine the cause and any parties involved, including correctional officers and other justice system workers.
 - The State Party must ensure the parties that played a role in the detainee death are prosecuted, and if convicted, are punished.
 - In the event of a detainee death, the State Party must ensure the family of the detainee is notified, given all necessary information, and adequately compensated.