



## **STATEMENT OF THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

### **UNITED NATIONS HUMAN RIGHTS COMMITTEE**

#### **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**September 12, 2023**

On behalf of The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund, we are pleased to submit this statement to the United Nations Human Rights Committee in connection with its review of U.S. compliance with the International Covenant on Civil and Political Rights (ICCPR). The Leadership Conference is a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the civil and human rights of all persons in the United States. Since its inception in 1950, our coalition has worked to ensure that all people are afforded civil and human rights protections under the U.S. Constitution and in accordance with international human rights norms. The Leadership Conference Education Fund builds public will for state and federal policies that promote and protect the civil and human rights of all persons in the United States. Our statement provides additional information and offers recommendations for actions that will, if adopted, enhance the ability of the United States to comply with the ICCPR on the issues related to the criminal-legal system, hate crimes, and voting rights.

Since the committee's last review of the United States' compliance in 2014, the nation has endured an aggressive rollback of civil rights protections and a rise in hate and bias, including hate crimes — sometimes reinforced and insisted on by elected officials and executive branch leaders, particularly during the administration of Donald Trump. The former president himself elevated and retweeted, at times, social media posts from white supremacists and neo-Nazis.

The policy priorities of the Trump administration included positions that undermined voting rights and criminal-legal system reforms. Rhetoric and unsubstantiated allegations even produced the disturbing and unprecedented violent attack on the U.S. Capitol building and our democracy on January 6, 2021, which has resulted in the conviction of extremist groups and individuals alike who felt called to their actions by statements of the former president. This violent insurrection did not happen in a vacuum. It was paired with numerous hurdles that voters faced during the 2020 election cycle amid a pandemic. It was also exacerbated by relentless efforts to spread disinformation on social media platforms to threaten civil rights, escalate hate speech, undermine election integrity, impose barriers to the ballot box, and discount the votes of communities of color. Amplified by social media, the “Big Lie” perpetrated by the former

president and his supporters has fueled racially discriminatory anti-voter laws passed by state legislatures across the nation. This remains an ongoing threat to our democracy, to civil and human rights, and to the advancement of racial and social justice in the United States.

As outlined in our 2022 report, “Holding the Line: Combating Racial Discrimination in a Divided America,” we strongly recommend the Biden administration create a stable federal body or structure focused on the implementation of human rights treaty obligations. The administration should establish an interagency mechanism coordinated by the White House through the Domestic Policy Council, National Security Council, Department of State, and Department of Justice. The mechanism should be tasked with ensuring, in consultation with civil society, that domestic agencies swiftly implement recommendations from regional and international human rights bodies.

In addition, we urge the Biden administration to take concrete steps to examine the need for the establishment of a National Human Rights Institution, as most other countries have done. Taking these steps would be consistent with and advance the president’s overall goals in Executive Order 13985 on “Advancing Racial Equity and Support for Underserved Communities.”

Racial Profiling, Excessive Use of Force, and the Criminal-Legal System  
*Issues 7, 13, 14*

The current state of much of the American criminal-legal system has been a stain on our constitutional promise of neutral justice, as well as our democracy. This system replicates and reinforces patterns of racial and economic discrimination that can be traced from slavery, legal segregation and the continuing forms of exclusion that result in explicit and implicit bias, and practices and policies that continue unnecessary and disproportionate contact with the criminal-legal system. The result is a criminal-legal bureaucracy that denies millions of people the opportunities, legal equality, and human rights they deserve while at the same time fueling the world’s highest incarceration rate and civil penalties that deepen impoverishment and, in too many states, disenfranchise people returning to communities after felony convictions.

Racial discrimination and disparities persist at every stage of the criminal-legal system. The United States is the world’s leading jailer with nearly 2 million people behind bars.<sup>1</sup> Even in the face of intractable police unions, political gridlock, and disparate treatment,<sup>2</sup> federal agencies have a myriad of tools at their disposal. Highlighted below are key areas where executive and legislative action could make a significant impact.

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<sup>1</sup> Wendy Sawyer and Peter Wagner “Mass Incarceration: The Whole Pie 2022.” *Prison Policy Initiative*. March 14, 2022. <http://www.prisonpolicy.org/reports/pie2022.html>

<sup>2</sup> Elizabeth Hinton et al. “An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System.” *Vera Institute of Justice*. May 2018. <http://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>

### *Racial Profiling*

Law enforcement officers — whether federal, state, or local — have substantial discretion when determining whether a person’s behavior is suspicious enough to warrant further investigation, which can and does lead to legally justified racial profiling under the current application of the law. Racial profiling in the United States began expanding even before the terror attacks of September 11, 2001, in several contexts — street-level crime, counterterrorism efforts, and immigration law enforcement — and has significantly expanded in their wake as well.

In 2023, the Biden administration issued “Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Gender Identity, and Disability” (2023 guidance), which improves previous iterations by expanding protected categories, broadens the personnel to which the guidance applies, and applies to joint DOJ operations with state and local law enforcement. However, despite these improvements, the policy fails to fully ban biased profiling across national security activities and programs and immigration enforcement. Congressional legislative action should be taken to officially ban discriminatory profiling in the United States.

### *Excessive Use of Force*

Police continue to use a broad spectrum of force against members of the public, and force is used disproportionately against communities of color and Black people. Black people are more than three times as likely as White people to be killed during a police encounter.<sup>3</sup> Since the beginning of 2015 to June 10, 2022, 7,426 people were killed by police in the United States. At least 40 percent of the people killed were people of color.<sup>4</sup> In addition to the myriad examples of police killings of unarmed Black men and women over the last century, there are even more instances of police using non-lethal levels of force, particularly in overpoliced Black and Brown communities in the United States.<sup>5</sup> These lower levels of force, which include strikes, kicks, takedowns, and taser discharges, cause high levels of trauma not only for people who experience it directly, but also for entire communities who experience high frequencies of aggressive police behavior and brutality.<sup>6</sup>

Police use of force is particularly troubling in combination with the current legal structure that consistently fails to hold police accountable for their dangerous behavior. This is particularly evident in legal norms like qualified immunity, which protects officers from being held personally accountable for their misconduct. The current legal standard also makes it exceptionally difficult to hold officers accountable if they express that they were afraid for their lives during an encounter.<sup>7</sup> Individual and

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<sup>3</sup> Gabriel L. Schwartz and Jaquelyn L. Jahn. “Mapping fatal police violence across US metropolitan areas: Overall rated and racial/ethnic inequities, 2013-2017.” PLoS ONE. June 24, 2020. <https://doi.org/10.1371/journal.pone.0229686>

<sup>4</sup> “Fatal Force: Police Shootings Database 2015-2022”. The Washington Post. <https://www.washingtonpost.com/graphics/investigations/police-shootings-database>

<sup>5</sup> Accountable Now. <https://www.accountablenow.com>

<sup>6</sup> Michele Heisler et al. “Expert Statement on Individual and Community Effects from Trauma Due to NYPD Use of Force in Response to the Mott Haven Protest on June 4, 2020.” Physicians for Human Rights. April 2021. <https://phr.org/wp-content/uploads/2021/04/PHR-Mott-Haven-Prote-st-Expert-Statement-April-2021.pdf>

<sup>7</sup> Amelia Thomson-DeVeaux et al. “Why It’s So Rare For Police Officers to Face Legal Consequences.” FiveThirtyEight. June 4, 2020. <https://fivethirtyeight.com/features/why-its-still-so-rare-for-police-officers-to-face-legal-consequences-for-misconduct/>

community trauma is such a concern that President Biden included a provision in a recent executive order, “Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety,” specifically calling for a nationwide study of the physical, mental, and public health impacts of the use of force on communities.<sup>8</sup>

### *Data collection and reporting*

There is no national requirement or standard for collecting and reporting police activity data.<sup>9,10</sup> This is true for all aspects of policing in the United States and includes use of force, misconduct, arrests, pretextual traffic stops, and pedestrian stops. Consequently, no one knows enough about when, where, and how often police are interacting with the public or the important details about the nature of those interactions. Due to the lack of mandatory data collection, media outlets like The Washington Post and The Guardian have created their own data collection projects. One egregious example of the alarming lack of oversight and standards in police data collection comes from Minneapolis. When a Minneapolis police officer murdered George Floyd, the killing was originally recorded in the Minneapolis police report as a “medical incident.”<sup>11</sup>

The national data collection infrastructure that does exist under-collects information and is voluntary. The FBI’s national database on police use of force, which began collecting data in January 2019,<sup>12</sup> only collects data on three types of force: “police killings of subjects,” “serious bodily injury,” and “firearm discharges.” This short list leaves out many common ways that police use force, such as strikes, kicks, takedowns, and taser discharges that people, particularly in Black and Brown communities, experience regularly. Additionally, there is no national requirement for the more than 18,000 police departments in the country to report their data to the FBI. Even federal law enforcement agencies were not required to report into the FBI database until very recently and failed to participate.<sup>13,14</sup> Voluntary participation has proven to be a significant challenge — one that threatens the already truncated usefulness of the FBI database.<sup>15</sup>

In-custody deaths are another area where improved data collection is not only necessary but required by law. The Death in Custody Reporting Act was passed in its most recent form in 2013, but it has yet to be

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<sup>8</sup> “Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety.” The White House. May 25, 2022. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/>

<sup>9</sup> Hauck, Grace. “More than half of police killings in the US are unreported in government data, study finds.” USA Today. September 30, 2021. <https://www.usatoday.com/story/news/nation/2021/09/30/police-killings-unreported-government-data-lancet-study-finds/5915807001/>

<sup>10</sup> “It’s Time to Start Collecting Stop Data: A Case for Comprehensive Statewide Legislation”. Policing Project. September 30, 2019. <https://www.policingproject.org/news-main/2019/9/27/its-time-to-start-collecting-stop-data-a-case-for-comprehensive-statewide-legislation>

<sup>11</sup> Marcus, Josh. “Initial police report calling George Floyd murder ‘medical incident’ goes viral after Chauvin guilty verdict.” The Independent. April 21, 2021. <https://www.independent.co.uk/news/world/americas/george-floyd-police-report-murder-b1834832.html>

<sup>12</sup> “National Use of Force Collection.” Federal Bureau of Investigation. <https://www.fbi.gov/services/cjis/ucr/use-of-force#:~:text=The%20FBI%20created%20the%20National,agencies%20on%20January%202019>

<sup>13</sup> “Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety.” The White House. May 25, 2022. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/>

<sup>14</sup> Ibid.

<sup>15</sup> “Law Enforcement: DOJ Can Improve Publication of Use of Force Data and Oversight of Excessive Force Allegations.” United States Government Accountability Office. December 7, 2021. [https://www.gao.gov/products/gao-22-104456#summary\\_recommend](https://www.gao.gov/products/gao-22-104456#summary_recommend)

fully implemented. Lack of implementation has serious consequences. No one in the United States knows how many people die annually in government custody. Due to the racial disparities that exist in the criminal-legal system, Black and Brown communities are most impacted by this lack of data and poor notification infrastructure for families of people who die in custody.

### *Progress and Steps Forward*

Since 2014 there have been some measures taken to reduce racial disparities within the criminal-legal system through executive and administrative action, federal legislation, civil unrest, and state-level litigation. But there have also been intentional steps taken, especially during the Trump administration, to undermine civil rights, embolden police brutality, and dismantle effective tools used by the federal government to regulate police practices. Specifically, the Trump administration significantly reduced the overall use of consent decrees and tried to withdraw from already negotiated consent decrees; ended the Community Oriented Policing Services' Collaborative Reform Initiative; rescinded Obama-era efforts to limit police department procurement of weapons from the U.S. military; and supported outsized, militarized responses to peaceful protests.<sup>16</sup>

In May 2020, George Floyd was murdered by a Minneapolis police officer. After years of witnessing police killing unarmed Black people, this heinous act was a tipping point that enraged the public and spurred widespread protests. For months, across the United States and the world, people gathered to protest police brutality and demand accountability. The offending officers have pled or been found guilty of federal charges and sentenced. In April 2021, the Justice Department initiated an investigation into the Minneapolis Police Department, which found that the police department and City of Minneapolis engage in a pattern or practice of conduct that violates the U.S. Constitution and federal law.

In 2021, Congress attempted — but failed — to negotiate a piece of police reform legislation, and lawmakers have been unable to pass meaningful reform since.

In September 2021, DOJ initiated a review of Title VI, a provision of the 1964 Civil Rights Act that “prohibits recipients of federal financial assistance from discriminating against any person on the basis of race, color, or national origin.”<sup>17</sup> In June 2022, as a consequence of the review, Associate Attorney General Vanita Gupta directed the DOJ to take steps to improve the implementation and enforcement of Title VI.<sup>18</sup> If the DOJ is successful, especially in managing Title VI compliance as it relates to the billions of dollars in grant funds distributed annually to state and local police departments, there could be a significant impact on racial discrimination. On May 25, 2022, on the second anniversary of the killing of George Floyd, President Biden signed the executive order on “Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety.” It lays out the first steps toward an accountability framework for policing. Among a long list of administrative steps, the executive

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<sup>16</sup> Trump Administration Civil and Human Rights Rollbacks”. The Leadership Conference on Civil and Human Rights. 2017-2021. <https://civilrights.org/trump-rollbacks/>

<sup>17</sup> “Review of the Department’s administrative enforcement of Title VI and the Safe Streets Act.” United States Department of Justice, Office of the Associate Attorney General. September 15, 2021. <https://www.justice.gov/asp/page/file/1433211/download>

<sup>18</sup> The Department’s Memo on the Implementation and Administrative Enforcement of Title VI and the Safe Streets Act.” United States Department of Justice, Office of the Associate Attorney General. June 22, 2022. <https://www.justice.gov/asp/page/file/1514511/download>.

order requires all federal law enforcement agencies to report their use of force data to the FBI for the national data collection, highlights the need for more engagement on the issue of co-response or alternative responses to mental health crises, and requires DOJ to study the impact of police use of force on communities of color.<sup>19</sup>

While some accountability in the criminal-legal system has been shown through these measures, these reactive strategies do nothing to prevent future brutalization or discrimination. Successful legislative action is needed at the state and federal levels to shrink the footprint of law enforcement in the lives of Black and Brown communities.

### *Recommendations*

#### *Racial Profiling*

- DOJ should revise the 2023 guidance to prohibit discriminatory profiling in all contexts, including national security and immigration enforcement.
- DOJ should issue revised guidance that explicitly prohibits data-gathering and “mapping” of racial, ethnic, and religious communities. The FBI must immediately discontinue this practice, provide transparency on how the FBI’s mapping operation has been developed and deployed, and publicly disclose maps that the FBI has produced with an explanation of how the agency has used the information in its law enforcement and intelligence activities.
- DOJ should use Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968 to condition federal funds to state and local law enforcement agencies on whether the agency has adopted policies prohibiting profiling.
- The U.S. Congress should take legislative action to prohibit racial profiling.

#### *Police Use of Force*

- DOJ should establish national categories and definitions of law enforcement use of force so that departments can begin to collect and report data in a standardized way.
- The administration, politicians, civil rights advocates, and communities should demand changes to the law that will address accountability loopholes like qualified immunity and require a higher standard for justification of use of force than an officer stating that they feared for their life during an encounter.

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<sup>19</sup> “Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety.” The White House. May 25, 2022. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-police-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/>

### *Data collection and reporting*

- DOJ should require robust data collection and reporting on federal police-community encounters and law enforcement activities, including stops and frisks, whether or not there was an arrest, issuance of a summons, or desk appearance ticket.
- DOJ should require that all data collection captures all demographic categories and can be disaggregated.
- DOJ should collect and make public all important police activity data, including arrests, pretextual and traffic stops, use of force, and misconduct. Data collected should be robust and, in the matter of use of force, include information on all uses of force, not just those that are lethal or lead to serious bodily injury. Data collection and reporting should be mandatory for all federal agencies as well as all state and local departments that receive federal grant funds. All federal efforts at data collection need to be reported to the public in a timely manner and available in a format that allows for disaggregation. Data should remain publicly available by jurisdiction so that comparisons can be made over time.
- DOJ should fully implement the Death in Custody Reporting Act of 2013.
- DOJ should fully implement Title VI and require that all federally funded programs in the criminal-legal system, including police departments, comply with Title VI.
- State and local governments should make police activity reporting mandatory and available to the public.

### *Hate Crimes*

#### *Issue 24*

The United States has experienced an alarming increase in hate crimes and violent white supremacy since the previous review.

In March 2023, the Federal Bureau of Investigation (FBI) released the most recent statistics on hate crimes. These data showed that 2021 was the highest year on record for reported hate crimes since the FBI began publishing the data in 1991.<sup>20</sup> But because law enforcement agencies do not have to report any data on hate crimes to the FBI, this is not the full picture. In fact, 2021 had the lowest amount of participation from law enforcement agencies since 2012.<sup>21</sup> Even though the most recent data show the highest number of reported hate crimes on record, we know the reality is far worse.

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<sup>20</sup> Federal Bureau of Investigation. "Crime Data Explorer." March 2023. <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>.

<sup>21</sup> Ibid.



From the murders of nine worshippers at the Mother Emanuel African Methodist Episcopal Church in Charleston, South Carolina, in June 2015 to the violent white supremacist and neo-Nazi rally in Charlottesville, Virginia, in August 2017 to the recent murders of Black shoppers at the Tops Friendly Market — the community’s only supermarket — in Buffalo, New York, and the murder of three Black people in Jacksonville, Florida in August 2023, violence and organized hate is visible and rising. So emboldened is hate-driven extremism that even the insurrection on the U.S. Capitol in January 2021 owes its violence, in no small part, to white supremacists and white nationalists. Both subtle and more overt racist rhetoric — including the “great replacement” theory with its origins in antisemitism and its fearmongering on changing racial demographics, and former President Donald Trump using words and insinuations that China was to blame for the COVID-19 pandemic — has been given cover from some public and elected officials. This has helped to create false legitimacy, implied permission, and even calls to action that hate groups are using to recruit new adherents, often online.

For four years, President Trump used the bully pulpit of the presidency to fan the flames of hate, roll back critical civil rights protections, and push racist and divisive policies and programs aimed at sowing division. The impact of this racist rhetoric is evident in the FBI’s annual hate crime statistics:

- 2015 saw a nearly 7 percent increase in hate crimes from 2014. Likely correlated with the increase in racist and inflammatory rhetoric from the 2016 election cycle, this increase was driven by a sharp rise in anti-Muslim hate crimes, which increased 67 percent from 2014 to 2015.<sup>22</sup>
- During Trump’s first year in office, reported hate crimes increased almost 5 percent, with nearly 60 percent being motivated by race, ethnicity, or ancestry bias.<sup>23</sup>
- The sharpest increase in hate crimes reported since the last U.S. government report in 2014 occurred in 2017, which had a nearly 17 percent increase in hate crimes from the previous year.<sup>24</sup>
- 2018 and 2019 were the two deadliest years on record for hate crimes in the United States and included the mass murders at Tree of Life Synagogue and at a Wal-Mart in El Paso, Texas.<sup>25</sup>
- The most recent data from the FBI demonstrate that Trump’s last year in office, 2020, saw the highest number of reported hate crimes since 2001. This was in large part driven by increases in anti-African American/anti-Black hate crimes and anti-Asian hate crimes. Anti-African

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<sup>22</sup> Chan, Melissa. “Hate Crimes Against Minorities in the U.S. Surged Last Year, FBI Says.” Time. November 14, 2016. <https://time.com/4569996/hate-crimes-muslims-2015-fbi>

<sup>23</sup> “2016 Hate Crime Statistics Released.” Federal Bureau of Investigation. November 13, 2017. <https://www.fbi.gov/news/stories/2016-hate-crime-statistics>

<sup>24</sup> Lucas, Ryan. “Hate Crimes Up In 2016, FBI Statistics Show.” National Public Radio. November 13, 2017. <https://www.npr.org/2017/11/13/563737883/hate-crimes-up-in-2016-fbi-statistics-show>

<sup>25</sup> “Uniform Crime Report Hate Crime Statistics, 2018.” Federal Bureau of Investigation. Fall 2019. <https://ucr.fbi.gov/hate-crime/2018/topic-pages/incidents-and-offen-ses>



American/anti-Black hate crimes increased by nearly 20 percent from 2019 to 2020.<sup>26</sup>

- On March 2, 2021, FBI Director Christopher Wray testified before the Senate Judiciary Committee, stating: “The top threat we face from DVEs [Domestic Violent Extremists] continues to be those we identify as Racially or Ethnically Motivated Violent Extremists (RMVEs), specifically those who advocate for the superiority of the white race, and who were the primary source of ideologically motivated lethal incidents of violence in 2018 and 2019.”<sup>27</sup>

### *Progress and Steps Forward*

President Biden took office in the midst of a hate crime crisis and began taking action to address it, specifically the alarming increase in anti-Asian hate crimes. During the global COVID-19 pandemic, anti-Asian hate crimes and hate incidents saw a sharp increase, with nongovernmental organizations documenting more than 10,000 anti-Asian American and Pacific Islander hate incidents from March 2020 to December 2021 alone.<sup>28</sup>

On May 20, 2021, President Biden signed the COVID-19 Hate Crimes Act, which requires a designated employee of DOJ to facilitate an expedited review of hate crimes related to the COVID-19 pandemic and required DOJ to issue guidance with the Department of Health and Human Services aimed at raising awareness of hate crimes during the pandemic. The COVID-19 Hate Crimes Act includes the Khalid Jabara and Heather Heyer NO HATE Act, which establishes grants for state-run hate crime reporting hotlines and authorizes grants for state and local governments to implement the National Incident-Based Reporting System (NIBRS). The law also allows a court to order educational classes or community service as a condition of supervised release.<sup>29</sup>

FBI Director James Comey had signed a recommendation in 2016 that the Uniform Crime Reporting (UCR) program sunset its traditional Summary Reporting System (SRS) and transition to NIBRS by January 1, 2021. NIBRS provides for more comprehensive data, including better data on hate crime incidents and bias-motivations. As of May 2022, the FBI reports 65 percent<sup>30</sup> of law enforcement agencies in the United States contribute to NIBRS, including 31 states that are partial NIBRS reporting states.<sup>31</sup>

### *Recommendations*

- Public officials from across government should use their bully pulpits to denounce racist speech, speak out against hate crimes, and share messages of inclusion. Data have shown that while hate

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<sup>26</sup> Ibid,

<sup>27</sup> U.S. Senate Committee on the Judiciary. March 2, 2021. <https://www.judiciary.senate.gov/imo/media/doc/SJC%20Oversight%20Hearing%20-%20FBI%20Director%20Wray%20SFR%20-%203.2.2021.pdf>

<sup>28</sup> Aggie J. Yellow Horse et al. “Stop AAPI Hate National Report.” Stop AAPI Hate. March 4, 2022.

<sup>29</sup> COVID-19 Hate Crimes Act, S.937, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/937>

<sup>30</sup> Federal Bureau of Investigation Crime Data Explorer. <https://crime-data-explorer.fr.cloud.gov/pages/home>

<sup>31</sup> “National Incident-Based Reporting System (NIBRS) Participation Status.” Federal Bureau of Investigation. March 2022. [https://s3-us-gov-west-1.amazonaws.com/cg-d4b776d0-d898-4153-90c8-8336f86bdfec/Map\\_NIBRS\\_Participation\\_MAR\\_2022.pdf](https://s3-us-gov-west-1.amazonaws.com/cg-d4b776d0-d898-4153-90c8-8336f86bdfec/Map_NIBRS_Participation_MAR_2022.pdf)

crimes may mirror the political climate, when public officials speak out against hate crimes, hate crimes can decline. President Biden specifically named white supremacy and mentioned that silence is complicity in his remarks in the aftermath of the deadly anti-Black hate crimes in Buffalo, New York and Jacksonville, Florida. President Biden, the attorney general, the director of the FBI, and members of Congress should continue to speak out against hate crimes and white supremacy.

- To ensure an accurate picture of what communities are experiencing across the country, the Biden administration must support mandatory hate crime reporting, and Congress must act to pass a law mandating hate crime data collection and reporting. Data drives policy, yet many individuals targeted for hate do not feel safe reporting crimes to law enforcement. Until hate crime data collection and reporting are made mandatory by Congress, DOJ should require law enforcement agencies that receive federal funding to report hate crime data to the UCR program.
- All offices of civil rights in federal agencies should review all recipients of federal financial assistance (FFA) to make sure there is language access in all materials about hate incidents and crimes, including information about reporting when FFA is distributed. DOJ should use its existing Title VI enforcement authorities across all agencies to ensure that all recipients of FFA are ensuring language access in all materials about hate incidents and crimes.
- Robust enforcement of Title VI in connection to hate crimes extends to schools and college campuses. As a part of Title VI enforcement, these civil rights offices should also address the needs of students targeted for hate, understanding how this may contribute to increased drop-out rates. School districts and institutions must understand their obligations concerning unlawful discrimination at schools before students return to schools. The Educational Opportunities Section of the Civil Rights Division should work with the Department of Education’s Office for Civil Rights (OCR) to ensure that campuses comply with hate crimes reporting requirements connected to Clery obligations, which require colleges to disclose crime statistics that happen on campus.<sup>32</sup> Clery Act reporting is mandatory; the FBI Hate Crime Statistics Act crime data collection system is entirely voluntary. Yet, there are colleges and universities that report their data to the Department of Education and not the FBI — even though the definition of what data is to be collected for both reports is identical.
- Until all law enforcement agencies have transitioned to NIBRS and are deemed NIBRS compliant by DOJ, DOJ should fully implement grant provisions of the COVID-19 Hate Crimes Act and Jabara-Heyer NO HATE Act that would provide incentives and support for law enforcement agencies to transition to NIBRS.

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<sup>32</sup> The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, or “Clery Act,” is a federal law that was passed in 1990. The Clery Act requires institutions of higher education that participate in the federal financial aid program to report crimes that occur on campus and send warnings to the school community when there is a known public safety risk on campus.

- DOJ should deploy the Community Relations Service (CRS), a DOJ entity that supports communities in conflict with mediation and other tools, and the Civil Rights Division to ensure that civil rights and community organizations have input in defining public safety and effective hate crimes reporting methods and are included in training development.<sup>33</sup> Community organizations can serve as a safe place for hate crimes survivors to find support. In some cases, community groups can also serve as bridges to local law enforcement for hate crimes reporting because they effectively garner community trust.
- DOJ should also create or redirect grants and discretionary funds to support local community organizations so that they can continue to serve people targeted for hate crimes. This would also allow community organizations to respond more effectively to hate incidents, enabling law enforcement to focus on hate crimes and strengthen communities without additional law enforcement presence. Improving data requires long-term investments in holistic services for those targeted for hate to enable people to feel safe enough in their communities to report hate incidents and crimes. Grants must include social services such as mental health support, housing support, food security, educational programs for children, and investment in cultural events.
- DOJ should support the creation of continued work of hate crimes working groups composed of community-based organizations, civil rights leaders, and police officials housed in every U.S. attorney's office (USAO) across the country. Under Attorney General Janet Reno, every USAO created a Hate Crimes Task Force. While many ended after her term as attorney general, others lasted across different administrations and priorities. For example, the task force for the Eastern District of California is a prime example of implementation of a task force that effectively engages diverse community leaders and state and local law enforcement leaders in regular meetings where all parties can develop relationships outside of crisis situations. In addition, career attorneys and administrative staff should help lead the Hate Crimes Task Force for continuity across administrations. CRS can support U.S. attorneys in the creation and facilitation of these task forces.

## Right to Vote

### *Issue 27*

The right to vote and to participate fully in the electoral process is integral to the foundation of American democracy. As the Supreme Court said more than a century ago, the right to vote is a “fundamental political right, preservative of all rights.”<sup>34</sup> The right to be free from discrimination in voting is protected

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<sup>33</sup> The Department of Justice's Community Relations Service (CRS) was authorized by the Civil Rights Act of 1964 and expanded under the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act in 2009. A component of DOJ, CRS assists communities facing tensions relating to race, color, and national origin. The agency works as a neutral party with all parties to develop solutions. CRS works with communities to prevent and respond to hate crimes motivated by race, color, national origin, gender, gender identity, sexual orientation, religion, or disability. CRS is unique as it is not an investigatory or prosecutorial agency and does not have law enforcement authority.

<sup>34</sup> *Yick v. Hopkins*, 118 U.S. 356, 370 (1886).

by the U.S. Constitution and by the Voting Rights Act (VRA) of 1965, which has been reauthorized five times by Congress with strong bipartisan majorities and signed into law by a Republican president on each occasion. However, since the committee’s last review in 2014, this foundational right has been under unprecedented attack. In nearly a decade since the previous ICCPR review, VRA protections have been eroded.

The devastating impact of the Supreme Court’s 2013 ruling in *Shelby County v. Holder* continues to reverberate around the country as states and local jurisdictions adopt discriminatory laws without seeking preclearance by DOJ. In 2021, the Supreme Court substantially weakened Section 2 of the VRA in *Brnovich v. Democratic National Committee*, limiting the ability to litigate voting rights cases.<sup>35</sup> Voting discrimination has only increased in intensity after the 2020 election, which ignited invalid claims of voting fraud and culminated in the violent insurrection at the U.S. Capitol on January 6, 2021.

The falsehoods surrounding the “Big Lie” propagated by former President Trump and his supporters — that the 2020 presidential election was stolen — have increased threats to the franchise for voters of color, both in being able to cast a vote and to have that vote count. The assault on democracy has taken new and dangerous forms and now includes efforts to strip the power of state and local elected officials, harass and intimidate both election officials and voters, and challenge the outcomes of elections. The very integrity and legitimacy of our election processes are being called into question.

#### *Voting Discrimination Unleashed by Shelby County Persists in Virulent Forms*

The *Shelby County* ruling effectively eliminating Section 5’s preclearance requirement opened the floodgates to voting discrimination with an intensity that has continued to this day. States and localities acted immediately to restrict the vote and implement discriminatory policies. In June 2023, The Leadership Conference published “Ten Years After *Shelby County v. Holder*: Charting the Path Forward for Our Democracy,” a report that illustrates the overwhelming and cumulative harm to communities of color over the past decade.

The Leadership Conference issued reports on the state of voting rights in 13 states across the country and introduced them into the U.S. congressional record.<sup>36</sup> They document the “current conditions” surrounding voting discrimination and highlight the pervasiveness and persistence of voting discrimination in the absence of Section 5’s preclearance requirement. An additional report by The Leadership Conference Education Fund found that, after *Shelby County*, thousands of polling places were shuttered or moved, primarily in states previously covered by Section 5 of the VRA.<sup>37</sup>

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<sup>35</sup> *Brnovich v. Democratic Natl. Comm.*, 141 S. Ct. 2321 (2021)

<sup>36</sup> “Testimony of Wade Henderson.” The Leadership Conference on Civil and Human Rights. Hearing on Oversight of the Voting Rights Act: Potential Legislative Reforms, U.S. House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties. August 16, 2021. <https://docs.house.gov/meetings/JU/JU10/20210816/114010/HHRG-117-JU10-Wstate-HendersonW-20210816.pdf>.

<sup>37</sup> “Democracy Diverted: Polling Closures and the Right to Vote.” The Leadership Conference Education Fund. September 2019. <https://civilrights.org/democracy-diverted/>

### *State Anti-Voter Laws*

The assault on democracy has significantly escalated since the 2020 presidential election. In 2022 alone, state legislatures introduced 440 voting bills that restricted the freedom to vote.<sup>38</sup> Thirty-four laws with anti-voter measures were enacted in 19 states.<sup>39</sup> These laws roll back early voting, restrict mail-in voting, add new hurdles for voter registration, impose harsh voter identification requirements, increase barriers for voters with disabilities, strip power from state and local election officials, and allow partisan actors to interfere with election processes or even reject election results entirely.<sup>40</sup> By early 2022, lawmakers in numerous states introduced more restrictive voting legislation than the previous year, including bills designed to undermine the electoral process.<sup>41</sup> And in January 2023 alone, at least 32 state legislatures were considering 150 pre-filed bills that would further restrict access to the ballot, representing an increase from the number of such bills introduced at the same time in 2021 and 2022.<sup>42</sup>

### *Harmful Redistricting*

In addition, for the first time since 1965, electoral maps are being designed without the full protections of the VRA. Legislators are drawing and adopting brazenly partisan and racially discriminatory plans to accomplish political gain at the expense of voters of color. For example, although 95 percent of the growth in Texas's population in the past decade was attributable to people of color, the Texas legislature redrew federal and state legislative districts to increase the influence of White voters and diminish the voting strength of communities of color.<sup>43</sup>

### *Threats Toward Election Officials*

There is an alarming rise in threats toward election officials and the election process itself, which jeopardize the operation and functioning of our democracy.<sup>44</sup> The same conspiracy theories, falsehoods, and violence that fueled a deadly attack on the U.S. Capitol now pose threats to democracy at the state and local level, targeting election officials from front-line poll workers to vote counters to secretaries of state. One recent study found that half of election officials are concerned about their safety, and nearly one in three know of a colleague who has quit partly due to safety concerns, increased threats, or intimidation.<sup>45</sup>

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> "Voting Laws Roundup." Brennan Center for Justice. February 9, 2022. <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2022>.

<sup>42</sup> "Voting Laws Roundup." Brennan Center for Justice. June 14, 2023. <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-june-2023>.

<sup>43</sup> Ura, Alexa. "U.S. Department of Justice Sues Texas Over New Political Maps." Texas Tribune. December 6, 2021. <https://www.texastribune.org/2021/12/06/department-of-justice-texas-political-maps/>.

<sup>44</sup> Schouten, Fredreka & Mena, Kelly. "It's 2022 and Election Officials Are Still Dealing with Threats," CNN. February 15, 2022. <https://www.cnn.com/2022/02/15/politics/election-officials-face-threats-ctzn/index.html>

<sup>45</sup> "Local Election Officials Survey." Brennan Center for Justice. March 10, 2022. <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022/>.

### *Election Interference*

At the state and local levels, efforts to interfere with impartial election administration and to discount or challenge election results are on the rise as politicians work hard to install partisan actors to interfere with the election process or even reject election results entirely. Georgia’s new law removed Secretary of State Brad Raffensperger — whom Donald Trump notoriously told to “find 11,780 votes” to nullify President Biden’s win — from his position as chair of the state election board and authorized the Republican-led legislature to appoint the chair.<sup>46</sup> Arizona’s partisan, post-election review — which only confirmed original election results — was intended to intimidate communities of color growing in political strength and create widespread distrust in our electoral system, and it has become a model for adoption by other states seeking to do the same.<sup>47</sup>

### *Barriers for Indigenous Voters*

Indigenous voters face distinct barriers to full participation in democracy. The geographic isolation of tribal lands is often compounded by poverty, lack of access to transportation, and poor roads that reduce the ability to connect to voting services often located off reservation. Native American and Alaska Native voters tend to have non-traditional mailing addresses, lack home mail delivery service, and have reduced access to affordable and reliable broadband. Restrictive laws that abolish early voting, curtail in-person voting, and reduce opportunities to vote by mail only compound the structural deficiencies already facing this community, which hinder their participation in political life.<sup>48</sup>

### *Language Access Issues*

Language access issues continue to hinder participation in the political process. Section 203 of the VRA requires jurisdictions to offer language assistance if certain thresholds of voters with limited English proficiency are met.<sup>49</sup> In 2021, the Census Bureau found that 331 jurisdictions required Section 203 coverage with more than 24 million voting age citizens who need language assistance, representing an increase of 22.3 percent from 2016.<sup>50</sup> Additionally, the recent wave of restrictive voting laws exacerbate the challenges faced by language minority voters, as they are often voters of color.

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<sup>46</sup> Berman, Ari. “The Coming Coup: How Republicans are Laying the Groundwork to Steal Future Elections.” Mother Jones. January 13, 2022. <https://www.motherjones.com/politics/2022/01/how-republicans-are-taking-over-election-system-big-lie/>.

<sup>47</sup> White, Laurel & Dunklau, Sam. “Republican-Led Election Reviews Take Shape in Pennsylvania and Wisconsin.” National Public Radio. September 23, 2021. <https://www.npr.org/2021/09/23/1039451858/republican-led-election-reviews-take-shape-in-pennsylvania-and-wisconsin>.

<sup>48</sup> “Statement of Jacqueline DeLeon”. Native American Rights Fund, Hearing on Restoring the Voting Rights Act: Protecting the Native American and Alaska Native Vote, Senate Judiciary Committee, Subcommittee on the Constitution. October 20, 2021. <https://www.judiciary.senate.gov/imo/media/doc/De%20Leon%20Testimony1.pdf>.

<sup>49</sup> “About Language Minority Voting Rights.” Department of Justice. January 4, 2022. <https://www.justice.gov/crt/about-language-minority-voting-rights>.

<sup>50</sup> “Census Bureau Releases 2021 Determinations for Section 203 of the Voting Rights Act.” U.S. Census Bureau. December 8, 2021. <https://www.census.gov/newsroom/press-releases/2021/section-203-voting-rights-act.html>.



### *Barriers for Voters with Disabilities*

Voters of color with a disability<sup>51</sup> face compound barriers to political participation as a result of newly enacted voting laws. Restrictions on mail-in ballots and bans or limits on ballot drop boxes translate into reduced voting opportunities for people with disabilities.<sup>52</sup> Prohibitions on absentee ballot collection efforts are particularly harmful to disabled voters, as many states are making third-party assistance illegal.<sup>53</sup> Other significant impediments include onerous voter ID requirements, limitations on early voting, and inaccessible polling places and voting machines.<sup>54</sup>

### *Disenfranchised D.C. Voters*

The disenfranchisement of Washington, D.C.'s nearly 700,000 residents continues to be a stain on our democracy. For more than 200 years,<sup>55</sup> residents of our nation's capital have lacked representation in Congress and have therefore been denied a voice in federal legislative decision-making. That a majority of these residents are people of color<sup>56</sup> perpetuates the underlying racial animus toward the district that has existed since its founding. The lack of voting representatives in Congress is a deprivation of the fundamental right to vote.

### *Felony Disenfranchisement*

Today, state laws bar more than 5.2 million citizens convicted of felony offenses from casting a ballot. In some states, more than 20 percent of the African-American population is not permitted to vote due to felony convictions, and across the nation one out of 13 African-American adults cannot vote because of a felony conviction. Many state felony disenfranchisement laws were passed after the Civil War to disempower African Americans by linking the right to vote to a criminal-legal system deeply infected by racism.<sup>57</sup> Incarcerated people are also stripped of their voices in our democracy when it comes to drawing voting maps — they are counted as residents of their prison districts rather than of the districts they call home. This practice, known as “prison-based gerrymandering,” distorts our democratic process by artificially inflating the district population count and the political influence of that district as result.

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<sup>51</sup> “Adults with Disabilities: Ethnicity & Race.” Center for Disease Control and Prevention.

<https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infograp-hic-disabilities-ethnicity-race.html>.

<sup>52</sup> Pulrang, Andrew. “Seven Ways New Voting Laws Can Affect People with Disabilities.” Forbes. July 25, 2021.

<https://www.forbes.com/sites/andrewpulrang/2021/07/25/7-ways-new-voting-laws-can-affect-people-with-disabilities/?sh=688316a56289>.

<sup>53</sup> Cineas, Fabiola. “Why It’s Now Illegal for Some Voters with Disabilities to Cast a Ballot.” Vox. April 28, 2022.

<https://www.vox.com/23043567/voters-with-disabilities-voting-barriers-restrictive-laws>.

<sup>54</sup> Pulrang, Andrew. “Seven Ways New Voting Laws Can Affect People with Disabilities.” Forbes. July 25, 2021.

<https://www.forbes.com/sites/andrewpulrang/2021/07/25/7-ways-new-voting-laws-can-affect-people-with-disabilities/?sh=688316a56289>

<sup>55</sup> “Statement of Wade Henderson.” The Leadership Conference on Civil and Human Rights. Hearing on H.R. 51, The “Washington, D.C. Admission Act,” U.S. House of Representatives, Committee on Oversight & Reform, March 22, 2021,

<http://civilrightsdocs.info/pdf/testimony/Testimony-Henderson-HR51-HCOR-3.22.21.pdf>.

<sup>56</sup> “QuickFacts, District of Columbia, Population Estimates.” U.S. Census Bureau. July 1, 2021. <https://www.census.gov/quickfacts/DC>.

<sup>57</sup> Some states condition the restoration of voting rights to the payment of unpaid fines or fees, a type of modern-day poll tax. In addition, there are voting rights implications of naturalization bars for lawful permanent residents with criminal records, as well as implications for youth prosecuted in the adult criminal justice system. Several states have taken steps to ease voting restrictions for people with records, but an overwhelming number of people with felony records are barred from participating in local, state, and federal elections.



### *Protecting Democracy at the Federal Level*

For democracy to work for all of us, it must include all of us. The ability of all who are eligible to participate in our political process has been severely threatened by restrictive voting laws and practices that jeopardize the functioning and outcome of our elections. Congress attempted to address these grave threats to democracy with comprehensive voting legislation. In 2021, the U.S. House of Representatives passed the John R. Lewis Voting Rights Advancement Act of 2021 to update, restore, and strengthen essential provisions of the VRA. The House also passed the For the People Act of 2021, which expanded access to the ballot box by creating automatic voter registration, restoring the voting rights of formerly incarcerated people, modernizing the nation's voting systems, and adopting other democracy reform measures.

In early 2022, the Senate considered the Freedom to Vote: John R. Lewis Act, which would have restored and strengthened essential provisions of the VRA to eliminate barriers to political participation for communities of color, including preventing the adoption of discriminatory voting practices before they are implemented. Additionally, the bill would have set a basic federal foundation for voting access for all Americans. It would require states to modernize voter registration by instituting automatic and same-day registration; strengthen voting by mail, early voting, and ballot access; protect against discriminatory purges; restore voting rights to citizens with past convictions once their term of incarceration is completed; ban partisan gerrymandering; and prevent state election subversion. The bill also included the Native American Voting Rights Act, which protects voting rights for Indigenous communities.

Unfortunately, the Freedom to Vote: John R. Lewis Act failed to even receive an up-or-down vote in the Senate, leaving the state of federal voting rights legislation in the United States unchanged. Therefore, it is even more imperative that the Biden administration use its full authority to enforce federal voting rights laws and require federal agencies to do everything within their power to protect and promote the fundamental right to vote.

### *Recommendations*

- Congress should pass the Freedom to Vote: John R. Lewis Act to restore and strengthen the VRA, provide national standards and other baseline reforms to improve voting access for all eligible Americans, protect against discriminatory actions, and protect Native voting rights and the right to vote on Indian lands.
- Congress should pass the Washington, D.C. Admission Act to grant statehood to D.C. and to ensure that its more than 700,000 residents, a majority of whom are people of color, have voting representation in Congress.

- The Biden administration should fully enforce and strengthen the executive order on “Promoting Access to Voting”<sup>58</sup> by ensuring that federal agencies are promoting the right to vote, mitigating discrimination and other barriers to voting, and expanding access to voter registration and accurate election information by taking concrete steps to actively help eligible Americans register to vote.
- The Biden administration should sufficiently fund DOJ’s Civil Rights Division to ensure strong and continued enforcement of voting rights laws.
- DOJ should vigorously enforce the VRA to combat all forms of discrimination in voting at the state and local levels.
- DOJ should vigorously enforce the Americans with Disabilities Act and the Help America Vote Act to ensure voters with disabilities have accessible voter registration, absentee voting, and in-person voting and options to cast a private, independent ballot.
- DOJ should vigorously enforce the VRA on behalf of language minority voters to ensure their access to the political process and to eradicate discrimination against language minority voters. Specifically, this refers to enforcement of the minority language and right to assistance provisions in Sections 4(e), 203, and 208 of the VRA, including by proactively engaging with Section 203 jurisdictions once new determinations are made through letters and consultation, and enforcement actions when necessary.
- DOJ should vigorously enforce the National Voter Registration Act. This should include those provisions requiring state agencies to provide voter registration during transactions involving public assistance, services for people with disabilities, and drivers’ license constituents, and those providing safeguards against improper registration purges.
- The Biden administration should support, and Congress should pass, the Democracy Restoration Act to restore voting rights to all currently and formerly incarcerated citizens to ensure that no one ever loses the right to vote. Ensure currently incarcerated people — including people detained before trial — have access to absentee ballots or onsite polling stations so they can exercise their franchise. Provide individuals in prison with adequate and complete information regarding voting eligibility and registration while incarcerated and prior to release.
- States should prohibit prison-based gerrymandering by drawing voting maps using data that count incarcerated people at their home addresses, not where they are confined.

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<sup>58</sup> Executive Order No. 14019, Executive Order On Promoting Access to Voting, March 7, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/07/executive-order-on-promoting-access-to-voting/>.

### Conclusion

Despite progress made to advance civil and human rights in the United States since the ratification of the ICCPR in 1992, more must be done. If adopted, these recommendations would enhance the ability of the United States to comply with the ICCPR on issues related to the criminal-legal system, hate crimes, and voting rights.

We hope this statement will be useful to the international community in assessing our nation's compliance with the ICCPR and that it serves as a public education tool to aid in protecting and promoting civil and human rights in the United States.