

SHADOW REPORT OF THE
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION
CONCERNING THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF
ALL FORMS OF RACIAL DISCRIMINATION

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INTRODUCTION

The National Association for the Advancement of Colored People (NAACP) recognizes the significance of reporting to the Committee on the Elimination of Racial Discrimination (Committee) on the United States compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) on the issue of racial discrimination in the United States.

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Relevant CERD Articles

CERD sets forth comprehensive guidelines to promote equality and racial justice. The treaty provides that the state actor may take special measures for the advancement of minority groups, and that the state actor ensures that its policies avoid creating or perpetuating segregation. Specifically:

- Article 1 defines discrimination to include practices with discriminatory effects, even if not intentionally discriminatory and provides that special measures may be taken to secure advancement.
- Article 2 undertakes to eliminate discrimination, to review government policies to that end, and “to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”
- Article 2(1) emphasizes the need for public authorities and institutions to avoid engaging in any form of racial discrimination and for each State Party to review all government policies in order to amend or rescind any legislation not in accordance.
- Article 2(2) aims to “ensure the adequate development and protection of certain racial groups or individuals belonging to them...[to guarantee] them the full and equal enjoyment of human rights and fundamental freedoms.”
- Article 5 (a) addresses the right to equal treatment before the tribunals and all other organs administering justice.
- Article 5 (b) addresses the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.
- Article 5(c) requires state parties “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... political rights, in particular the right to participate in elections- to vote and to stand for- election on the basis of universal and equal suffrage.”

- Article 5 (d)(iii), requires state actors to undertake the elimination of housing discrimination, including unintentional practices with discriminatory effects, and to eradicate segregation
- Article 5 (e)(i) highlights workers' rights in the areas of free choice to employment, just and favorable conditions of work, protection against unemployment, equal pay for equal work, and just and favorable remuneration.
- Article 5 (e)(ii) addresses the right to form and join trade unions.
- Article 5(e)(v) affirms the right to education is guaranteed to all “without distinction as to race, colour, or national or ethnic origin.”
- Article 6 requires State Parties to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other state institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

The Organization

NAACP –National Association for the Advancement of Colored People

- Founded in 1909, the National Association for the Advancement of Colored People (NAACP) is the nation's oldest, largest, and most widely-recognized nonpartisan, grassroots-based civil rights organization and active advocate for civil rights in the United States and abroad.
- The mission of the NAACP is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. The NAACP works towards a society in which all individuals have equal rights without discrimination based on race. The organization works to advance the political, educational, social, and economic equality of all citizens, wants to achieve equality of rights and eliminate race prejudice among the citizens of the United States. The NAACP also works to remove all barriers of racial discrimination through democratic processes, seeks enactment and enforcement of federal, state, and local laws securing civil rights for all, and to inform the public of the adverse effects of racial discrimination and to seek its elimination. The association educates persons as to their constitutional rights on how to take all lawful action to secure the exercise thereof, and to take any other lawful action in furtherance of these objectives, consistent with the NAACP's Articles of Incorporation and this Constitution.
- American civil rights activist Dr. William Edward Burghardt DuBois (Dr.WEB DuBois) was among the founders of the NAACP and from 1910 to 1934 served as director of publicity and research.
- In 1911, the NAACP's international efforts began when it sent four delegates, including Dr. DuBois, to the first Universal Races Congress in London. The Conference aimed at developing closer understanding and cooperation between the races. Seven years later Dr. DuBois went to France as representative for the NAACP and CRISIS (the official magazine of the NAACP) for The League of Nations (predecessor to the United Nations) Peace Conference following the end of World War. He went to collect material for an NAACP history of the American Negro in the war and to summon a Pan African Congress in behalf of the NAACP. A resolution was adopted that it was the right of people of African descent to

have a voice in their own government and whenever there was an abuse in this regard, it is the duty of the United Nations to publicize these conditions.

- In 1935, NAACP representative Walter White spent 3 months touring European and Mediterranean Theatres of War to observe the US War operations and treatment accorded Black troops. He submitted a 14-point memorandum for improving opportunities for Black soldiers.
- Also In 1935, the NAACP petitioned the League of Nations to protest the proposed British –Franco Agreements which would have settled the Italo- Ethiopian War by giving half of the African Nation to Italy, In 1945, Walter White and Dr. DuBois proposed to the United Nations Conference on International organizations, that the colonial system be abolished and equality of races recognized, and Dr. DuBois attended the Pan- African Congress in London, which met to consider the problem of African people around the world. He organized the preparation of a 155 page petition, “An Appeal to the World,” documenting the history of racism in America, which was presented to the United Nations in 1947.
- The NAACP worked alongside the UN to denounce segregation and colonialism around the world, and by 1958, the NAACP became affiliated with the United Nations as a non-governmental organization. The membership was renewed in the 1990’s.
- A major effort by the NAACP to develop a cohesive economic strategy for Americans in the United States and abroad was the creation of a NAACP Economic Policy Advocacy Council.
- From massive anti-apartheid rallies in the city of New York to a Cross-Continent March for Human Dignity in South Africa and at home, the NAACP continued to support the work of the United Nations and their global principles.
- The NAACP actively engages in advocacy and education before the United States Congress, the Administration, the United Nations and other international bodies, and foreign nations on a plethora of issues. These actions include working with members of the Congress and the Administration and their staff members in the crafting of policy and legislation; testifying and working with the United Nations to develop policies, protocols, covenants, and treaties; drafting and delivering testimony before the United State Congress; and creating and distributing Action Alerts, Issue Briefs and Issue Updates aimed at informing, educating, and

engaging NAACP Members and the American public about different issues and how they can be more actively involved in making improvements.

- The NAACP has been active in the International Covenant on Civil and Political Rights (ICCPR) process. In 2000 it participated in the U.S. Preparation Conference in Washington D.C, the Western Hemispheric Conference on the World Conference in Racism, which took place in Santiago de Chile, and was involved in the World Conference against Racism in South Africa in 2001.
- When the United Nations Human Rights Committee raised issues of felony disenfranchisement, stand your ground laws, racial profiling, and the school to prison pipeline during a two-day hearing in Geneva, a delegation from the NAACP was present for ICCPR review. The NAACP delegation included Association members, members of the NAACP Board of Directors, and directly affected parties belonging to the Kemba Smith Foundation, Florida Rights Restoration Coalition, and PICO. The NAACP released a statement in response to the ICCPR treaty compliance review.
- The NAACP's most recent projects include getting the United States Congress to support the Africa Growth and Opportunity Acceleration Act of 2004. This legislation renewed provisions that give trade advantages to imports from some African countries as well as technical assistance to help those nations improve their economies through September 2015. Renewing these provisions was crucial in helping African industry gain a fair place in the global marketplace prior to worldwide quotas being removed in January 2005.
- The NAACP has also worked to help pass legislation to increase funding for the Global AIDS fund. These efforts were successful as the bill was signed into law on May 27, 2003.
- The association has also consistently supported legislation to normalize U.S. relations with Cuba.
- Among other projects, the NAACP has recognized the conflict in Darfur, Sudan as genocide for over a decade; since 2003 we have worked with our grassroots network on United States policies to assist in bringing an end to these atrocities.
- In 2006, the NAACP joined forces with United States and international coalition partners to urge that the United States Congress and President hold a joint session of Congress to hear from newly elected Liberian President Ellen Johnson Sirleaf regarding \$100 million in emergency supplemental funds for Liberia. The NAACP developed research studies and

drafted talking points regarding the needs in Liberia. The result was a \$64 million United States appropriation to address the needs of Liberia.

- In 2006, the NAACP collaborated with actor Isaiah Washington to address health, education and other challenges in Sierra Leone.
- Further, the NAACP has recognized the needs of the people in the Democratic Republic of the Congo. To this end, the NAACP participated in the creation of Congo Global Action, a collection of humanitarian, human rights, civil rights, environmental, faith-based and Congolese organizations.
- The association has worked to address human, voting, social, and economic rights for peoples of the African Diaspora.
- Beginning in early 2006, the NAACP began working with Venezuelan officials, resulting in an invitation to the NAACP to send observers for Venezuela's 2006 Presidential Elections which took place on December 3, 2006. The NAACP accepted the invitation and sent a delegation from November 28 - December 6, 2006 to serve in this capacity. Following the election, the NAACP made its recommendations and in February of 2007 released a report entitled, "An Observational Briefing of the 2006 Venezuelan Presidential Election". This opportunity also helped to build and strengthen the relationship between the NAACP, the government of Venezuela, and the Afro-Venezuelan community.
- In 2005-06, the international media reported ongoing civil unrest throughout France's minority suburban neighborhoods. Impressed with the relative success of the American civil rights movement and the NAACP's contribution to that effort, in 2005 Conseil Représentatif des Associationa Noires (CRAN) inquired about NAACP strategies in building a successful civil rights organization and recommended ways to help advance full citizenship rights for all living in France, regardless of race, ethnicity or religion. To this end, the NAACP met with CRAN in Paris on April 28-29, 2006 to discuss the NAACP's history and its Brown vs. Board strategy in dismantling America's separate but equal doctrine. The speeches were well received and CRAN requested that the NAACP to return in 2007 to provide further consultation. Such a meeting did take place on April 2-7, 2007 in which NAACP representatives participated.
- In response to the January, 2010 catastrophic earthquake which struck the island nation of Haiti, the NAACP established a fund which collected cash donations to go toward relief

efforts. The fund eventually grew to just under \$200,000, which was divided among four groups: The Haitian American Grassroots Coalition, the Institute of te Black World, Habitat for Humanity, and transAfrica.

- On April 4th 2010, an NAACP delegation traveled to Senegal, Africa to participate in the commemoration of the 50th anniversary of the Senegalese independence from France in Dakar and the launching of Statue of the African Renaissance

EXECUTIVE SUMMARY

Criminal Justice

- African Americans are disproportionately represented at all stages of the criminal justice system. Over 60% of the men and women who are incarcerated in United States' prisons and jails today are racial or ethnic minorities.
- For example, while white students were slightly more likely to have abused an illegal substance within the past month than black students, from 1980-2010, black youth were arrested for drug crimes at rates more than double those of white youth.
- The public defenders systems across the country are overburdened, and dedicated public defenders do not have enough time to conduct thorough investigations. Their clients are generally low-income earners and people of color. In the U.S. racial minorities are disproportionately poor, many indigent. Indigent defendants in state courts are generally represented by undertrained, under resourced lawyers who are ill-prepared to conduct the defense of their clients' cases.
- The "War on Drugs" has exacerbated racial inequalities in the criminal justice system through discriminatory law enforcement practices and disparities in sentencing laws, including the application of harsh mandatory minimum sentences. While the federal Fair Sentencing Act (FSA) of 2010 reduced the crack/powder cocaine sentencing quantity disparity triggering mandatory minimum penalties from 100:1 to 18:1, there is still disparate treatment in the sentencing of individuals convicted of offenses involving these two pharmacologically identical drugs.¹ Despite the fact that African Americans and white Americans use drugs at roughly the same rate, African Americans constitute 80% of those sentenced under federal crack cocaine laws. This disparity in sentencing laws leads to harsher sentences for African American defendants for committing similar offenses to those of their white or Latino counterparts convicted of powder cocaine offenses.

¹ From The Sentencing Project MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 51 (The New Press 2012); KARA GOTSCH, *THE SENTENCING PROJECT, BREAKTHROUGH IN U.S. DRUG SENTENCING REFORM: THE FAIR SENTENCING ACT AND THE UNFINISHED REFORM AGENDA* 9 (Washington Office on Latin America, 2011), *available at* http://sentencingproject.org/doc/dp_WOLA_Article.pdf.

Prisons

- The U.S. has 5% of the world's population and 25% of the world's prisoners.

Combining the number of people in prison and jail with those under parole or probation supervision, 1 in every 31 American adults today is under some form of correctional control. As staggering as this figure is, the racial disparity is even more striking, and alarming. Labels, such as felon, have prevented African Americans from voting and accessing public housing, student loans and other public assistance as well as cost them various employment opportunities.

- Roughly half of the 4,500 inmates who live in extreme isolation every day do so in a shared cell, some of which measure 105 square feet. A disproportionate number of African Americans are in extreme isolation cells. Extreme isolation causes emotional and psychological harm inducing apathy, lethargy, anxiety, depression, despair, rage and uncontrollable impulses, even among the healthy and mentally stable. Sexual assault in prisons is underreported. Inmates have drastically higher rates of chronic, acute, and behavioral health problems than the general population.

- Overcrowding in jails and prisons leads to overstrained health services and increases the risk of the spread of infectious disease. Furthermore, due in part to overcrowding in our nation's prisons and jails basic mental and physical needs of prisoners are not being met. As a result, people leaving prison experience a three-to-eightfold increased risk of drug-related death during the first two weeks following their release.

- The rape of prisoners is a form of torture and classified as cruel and unusual punishment by several international bodies. Nationally, the estimates of actual sexual assaults in detention facilities are fifteen times higher than the number of official reports filed for the same time period.

- Ex-offenders usually return to the communities where they initiated their criminal conduct facing poverty and homelessness. Drug offenders are ineligible for federal financial aid for some time and subsequent offenses can lead to a lifetime ban. Public housing agencies may access criminal records of housing applicants and deny housing grants to drug offenders, and if their family lives in publicly subsidized housing it may risk eviction.

Police Brutality

- The U.S. government has failed to fulfill its obligations under article 5(b) of the Convention to ensure people of color are “secure from violence or bodily harm” inflicted by government officials.
- Police misconduct, the lack of law enforcement accountability to the communities they serve, and the fact that there are no national uniform standards for law enforcement officers or agencies, are problems that affect every sector of our country and imperils the continued security of our nation.
- If you are a person of color living in the United States, there are law enforcement officials who look at you differently, and treat you with a greater level of suspicion. Racial profiling incidents account for 43% of all the shootings.
- Statistics compiled following the DOJ/FBI Uniform Crime Reporting (UCR) methodology, recording only the most serious allegations (not conviction) of police brutality show that nearly \$200 million is spent in related civil litigation expense, excluding legal fees and court costs. A common claim is that those killed had a weapon, but 46% of those killed by law enforcement officials had no weapon on them when they were killed, and 18% were likely armed. The remaining 36% were alleged to have weapons (a cane or toy gun qualified) and these allegations were disputed by witnesses or later investigations.

Stand Your Ground

- Since 2005, twenty-one additional states have adopted “shoot first” statutes that generally permit the use of deadly force in public places with no duty to attempt to retreat. Four other states have adopted similar laws, but they apply only when the shooter is in his or her car. Seven additional states permit the use of deadly force in self-defense in public with no duty to retreat through a combination of statutes, judicial decisions, and/or jury instructions. These states are distinct from true “Florida-style” laws in several respects, however. For one, many of the shoot first protections established in these states may only be invoked during criminal trials, as opposed to the Florida law, which enables a shooter to escape liability in a pretrial hearing. Additionally, these states do not have some of the especially onerous elements found in the Florida law, such as the provision preventing law enforcement from arresting a shooter without probable cause that the force used was unlawful. Lastly, Utah has

had a “Stand Your Ground” type law on the books since 1994, but it strengthened and clarified its law to be more in line with the Florida law post-2005.

- Stand Your Ground (SYG) means no duty to retreat from the situation before resorting to deadly force, and it is not limited to your property (home, office, etc.) Florida was the first state to pass a “Stand Your Ground” law in 2005, and it was the site of the controversial killing of 17 year-old Trayvon Martin in late February 2012. Though Martin was unarmed, Zimmerman, his attacker, discharged a gun he had concealed in his waist, killing the teenager. It was not until nearly six weeks later, amidst public outcry around the failure to charge Zimmerman for murder, that Zimmerman was ultimately taken into custody and charged by a special prosecutor named by the Governor of Florida.

- These cases are too common. On November 23, 2012, Jordan Davis, another unarmed black male teenager was shot and killed by a 45-year old white male named Michael Dunn outside of a gas station in Jacksonville, Florida. After an argument over loud music, Dunn pulled out a gun and shot at the SUV at least eight times, fatally wounding 17-year old Davis. Thus, Dunn initiated a deadly confrontation with an unarmed black victim and had the opportunity to retreat was given blanket immunity. He was convicted of attempted murder instead of manslaughter.

- SYG laws are based on fear, which is often rooted in racism and explains the different outcomes and applications of the law. In 2010, Marissa Alexander, an African American woman, was sentenced to 20 years in prison after she fired a bullet at a wall to scare off her abusive husband. She claimed self-defense, tried to invoke Florida's "stand your ground" law and rejected plea deals that could have gotten her a much shorter sentence. A jury found her guilty as charged: aggravated assault with a deadly weapon. Because she fired a gun while committing a felony, Florida's mandatory-minimum gun law dictated the 20-year sentence. The local NAACP chapter and the district's African-American congresswoman say blacks more often are incarcerated for long periods because of overzealous prosecutors and judges bound by the wrong-headed statute.

Juvenile Justice

- African Americans make up two-fifths of the confined youth today. Students of color face harsher punishments in school than their white peers, leading to a higher number of

youth of color incarcerated. Black and Hispanic students represent more than 70% of those involved in school-related arrests or referrals to law enforcement.²

- Nationwide, African-Americans represent 16% of the overall juvenile population, yet they also represent 26% of juvenile arrests, 44% of youth who are detained, 46% of the youth who are judicially waived to criminal court, and 58% of the youth admitted to state prisons. African American youth are 1.4 times more likely to be detained than their white peers. One of every three young African American males is in prison, probation, or parole and African American juveniles are more than twice as likely to be transferred to adult court.
- White youth are twice as likely to be defended by private attorneys as African American youth, and young offenders who are represented by private attorneys are less likely to be convicted and less likely to be transferred to adult court. Of young offenders serving time in adult state prisons, 60% are African American, but African Americans are 15% of the youth population.

Hate Groups

- The United States is home to over 939 active hate groups. Their activities include criminal acts, marches, rallies, meetings, etc. This number has been in decline, but “race” continues to be the category where hate crimes are reported the most, and 68% of race hate crimes are committed against African Americans. In the Uniform Crime Reporting Program, the victim of a hate crime may be an individual, a business, an institution, or society as a whole. In 2012, the nation’s law enforcement agencies reported that there were 7,164 victims of hate crimes. Of these victims, 13 were victimized in 6 separate multiple-bias incidents.
- From lynching, to burning crosses and churches, to murdering a man by chaining him to a truck and dragging him down a road for three miles, anti-black violence aims to kill individuals and terrorize an entire group of people.
- While White Americans are the racial majority, with a 72% share of the U.S. population, according to the 2010 U.S. Census, and African Americans are the largest racial minority, amounting to nearly 13% of the population, among the single-bias hate crime incidents in 2012, there were 3,467 victims of racially motivated hate crime, where 66.2 % were victims

² American Progress <http://americanprogress.org/issues/race/news/2012/03/13/11351/the-top-10-most-startling-facts-about-people-of-color-and-criminal-justice-in-the-united-states/>

of an offender's anti-black bias, and 48.5% of the victims were targeted because of the offender's bias against a race. In 2012, race was reported for 5,331 known hate crime offenders. Of these offenders 54.6% were white, and 23.3% were black.

- The United States has experienced a resurgence of the antigovernment "Patriot" movement, which in the 1990s led to a string of domestic terrorist plots, including the Oklahoma City bombing. The number of Patriot groups, including armed militias, skyrocketed following the election of President Obama in 2008 – rising 813%, from 149 groups in 2008 to an all-time high of 1,360 in 2012. The number fell to 1,096 in 2013.
- This growth in extremism has been aided by mainstream media figures and politicians who have used their platforms to legitimize false propaganda about immigrants and other minorities and spread the kind of paranoid conspiracy theories on which militia groups thrive.

Death Penalty

- More than half of the 3095 people on death row nationwide are people of color, and a defendant is more likely to get the death penalty if the victim is white. These numbers demonstrate that the application of the death penalty in the U.S. is highly influenced by racial bias. In 2013, 82% of the studies show that race influences the likelihood of being charged with capital murder or receiving the death penalty. Those who murdered whites were found more likely to be sentenced to death than those who murdered blacks.

Immigration Rights-Haitian Asylum Seekers

- The country of Haiti is consumed by political violence and turmoil. The United States is obliged, under international law, not to return people to a country where their lives or freedom would be threatened on account of their political opinions, but the U.S. detention and interdiction policies toward Haitian refugees are harsh and increasingly discriminatory.³ The 2010 deadly earthquake in Haiti highlights that environmental factors must gain a foothold in immigration policy. After a natural disaster of this magnitude documentation required by the authorities is not always available. Haitians do not always have the means to pay for the Temporary Protection Status (TPS) applications and often face cruel treatment upon

³ Human Rights First <http://www.humanrightsfirst.org/our-work/refugee-protection/haitian-refugees-and-the-us-asylum-system>

repatriation. Some Haitians in the US are reluctant to apply for TPS because they fear prison or deportation. The US suspended the deportation of Haitians after the 2010 earthquake but resumed it in 2011.

- The TPS for eligible nationals of Haiti will be extended for an additional 18 months, effective July 23, 2014 through Jan. 22, 2016. The 18-month extension allows TPS re-registrants to apply for a new Employment Authorization Document (EAD).

The Wealth Gap

- The median wealth of white households is 20 times that of African American households and 18 times that of Hispanic households. These lopsided wealth ratios are the largest since the government began publishing such data a quarter century ago and roughly twice the size of the ratios that had prevailed between these three groups for the two decades prior to the Great Recession that ended in 2009.
- African Americans have also been the most unemployed racial group in the U.S. over the last half century, with an unemployment rate almost consistently double the national average.
- African American poverty fell quickly between 1959 and 1969, from 55.1 percent to 32.2 percent. But after that, the drop was slower and more uneven. In 2011, 27.6 percent of African American households were in poverty — nearly triple the poverty rate for whites.
- At a per-capita income of \$18,054 in 2008, African-American earnings were just 57.9% that of whites' \$28,502.
- In 2013, African American women and Latinas in the United States are paid \$18,817 and \$23,298 less than non-Hispanic white men yearly, respectively. That's 64 cents and 55 cents for every dollar a man earns.

Residential Segregation and Housing Discrimination

- As communities of color continue to disproportionately endure harm from the foreclosure crisis and minorities still experience discrimination in the housing market, it is important that the Department of Justice vigorously enforce the Fair Housing Act and Equal

⁴ Paul Taylor et al., *Twenty to One: Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics* (Washington, DC: Pew Research Center Social and Demographic Trends, 2011).

Credit Opportunity Act against servicers, lenders, brokerages, and other companies engaging in discriminatory practices, including when it comes to the maintenance, marketing, and auctioning of Real Estate Owned (REO) properties.

- A proposed regulation intended to provide a clear, data-driven system for fair housing planning and compliance among grantees has languished since regulatory comments closed in September 2013, without a clear commitment to a date for finalization.
- The Section 8 Housing Choice Voucher Program (HCV) is the United States' largest low income-housing program, serving over 2 million families. Unfortunately, a number of program's design features have the effect of steering low-income families into lower opportunity areas.
- The Low Income Housing Tax Credit program is the largest federal low-income housing development program, with 1,539,619 units placed in service between 1995 and 2009. Yet this program still lacks meaningful civil rights guidance.
- GSEs (Government Sponsored Enterprises) have unnecessarily relied upon credit profile factors that bear modest relationships to credit risk but have a disparate impact on borrowers of color.
- Real estate agents and rental housing providers recommend and show fewer available homes and apartments to minority families.

Education

- American students continue to attend schools that are deeply segregated by both race and class, and schools serving low-income families and racial and ethnic minorities consistently lack the funding, resources, and faculty experience and expertise necessary to improve the education outcomes of students of color. While the federal government has made attempts to address the academic outcomes associated with vast racial and socioeconomic disparities, it has insufficiently grappled with the underlying causes of those disparities.
- African Americans are more likely to attend high poverty schools and schools that do not offer Advanced Placement courses. The rate of African Americans dropping out of school exceeds the rate at which they are graduating. The immediate college enrollment rate for African Americans was 56% compared to 70% for white high school graduates.
- Despite the fact that a secondary degree is increasingly important in terms of making a

living, the cost of that secondary degree is also skyrocketing. Congress is not supporting Pell Grants, which are grants that do not need to be repaid. More than 60% of African American undergraduates rely on Pell Grants to pay for their education.

- High-minority and high-poverty schools often also have the added burden of lower levels of funding, lower teacher quality, and higher dropout rates. The result is that students whose families already face hardship are placed at an even greater disadvantage. In addition—regardless of whether funding has been equalized—high-poverty and high-minority schools often fail to provide opportunities for many students to achieve at the highest level, including courses required by many universities. Even comparing similar courses, majority-minority schools tend to teach a less demanding curriculum than wealthier, non-minority schools. On average, these schools provide lower-quality teachers with a greater rate of turnover.
- School Resource Officers have become more common. Studies continue to produce mixed results when testing whether discrimination plays a factor in arrest decision-making, but one recent meta-analysis of such studies strongly suggests that race is an important factor, and race is a central feature in the criminalization of school discipline

Schools' Use of Force

- Over the past two decades, school resource officers (SROs) have become common. Despite their prominence in schools, significant investigation into their arrest-making behavior has not occurred. Studies continue to produce mixed results when testing whether discrimination plays a factor in arrest decision-making, but one recent meta-analysis of such studies strongly suggests that race is an important factor. Race is a central feature in the criminalization of school discipline.

Health Disparities

- Despite the fact that the 2010 Affordable Care Act takes a number of crucial steps towards ending racial and ethnic minority disparities in health care, and a number of initiatives by the Department of Health and Human Services, health care disparities continue to exist in both service and outcome.
- Furthermore, African Americans are contracting HIV / AIDs in disproportionately high

and record numbers.

- Lastly, childhood obesity occurs among African American children at disproportionate rates: African American children and adolescents are more likely to be overweight and obese than their Caucasian peers.
- The higher prevalence of overweight and obesity among African American children places them at a greater risk of developing chronic diseases including Type 2 diabetes, high blood pressure and other cardiovascular disease risk factors, asthma, sleep apnea, and social discrimination.

Voting Rights

- In 2013, the Supreme Court struck down key provisions of the 1965 Voting Rights Act. States with a history of racial discrimination can now implement Voter ID laws, redraw district lines, or change the time, place, or manner of an election without having to first demonstrate to the federal government that it will not have a racially discriminatory impact. Thus states can once again dilute the voices of large populations of communities of color without federal oversight.
- There is clear evidence that state felony disenfranchisement voter laws have a disparate impact on African Americans and other minority groups. At present, 7.7% of the adult African-American population, or one out of every thirteen, is disenfranchised. This rate is four times greater than the non- African- American population rate of 1.8%. In three states, at least one out of every five African- American adults is disenfranchised: Florida (23%), Kentucky (22%), and Virginia (20%). Nationwide, 2.2 million African-Americans are disenfranchised on the basis of involvement with the criminal justice system, more than 40% have completed the terms of their sentences.

ISSUES

Criminal Justice

Under Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (“Convention”) the state party must pursue by all appropriate means and without delay a policy of eliminating racial discrimination. The government must actively review governmental, national, and local policies with a racially discriminatory effect, and requires the state party to prohibit and to eliminate racial discrimination in all its forms to ensure the right to equal treatment before justice system.

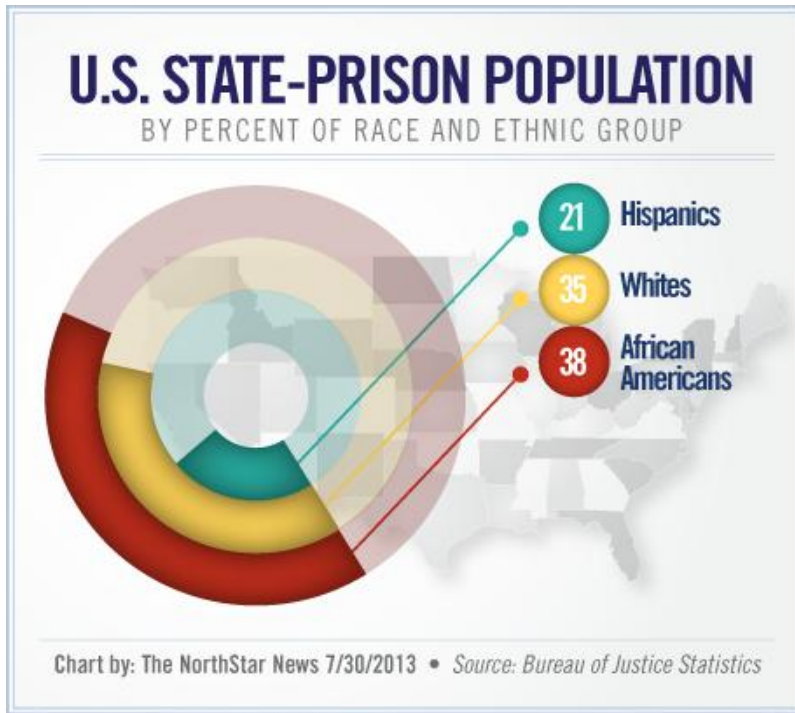
According to the U.S. Bureau of Justice Statistics (BJS), 2,266,800 adults were incarcerated in U.S. federal and state prisons, and county jails at year-end 2011, 4,814,200 adults at year-end 2011 were on probation or on parole, and in total, 6,977,700 adults were under correctional supervision (probation, parole, jail, or prison). A 2014 report published by the National Research Council asserts that the prison population of the United States "is by far the largest in the world. Just under one-quarter of the world's prisoners are held in American prisons." In addition, there were 70,792 juveniles in juvenile detention in 2010. According to the US Bureau of Justice Statistics (BJS) non-Hispanic African Americans accounted for 39.4% of the total prison and jail population in 2009 (841,000 African American males and 64,800 black females out of a total of 2,096,300 males and 201,200 females). At the same time, according to the 2010 census of the US Census Bureau African Americans (including Hispanic blacks) comprised 13.6% of the US population.⁵

Combining the number of people in prison and jail with those under parole or probation supervision, 1 in every 31 adults is under some form of correctional control.⁶ The rate of incarceration for countries comparable to the United States is around 100 prisoners per 100,000 residents, while America it is closer to 500 prisoners per 100,000 residents.⁷ African Americans are disproportionately represented at all stages of the criminal justice system.

⁵ Prison Inmates for 2010 – Statistical Tables – US Bureau of Justice Statistics, (2010). Black population. Annual Social and Economic (ASEC) Supplement to the Current Population Survey (CPS) US Census Bureau

⁶ NAACP

⁷ Bureau of Justice Statistics (BJS) cited by the Population Reference Bureau
<http://www.prb.org/Publications/Articles/2012/us-incarceration.aspx>



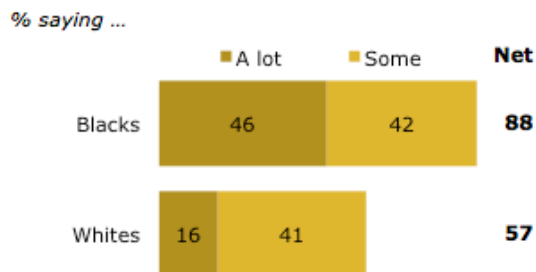
Incarceration of African Americans harms communities by stigmatizing and removing substantial numbers of men and women. In 2011, 1 in 15 African-American children have a parent in prison, compared to 1 in 111 white children. Labels, such as felon, have prevented African Americans from voting and accessing public housing, student loans and other public assistance⁸ as well as securing employment. African-American children are more likely than white or Hispanic children to have a parent who is in prison, and African American children are more likely to be in foster care and remain in foster care longer than white or Hispanic children.⁹ We ask the Committee to consider these areas of concern in American criminal court system.

⁸ "Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use" Drug Policy Alliance (New York, NY: March 2011), p. 9.

<http://www.drugpolicy.org/sites/default/files/Drug%20Courts%20Are%20Not%20...>

⁹ Parents in Prison, supra note 67, at 2 (breaking down the percentages of how likely children of different races have parents in jail).

How Much Discrimination Is There Against African Americans?



PEW RESEARCH CENTER. May 1-5, 2013. Blacks and whites include only those who are not Hispanic.

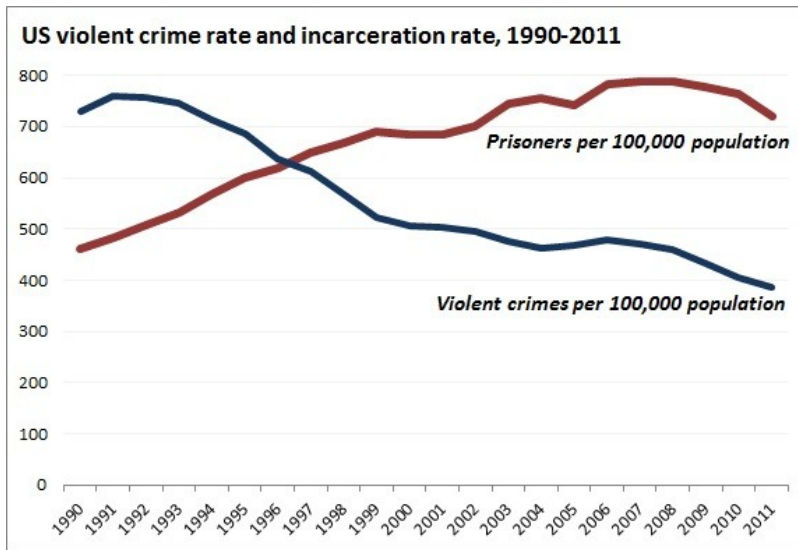
According to data gathered by the Sentencing Project after studying other areas of the law findings indicate that higher crime rates do not fully account for the racial disparity in arrests. Implicit biases and stereotypes play an important role and are activated when individuals (in this case police officers) must make fast decisions with imperfect information. Research indicates that the majority of Americans of all races associate African Americans with adjectives such as “dangerous,” “aggressive,” “violent,” and “criminal.”¹⁰ A study published by the National Institute on Drug Abuse found that white students were slightly more likely to have abused an illegal substance within the past month than black students, but from 1980-2010, black youth were arrested for drug crimes at rates more than double those of white youth.¹¹ In addition, the Bureau of Justice Statistics found that while white, black, and Hispanic drivers were stopped at similar rates nationwide, black drivers were three times as likely to be searched during a stop as white drivers¹². Another example is the New York Police Department’s (NYPD) “stop and frisk” method. While African Americans constitute 25% of New York City’s population, between 2010 and 2012, 52% of those stopped by the NYPD were African Americans, and 9% were white.¹³

¹⁰ See, e.g., Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J.

¹¹ Office of Juvenile Justice and Delinquency Prevention, *Law Enforcement and Juvenile Crime* http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05274 (Dec. 2012).

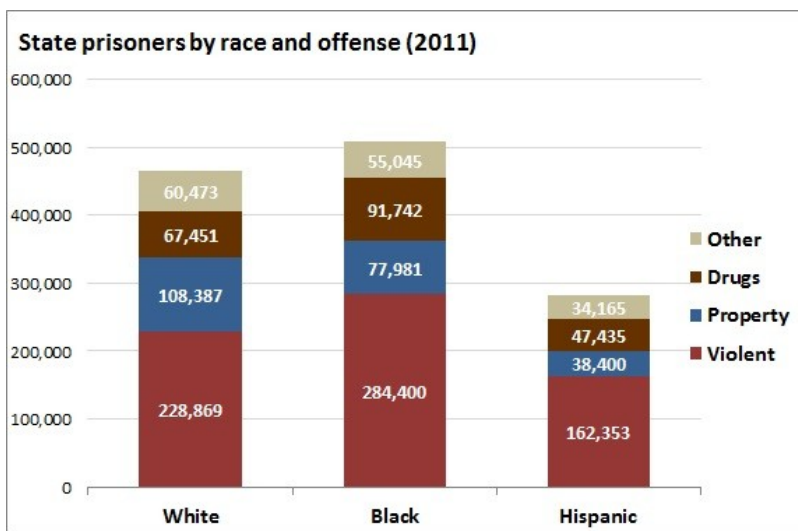
¹² Christine Eith & Matthew R. Durose, Bureau of Justice Statistics, *Contacts Between Police and Public*, 2008, 1 (Oct. 2011).

¹³ Second Supplemental Report of Jeffrey Fagan, Ph.D. at 11 tbl.3, *Floyd v. City of New York*, 2013 U.S. Dist. LEXIS 68790 (S.D.N.Y. 2013) (08 Civ. 01034 (SAS)) (hereinafter Fagan).



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The Impact of the War on Drugs: While African-Americans are 14% of monthly drug users and whites 69.2%, 37% of those arrested for a drug offense are African Americans. Black men enter state prisons on drug charges at ten times the rate of white men. In the case of crack-cocaine use, despite the fact that two-thirds of the regular crack users are white or Latino, 82% of defendants sentenced in federal court for crack offenses are African Americans.¹⁵



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¹⁴ Bureau of Justice Statistics <http://www.bjs.gov/index.cfm?ty=pbtp&tid=11&iid=1>

¹⁵ The Sentencing Project, *A 25 Years Quagmire: The War on Drugs and Its Impact on American Society 19-20* (2007).

¹⁶ Bureau of Justice Statistics <http://www.bjs.gov/index.cfm?ty=pbtp&tid=11&iid=1>

Defendant: The Sixth and Fourteen Amendments of the Constitution of the United States guarantee effective representation of those accused of certain crimes required by both federal and state constitutions.¹⁷ While 69% of white state prison inmates reported they had lawyers appointed by the court, 77% of African Americans had publicly financed attorneys. In federal prison black inmates were more likely than whites and Hispanics to have had public counsel, with 65% for African Americans, 57% for whites and 56% for Hispanics.¹⁸ The public defense systems across the country are overburdened, and dedicated public defenders do not have enough time to conduct thorough investigations. Their clients are generally low-income earners and people of color. In the U.S. racial minorities are disproportionately poor, many indigent. Indigent defendants in state courts are generally represented by “undertrained, under resourced lawyers who are under prepared to conduct the defense of their clients’ cases”.¹⁹ According to the report published by the Justice Policy Institute, 73% of county-based public defender offices lacked the requisite number of attorneys and 23% of these offices had less than half of the necessary attorneys to meet caseload standards.²⁰ For these reasons, of great importance is the Justice Integrity Act, which would address racial and ethnic disparities in the federal justice system by mandating the creation of 10 pilot programs to evaluate racial and ethnic fairness in the practices of U.S. Attorney’s Offices.

Prosecutor: Prosecutorial discretion may result in disparate treatment of minorities. For example, the State of Georgia has a “two strikes, you’re out” law, under which a life sentence may be imposed for a second drug offense, and the State’s district attorneys have discretion to seek this penalty. As of 1995, life imprisonment under the “two strikes” law had been imposed on 16% of eligible black defendants and 1% percent of eligible white defendants. In Georgia, 98.4% of those serving life sentences under the “two strikes, you’re out” law are African American. Regarding the Federal system, a United States Sentencing Commission report found that, “for comparable behavior, prosecutors offered white defendants plea bargains that permitted the imposition of sentences below what would otherwise be the

¹⁷ National Center for State Courts (NCSC) <http://www.ncsc.org/topics/access-and-fairness/indigent-defense/resource-guide.aspx>

¹⁸ Bureau of Justice Statistics <http://www.bjs.gov/index.cfm?ty=tp&tid=28>

¹⁹ Rodney Uphoff. Broke and Broken: Can We Fix Our State Indigent Defense System?. (Summer 2010). Missouri Law Review 75, no. 3.

²⁰ Justice Policy Institute, Overloaded Public Defense Systems Result in More Prison Time, Less Justice <http://www.justicepolicy.org/news/2757>

statutory minimum more often than they offered such deals to blacks or Hispanic defendants”²¹. Prosecutorial misconduct and racial bias adds to the problem. For example, Washington courts have seldom granted new trials when prosecutors have committed this type of prosecutorial misconduct arguing that this misconduct is generally harmless.²²

Prisons

Abuse: Roughly half of the 4,500 inmates who live in extreme isolation every day do so in a shared cell, some of which measure 105 square feet. Extreme isolation is the absolute deprivation of meaningful human interaction and mental stimulation and results in forced idleness and the complete cessation of education and rehabilitation. New York spends hundreds of millions of dollars on these cells. The state has nearly 5,000 isolation beds located in 39 prisons including two dedicated extreme isolation prisons. These cost about \$76 million a year to operate. From 2007 to 2011, New York issued more than 68,100 sentences to extreme isolation for violations of prison rules. The average sentence was five months, although many prisoners are held in extreme isolation for years. “Extreme isolation causes emotional and psychological harm, inducing apathy, lethargy, anxiety, depression, despair, rage and uncontrollable impulses, even among the healthy and mentally stable.” The racial bias is evident because of a disproportionate number of African Americans in extreme isolation.²³

Sexual Assault: The rape of prisoners is a form of torture and classified as cruel and unusual punishment by several international bodies. Sexual assault is underreported, and immunity is a problem. Nationally, the estimates of actual sexual assaults in detention facilities are fifteen times higher than the number of official reports filed for the same time

²¹ The Leadership Conference, Chapter 2: Race and Prosecutorial Discretion, Justice on Trial <http://www.civilrights.org/publications/justice-on-trial/prosecutorial.html>

²² See, e.g., *State v. Galvan*, No. 14920-0-III, 1997 WL 437676, at *3–4 (Wash. Ct. App. Aug. 5, 1997) (stating that it was not reversible error when the prosecutor pursued evidence regarding a “Mexican Ounce” and a witness for the State commented that Hispanics conducted most of the drug trade in the area). Errors that did not seem to affect the trial court’s verdict are considered harmless and disregarded”. 5 WASH. PRACTICE, EVIDENCE LAW & PRACTICE § 103.25 (5th ed. 2011). Courts have not defined harmless error, so courts have generally looked to previous court decisions to determine whether an error was harmless. *Id.*

²³ A Report by The New York Civil Liberties Union (NYCLU) Boxed In, The True Cost of Extreme Isolation in New York’s Prisons http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf

period.²⁴ In many states guards have access to the inmates' personal history files, any record of complaints against themselves or other prison authorities. “Sometimes guards threaten to take away the prisoners' children and visitation rights as a means of silencing the women” or violently retaliate against female inmates who complain about sexual assault and harassment. If a prison official is found guilty, he is often simply transferred to another facility. African American women are 8 times more likely to receive jail sentences than European American women. For example in California, the state with the largest population of women in prison, 46% are African American. Women, but also men, are violently assaulted or forced into sex for favors or to avoid punishment.²⁵

Health: Inmates have drastically higher rates of chronic, acute, and behavioral health problems than the general population. Overcrowding in jails and prisons leads to overstrained health services and increases the risk of the spread of infectious disease. People leaving prison experience a three-to-eightfold increased risk of drug-related death during the first two weeks following their release.²⁶ Epidemiologic studies show that 14.5% of men and 31% of women in jail have a serious mental illness compared to 5% in the general population.²⁷ Prisoners with mental illnesses are more likely to become homeless (17% as opposed to 9% of prisoners without mental illnesses). “People with serious psychiatric needs are more likely to be victims of violent crimes, more likely to be housed in solitary confinement, and are at higher risk of suicide and self-harm while incarcerated.”²⁸ According to the Bureau of Justice Statistics between 2000 and 2009 suicide was the cause of one third of deaths in prisons, and suicide is the leading cause of death in prisons.²⁹

State Assistance: Approximately 90% of prisoners incarcerated every year will re-enter society, and two-thirds of them are racial minorities.³⁰ Offenders are given a small stipend, ranging from \$25 to \$200.56, and counseling or educational programs are not made available. Ex-offenders usually return to the communities where they initiated their criminal conduct.³¹

²⁴ Beck, Allen J. & Harrison, Paige M., Bureau of Justice Statistics. *Sexual Violence Reported by Correctional Authorities*, 2006 (2007).

²⁵ Pennsylvania Coalition Against Rape <http://www.pcar.org/about-sexual-violence/prison-rape?page=1>

²⁶ Merrall et al., 2010.

²⁷ Steadman et al. 2009; Substance Abuse and Mental Health Services Administration, 2012.

²⁸ Haney, 2003; Fellner, 2006; Teplin, 2002.

²⁹ NAACP

³⁰ Joan Petersilia, “From Cell to Society: Who is Returning Home?” in *Prisoner Reentry and Crime in America* (Jeremy Travis C. Visher, eds. 2005)

³¹ James Austin, *Prisoner Reentry: Current Trends, Practices and Issues*, 47 *CRIME & DELINQ.* 314, 326 (2001)

The Higher Education Act substantially limits the ability of drug offenders to access financial aid. Drug offenders are ineligible for federal financial aid for some time and subsequent offenses can lead to a lifetime ban.³² Drug offenders are at the mercy of public housing agencies may access criminal records of housing applicants and deny housing grants to drug offenders, and if their family lives in publicly subsidized housing, the family risks eviction.³³

Prison Recidivism Rates: Prison spending costs states \$52 billion annually. Still a study conducted by the Pew Center on the States showed that the number of inmates returning to state prisons within three years of release remained steady for more than a decade, which may indicate that the prison system did not deter criminals from re-offending. The Pew Center on the States found that slightly more than four in ten offenders return to prison within three years.³⁴ Education and substance abuse programs decrease recidivism. In Florida for example, two-thirds of inmates who complete substance abuse programs in prison are successful after release, while those who earn a GED are 8.7% less likely to recidivate than those who do not complete a program. Inmates with a Vocational Certificate at release were 14% less likely to recidivate than inmates overall.³⁵

Poverty: A large number of prisoners are released into major metropolitan areas “into communities with minimal treatment, few skills, little exposure to the work world, and little planning for transitioning from prison to community. These neighborhoods tend to have economic disadvantages of their own. Research has found that high rates of returning offenders destabilize communities.³⁶ For African American women incarcerated are exceptionally vulnerable when re-entering society.³⁷ Welfare reform legislation, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) denies drug offenders eligibility for public assistance for life.³⁸

³² 20 U.S.C. § 1091(r) (2006).

³³ See generally Public Health and Welfare Act, 42 U.S.C. § 1437d(q) (2006).

³⁴ The PEW Center on the States. State of Recidivism, *The Revolving Doors of American Prisons* (2011).

³⁵ From the Florida Department of Corrections: Agency Annual Report 2011-2012

http://www.dc.state.fl.us/pub/annual/1112/stats/im_pop.html

³⁶ Travis & Petersilia, supra note 41, at 300 (suggesting that release into disadvantaged neighborhoods can alter the social framework).

³⁷ *The Intersectionality of Race, Gender, and Reentry: Challenges for African-American Women*, Geneva Brown (2010).

³⁸ § 862(b)(1); see also id. § 862(d)(1) “Denial of assistance and benefits for certain drug-related convictions (a) In general. An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))) shall not be eligible

Police Brutality

The U.S. government has failed to fulfill its obligations under article 5(b) of the Convention to ensure people of color are “secure from violence or bodily harm” inflicted by government officials. Statistics compiled follow the DOJ/FBI Uniform Crime Reporting (UCR) methodology, recording only the most serious allegation (not conviction) of police brutality show that nearly \$200 million is spent in related civil litigation expense, excluding legal fees and court costs.³⁹ A common claim is that those killed had a weapon, but 46% of those killed had no weapon on them when they were killed, and 18% were likely armed. The remaining 36% were alleged to have weapons (a cane or toy gun qualified) and these allegations were disputed by witnesses or later investigations.⁴⁰

“Stand Your Ground” Laws

Florida was the first state to pass a “Stand Your Ground” law in 2005, and it was the site of the controversial killing of 17 year-old Trayvon Martin in late February 2012. Martin was a black high school student from Miami who had traveled to Sanford, Florida, to visit his father who lived in a gated community there. On February 26, 2012, Martin was walking home from the store when he was pursued by George Zimmerman, a 28 year-old neighborhood watch coordinator for the community. Believing Martin to be “suspicious,” Zimmerman called the police before leaving his vehicle to follow Martin and an altercation ensued. Though Martin was unarmed, Zimmerman discharged a gun he had concealed in his waist, killing the teenager. The police arrived two minutes later, took Zimmerman in for questioning but ultimately released him the same day. It was not until nearly six weeks later, amidst public outcry around the failure to charge Zimmerman for murder, that Zimmerman

for-- (1) assistance under any State program funded under part A of title IV of the Social Security Act [42 U.S.C.A. § 601 et seq.], or (2) benefits under the food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977 [7 U.S.C.A. § 2011 et seq.]”

³⁹ Stephen Lendman, Police Brutality in America. Dissident Voice <http://dissidentvoice.org/2010/07/police-brutality-in-america/>

⁴⁰ Adam Hudson on March 19, 2013 in Empire/Hegemony <http://adamhudson.org/2012/08/25/every-36-hours-a-black-person-is-killed-by-a-police-officer/>

was ultimately taken into custody and charged by a special prosecutor named by the Governor of Florida.⁴¹

Since 2005, twenty-one additional states have adopted these “shoot first” statutes that generally permit the use of deadly force in public places with no duty to attempt to retreat. Four other states have adopted similar laws, but they apply only when the shooter is in his or her car. Seven additional states permit the use of deadly force in self-defense in public with no duty to retreat through a combination of statutes, judicial decisions, and/or jury instructions. These states are distinct from true “Florida-style” laws in several respects, however. For one, many of the shoot first protections established in these states may only be invoked during criminal trials, as opposed to the Florida law, which enables a shooter to escape liability in a pretrial hearing. Additionally, these states do not have some of the especially onerous elements found in the Florida law, such as the provision preventing law enforcement from arresting a shooter without probable cause that the force used was unlawful. Lastly, Utah has had a “Stand Your Ground” type law on the books since 1994, but it strengthened and clarified its law to be more in line with the Florida law post-2005.

However, there are significant questions as to whether these laws engender a “shoot first” mindset that leads to more homicides, while muddling proper investigations of those killings. These laws make it easier for people to murder other human beings and without facing legal consequences. They essentially eviscerate any deterrent to gun related homicides, and provide a road map to getting out of jail with blanket immunity. In fact, national studies have shown that the number of homicides has increased in those states that have implemented some form of SYG laws. The Trayvon Martin killing in February 2012 occasioned closer scrutiny of SYG laws throughout the U.S., revealing racial bias in the application of the law. Statistics based on a database compiled by the Tampa Bay Times of cases in which “stand your ground” was raised as a defense in Florida since the passage of the law show that a defendant who killed a white person was two times more likely to be convicted of a crime

⁴¹ Note that the “Stand Your Ground” defense was not invoked in the Martin case, and thus was not the reason why George Zimmerman was ultimately acquitted. This case, however, symbolizes how the mentality promoted by SYG laws can lead to a situation in which law enforcement does not immediately arrest individuals like Zimmerman or fully investigate incidents in which an individual has lost his/her life. It is also widely believed, based on post-trial interviews, that the rationale behind SYG laws also influenced the jurors who rendered a not guilty verdict in Zimmerman’s trial.

than when a defendant killed a black person.⁴² Nationally, Chart 1 illustrates the disparity in courts’ determination of whether a homicide is justifiable based on the race of the defendant and the victim. As Chart 1 shows, in comparing the percentage likelihood that a killing would be found to be justified in relation to that rate in white-on-white homicides, white-on-black homicides are much more likely to be found justified in SYG states as compared to non-SYG states.⁴³

Table 2. Percentage of Homicides Ruled Justified, 2005-10

	Total	Non-Stand Your Ground states	Stand Your Ground states
White on white	2.21	1.68	3.51***
White on black	11.41	9.51	16.85***
Black on white	1.20	1.13	1.40
Black on black	2.43	2.15	3.16***
Total	2.57	2.15	3.67***

Source: 2005-10 FBI Uniform Crime Statistics Supplementary Homicide Reports.

* $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

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While the killing of Trayvon Martin gained national attention, there are hundreds of similar cases where the “stand your ground” had been invoked. Because the Martin killing occurred in Florida, extensive data has been gathered on specific cases implicating the SYG law. The following are examples of other cases illustrating the inconsistency and discriminatory way in which the law has been applied: states that have it??

On November 23, 2012, Jordan Davis, another unarmed black male teenager was shot and killed by a 45-year old white male named Michael Dunn outside of a gas station in Jacksonville, Florida.⁴⁵ Dunn pulled into the parking lot next to a black SUV with tinted windows playing loud music. When Dunn asked Davis, a passenger in the back seat of the SUV, to turn down the volume, an argument broke out. Dunn pulled out a gun, shooting at the SUV at least eight times, fatally wounding 17-year old Davis. Dunn claims that he fired in

⁴² Susan Taylor Martin, Kris Hundley and Connie Humburg, Race plays Complex Role in Florida's 'Stand Your Ground' Law, Tampa Bay Times (Jun. 2, 2012), available at: <http://www.tampabay.com/news/courts/criminal/race-plays-complex-role-in-floridas-stand-your-ground-law/1233152> (hereinafter “Tampa Bay Times Article”)

⁴³ Sarah Childress, Is There Racial Bias in “Stand Your Ground” Laws? Frontline PBS (Jul. 31, 2012) available at: <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/is-there-racial-bias-in-stand-your-ground-laws/> (Last accessed: Sept. 6, 2013)

⁴⁴ NAACP 2014

⁴⁵ *Id.* This story comes from a database of stand your ground cases that the Tampa Bay Times reporters assembled for the story, available at http://tampabay.com/stand-your-ground-law/cases/case_259.

self-defense because he thought he saw a shotgun and he could not tell how many people were inside the SUV. No weapon was found on the scene. It is expected that Dunn will file a “stand your ground” motion in the trial, which is scheduled for September 23, 2013. This case illustrates the perversity of SYG laws, whereby a white defendant who initiated a deadly confrontation with an unarmed black victim and had the opportunity to retreat could be given blanket immunity.

On June 26, 2011, Jack “Sandy” Newstedt of Sebastian, Florida had spent the night out with his friends to celebrate his 21st birthday. Early that morning, around 2:30 AM, the group returned to his friend’s home located in a subdivision marked by dense foliage and gravel roads. While Newstedt’s friends went inside the home, he became disoriented and wandered down the block to a house down the street. When Newstedt discovered the door was locked, he mistakenly believed his friends had locked him out as a prank. Newstedt knocked on the door, calling for his friends to let him in. Unbeknownst to Newstedt, the homeowner, Claiborne “Clay” Rowe stood on the other side of the door.⁴⁶ Thinking the knocks were coming from a potential intruder, Rowe called the police and grabbed his handgun. After a few minutes passed, but before the police arrived, Rowe opened up the door. When Newstedt, who was unarmed, stumbled into the house, Rowe fired a shot, killing him with a single gunshot wound to the chest.⁴⁷ Calling it a justifiable homicide, the State Attorney chose not to file any charges against Rowe.⁴⁸

Juvenile Justice

The Convention on the Elimination of all forms of Racial Discrimination (CERD) recognizes that racial and ethnic discrimination is a barrier to the full realization of human rights and asks States to stop perpetuating racial discrimination. The arrest rate among African American youth continues to be an issue of concern. African American youth are 1.4

⁴⁶ Tr. of Dream Defender’s People’s Session, Test. of Bethany Spagnola, p. 24, ll. 11-13. Aug. 1, 2013 (hereinafter “Spagnola Test.”).

⁴⁷ Spagnola Test., p. 25, ll. 6-13.

⁴⁸ Joseph W. Fenton, *Mother upset over state not charging shooter of her son*, Vero Beach 32963 Online, http://vb32963online.com/STORIES%202011/AUGUST%202011/vb32963_summerplace_shooter_not_charged_iss ue34_082511.html (last visited Sept. 6, 2013).

times more likely to be detained than their white peers.⁴⁹ One of every three young black males is in prison, probation, or parole and are more than twice as likely to be transferred to adult court. White youth are twice as likely to be defended by private attorneys as African American youth, and young offenders who are represented by private attorneys are less likely to be convicted and less likely to be transferred to adult court. Of young offenders serving time in adult state prisons, 60% are African American, but African Americans are 15% of the youth population.⁵⁰

African Americans make up about 16% of the overall youth population in our country, and two-fifths of the confined youth today. Students of color face harsher punishments in school than their white peers, leading to a higher number of youth of color incarcerated. Black and Hispanic students represent more than 70% of those involved in school-related arrests or referrals to law enforcement.⁵¹ Nationwide, African-Americans represent 26% of juvenile arrests, 44% of youth who are detained, 46% of the youth who are judicially waived to criminal court, and 58% of the youth admitted to state prisons (Center on Juvenile and Criminal Justice).

⁴⁹ Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: 2006 National Report*, Washington, DC, 2006.

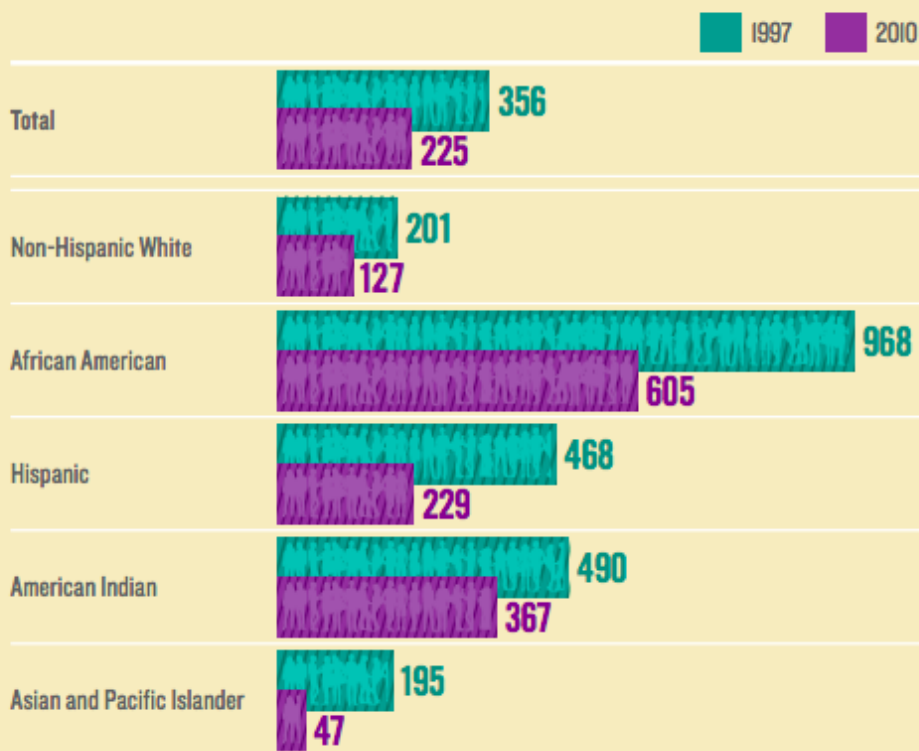
⁵⁰ *Building Blocks for Youth, Youth Crime/Adult Time: Is Justice Served*, Washington, DC, October 26, 2000.

⁵¹ American Progress <http://americanprogress.org/issues/race/news/2012/03/13/11351/the-top-10-most-startling-facts-about-people-of-color-and-criminal-justice-in-the-united-states/>

FIGURE 2

Youth in Confinement by Race (rate per 100,000)

The decline in youth confinement has occurred across all five largest racial groups, but large disparities remain in youth confinement rates by race.



SOURCE Sickmund, M., Stadky, T.J., Kang, W., and Puzanchara, C. (2011) "Easy Access to the Census of Juveniles in Residential Placement." www.ojjdp.gov/ojstatbb/ezacjrp/

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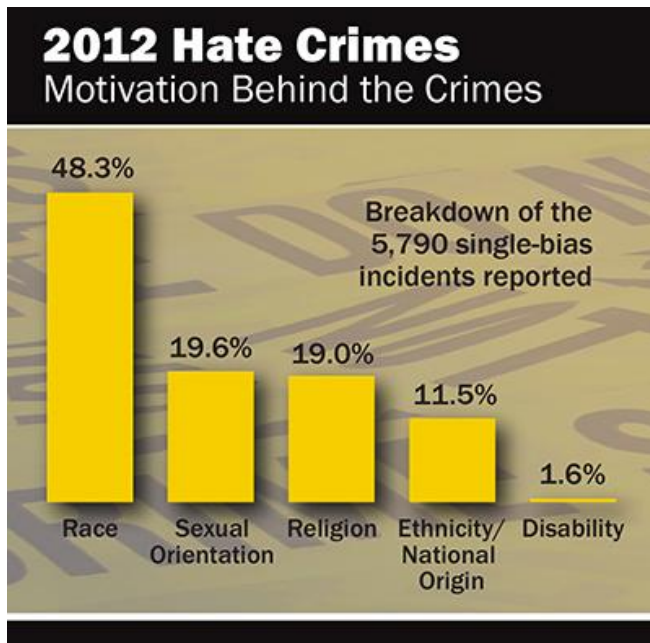
Hate Groups

In the Uniform Crime Reporting Program, the victim of a hate crime may be an individual, a business, an institution, or society as a whole. In 2012, the nation's law enforcement agencies reported 7,164 victims of hate crimes. Of these victims, 13 were victimized in 6 separate multiple-bias incidents. A total of 3,948 known hate crime offenders

⁵² Figure from the Annie E. Casey "Kids Count" 2012 report showing youth in confinement by race. From The Chicago Bureau jjie.org

committed crimes against persons in 2012. Of these offenders 43.0% committed simple assault, 29.9% intimidated their victims, and 25.6% committed aggravated assault.

While White Americans are the racial majority, with a 72% share of the U.S. population, according to the 2010 U.S. Census and African Americans are the largest racial minority, amounting to nearly 13% of the population, among the single-bias hate crime incidents in 2012, there were 3,467 victims of racially motivated hate crime, where 66.2 % were victims of an offender’s anti-black bias. 48.5% of the victims were targeted because of the offender’s bias against a race. In 2012, race was reported for 5,331 known hate crime offenders. Of these offenders 54.6% were white, and 23.3% were black.⁵³



The United States has experienced a resurgence of the antigovernment “Patriot” movement, which in the 1990s led to a string of domestic terrorist plots, including the Oklahoma City bombing. The number of Patriot groups, including armed militias, skyrocketed following the election of President Obama in 2008 – rising 813%, from 149 groups in 2008 to an all-time high of 1,360 in 2012. The number fell to 1,096 in 2013. This growth in extremism has been aided by mainstream media figures and politicians who have

⁵³ FBI Annual Death Crime Report (2013).

used their platforms to legitimize false propaganda about immigrants and other minorities and spread the kind of paranoid conspiracy theories on which militia groups thrive.⁵⁴

Even the common presence of hate crimes on courts indicates the need to attack this problem. Just a month ago in *U.S. v. Cannon*, the United States Court of Appeals for the Fifth Circuit found sufficient evidence to show to show the defendants attacked the African–American victim because of race. The hate crime victim group with the most reported crimes is the “Race” category, and anti-black hate crimes topped the group.

Death Penalty

From the days of slavery, through years of lynchings and Jim Crow laws, and even today capital punishment has always been deeply affected by race. Although African Americans make up only 13% of the overall population, 42% of the people currently on death row are black, and 35% of those who have been executed in the United States are African American. African Americans are also over-represented in the number of people on death row who are later found to be innocent: Over 130 people have been freed from death row since 1973 due to evidence of their innocence: 38% of death row inmates who were ultimately freed because of new evidence were African Americans, and 35% of those executed and later found to be innocent were black. The death penalty undermines trust and integrity in the criminal justice system because it is racially biased, inhumane and risks the lives of innocent people. Currently, 34 states and the federal government use the death penalty while 16 states have outlawed the practice.

Furthermore, research indicates that a defendant is more likely to get the death penalty if the victim is white.⁵⁵ In 2013 the NAACP reported that in 82% of the studies [reviewed], race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found more likely to be sentenced to death than those who murdered blacks.”⁵⁶ Inadequate counsel is an important factor to consider.

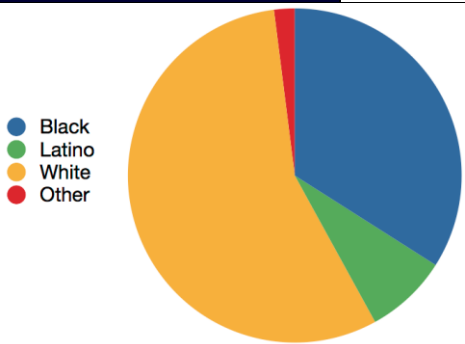
⁵⁴ Sothern Poverty Law Center

⁵⁵ Equal Justice Initiative, Racial Bias <http://www.eji.org/deathpenalty/racialbias>

⁵⁶ United States General Accounting Office, *Death Penalty Sentencing*, February 1990.

Race of Defendants Executed in the U.S. Since 1976	BLACK	477	34%
	LATINO	110	8%
	WHITE	771	56%
	OTHER	24	2%

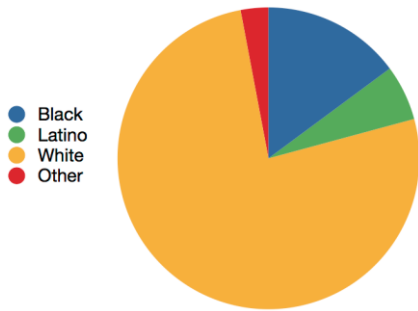
NOTE: The federal government counts some categories, such as Hispanics, as an ethnic group rather than a race. DPIC refers to all groups as races because the sources for much of our information use these categories.



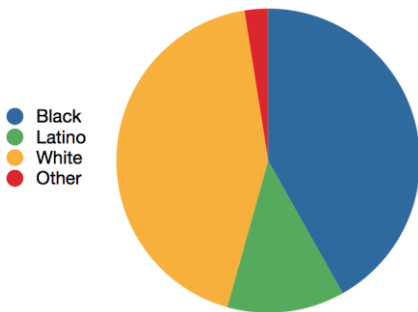
Race of Victims Since 1976	BLACK	304	14.9%
	LATINO	133	6.5%
	WHITE	1544	76.3%
	OTHER	44	2.1%

NOTE: Number of Victims refers to the victims in the underlying murder in cases where an execution has occurred since the restoration of the death penalty in 1976. There are more victims than executions because some cases involve more than one victim.

Race of Victim Figures up to 10/1/2013 from NAACP-LDF "Death Row USA (October 1, 2013)" in addition to DPIC data.



Current U.S. Death Row Population by Race	BLACK	1,285	41.61%
	LATINO	391	12.66%
	WHITE	1,335	43.23%
	OTHER	77	2.49%
Death Row Population Figures from NAACP-LDF "Death Row USA (October 1, 2013)"			



Immigration Rights - Haitian Asylum Seekers

The United States has failed to fulfill its obligations under CERD to identify racially discriminatory practices and change laws that have a racially discriminatory impact. The United States is home to about 535,000 Haitian immigrants, which is largest concentration in any single country of Haitians abroad.⁵⁸

⁵⁷ NAACP 2013 NAACP-LDF *Death Row USA* (October 1, 2013).

⁵⁸ Migration Policy Institute <http://www.migrationpolicy.org/article/haitian-immigrants-united-states>

Some critics argue that the treatment bestowed upon Cuban refugees is an example of a double standard on the basis of race. However, TransAfrica, NAACP and the Congressional Black Caucus released an amicus curiae brief designating U.S. interdiction policy as discriminatory and further arguing that Haitians were subject to “separate and unequal” treatment.”⁵⁹

Some Haitians in the US are reluctant to apply for Temporary Protected Status (TPS) because they fear prison or deportation. The US suspended the deportation of Haitians after the 2010 earthquake but resumed it in 2011.⁶⁰ The TPS for eligible nationals of Haiti will be extended for an additional 18 months, effective July 23, 2014 through Jan. 22, 2016. The 18-month extension allows TPS re-registrants to apply for a new Employment Authorization Document (EAD).

After the cholera outbreak that killed approximately 4,000 people in Haiti⁶¹, the ACLU of Florida warned that conditions in Haiti were too dangerous to safely return Haitian nationals. The reasons given noted the cholera epidemic, the “deplorable conditions” of Haitian jails where repatriated Haitians are sent, and “pressing human rights and humanitarian concerns” (29 Dec. 2010). Several other organizations have expressed similar concerns, including the Inter-American Commission on Human Rights (IACHR) (AFP 4 Feb. 2011), the American Friends Service Committee (States News Service 12 Feb. 2011), and other advocates (CMC 13 Jan.2011).⁶² TPS applications cost from \$50 to \$390 to file, and many applicants don’t have the economic means to pay for this. Birth certificates of applicants’ parents have also been required to verify Haitian nationality. These documents are often nearly impossible to obtain after the earthquake’s vast destruction.

Numerous cases are taken to American courts. Courts have sustained that an alien is eligible for protection under the Convention Against Torture (CAT) when he can establish by a preponderance of the objective evidence that it is more likely than not that he or she will be subject to torture upon removal, but even when an alien meets the eligibility requirements for

⁵⁹ Council on Hemispheric Affairs <http://www.coha.org/disparities-in-u-s-immigration-policy-toward-haiti-and-cuba-a-legacy-to-be-continued/>

⁶⁰ *ibid.*; ACLU 26 Jan. 2011; Reuters 20 Jan.2011

⁶¹ Reuters 20 Jan. 2011; AP 1 Feb. 2011

⁶² Immigration Refugee Board of Canada United States and Haiti: Temporary and permanent protection offered to Haitian asylum seekers in the United States; statistics on the number of Haitians granted asylum and Temporary Protected Status (TPS) (2008 - 2011) <http://www.refworld.org/docid/4f5f36202.html>

cancellation of removal, “he must establish that relief is warranted as a matter of discretion”.⁶³ In *Ridore v. Holder* the United States Court of Appeals for the Ninth Circuit granted an alien and a citizen of Haiti his petition for review of a decision of the Board of Immigration Appeals (BIA) ordering him removed. The defendant argued criminal prisoners deported to Haiti were subject to cruel and unusual punishment.⁶⁴ Conversely, in another petition for review of a decision of the BIA, affirming an immigration judge's (IJ) denial of his applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT) a Haiti national also got the court of appeals to rule that the substantial evidence supported the determination that the changed country conditions rendered the alien's fear of political persecution unreasonable and relief under CAT was ruled unwarranted.⁶⁵ Pro-bono lawyers take these immigrations cases, and often the immigrants do not understand the intricacy of their battle, only what their lawyers tell them.⁶⁶

Wealth Gap

The homeownership gaps between whites and people of color have gotten worse or remained stagnant, in spite of much rhetoric in recent years describing the increase in minority homeownership. These increases have been outpaced or matched by increases in white homeownership. For example, the homeownership gap between whites and African-Americans has gotten worse. The gap in 1940 was 22.8 percentage points, in 1960 was 26.2 points, in 1995 was 28, and in 2010 was 28.5 percentage points.⁶⁷ The homeownership gap between whites and Hispanics has improved by only two percentage points from 28.9 in 1995 to 26.9 in 2010.⁶⁸

Homeownership has long been the primary asset for most Americans. Steadily building modest wealth can leverage education, entrepreneurship, or retirement opportunities. When

⁶³ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 304(a), 8 U.S.C.A. § 1229b(a).

⁶⁴ *Ridore v. Holder*, United States Court of Appeals, Ninth Circuit. October 03, 2012 696 F.3d 907 2012 WL 4513230 (2012).

⁶⁵ *Calixte v. Holder*, United States Court of Appeals, Ninth Circuit. November 07, 2011 457 Fed.Appx. 707 2011 WL 5319919 (2011).

⁶⁶ NMC: Haiti <http://nmc-haiti.blogspot.com/2010/05/second-migration-peak-immigrating-to-us.html>

⁶⁷ Leigh, Wilhemina and Huff, Danielle, “African Americans and Homeownership: Separate and Unequal, 1940 to 2006.” Joint Center for Political and Economic Studies, Brief #1, November 2007 p.4; and “State of the Nation’s Housing 2011,” Joint Center for Housing Studies of Harvard University, p. 36.

⁶⁸ *Ibid* Joint Center for Housing Studies of Harvard University.

nurtured over a lifecycle, home equity can be shared with the next generation and further their financial security. Communities of color do not own homes at rates comparable to their White peers, which contributes heavily to the racial wealth gap. In fact, recent research by the Pew Research Center shows that.⁶⁹

Civil rights institutions including the NAACP have fought for decades for policies that ensure that qualified borrowers of color are able to access the same homeownership opportunities enjoyed by the rest of the market. Unfortunately, policies to this end have been undermined by lax oversight of financial institutions, faulty implementation, and predatory lending. An abundance of research has shown that African American and Hispanic borrowers were disproportionately sold subprime loans, even when their income and credit profiles warranted standard prime loans.⁷⁰ Equal access to mainstream financial services and affordable rental and owner-occupied housing is a critical step toward providing all families with access to wealth-building opportunities, good jobs, schools, transportation, health care, and other factors that determine positive life outcomes. Providing this access has been, and must remain, an important public policy goal.

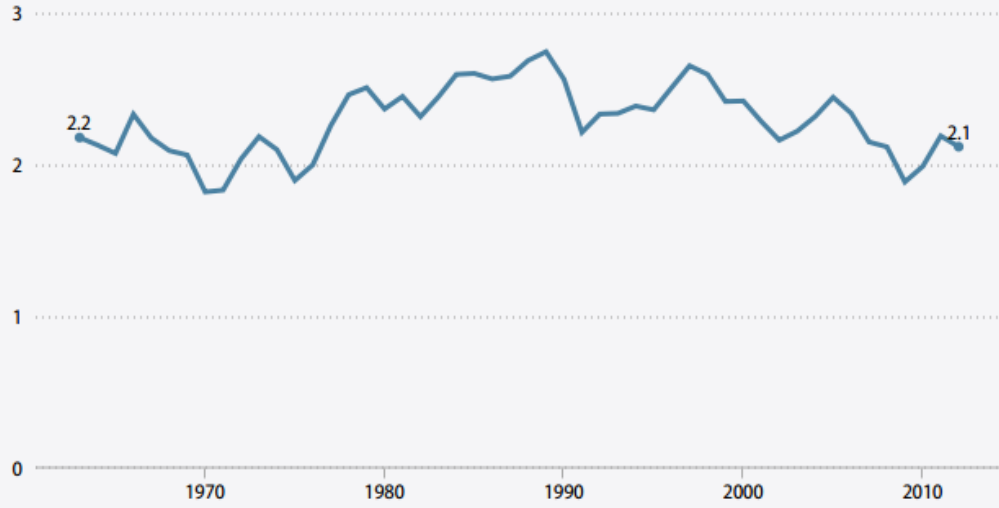
Since the 1960s, the difference in household income between black and white households ballooned from \$19,000 to \$27,000, meaning black households on average earn just 59% as much as their white neighbors. Blacks enjoyed a bit of a boost from the prosperous early 2000s, when they earned 65% as much as white households, but the Great Recession made quick work of destroying those gains. Black children are more likely to be born into poverty than white children; but they are also less likely to escape.

The African American unemployment rate has consistently been twice as high as the white unemployment rate for 50 years.

⁶⁹ Paul Taylor et al., *Twenty to One: Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics* (Washington, DC: Pew Research Center Social and Demographic Trends, 2011).

⁷⁰ Robert B. Avery, Kenneth P. Brevoort, and Glen Canner, "The 2007 HMDA Data," *Federal Reserve Bulletin* 94 (December 23, 2008); and Debbie Gruenstein Bocian, Keith S. Ernst, and Wei Li, *Unfair Lending: The Effect of Race and Ethnicity on Price of Subprime Mortgages* (Durham, NC: Center for Responsible Lending, 2006).

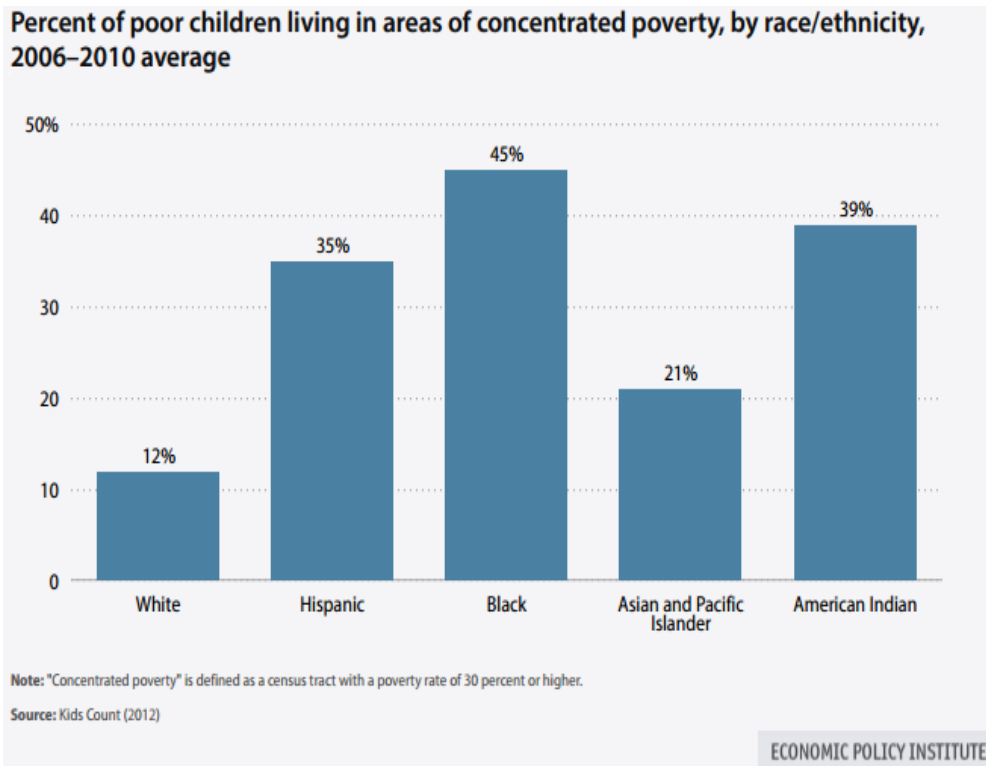
Ratio of black to white unemployment rate, 1963–2012



Note: White and black data before 1979 include Hispanics.

Source: Data from 1963 to 1966 come from the Statistical Abstract of the United States (U.S. Census Bureau 1968); "black" is "nonwhite" data. Data from 1967 to 1971 come from the Statistical Abstract of the United States (U.S. Census Bureau 1973); "black" is "Negro and other" data. Data from 1972 to 1978 come from the Bureau of Labor Statistics Current Population Survey public data series. Data after 1978 are based on the author's analysis of basic monthly Current Population Survey microdata.

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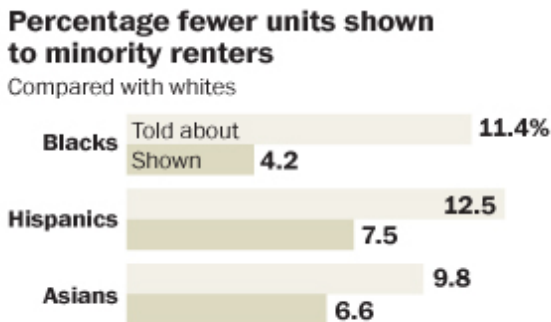


Residential Segregation and Housing Discrimination

Obligations with respect to housing under CERD are similar to those required under U.S. domestic civil rights law. Both sets of requirements redress the significant barriers to racial equality in residential choice that perpetuate segregation and thwart shared access to social resources, including quality education, employment, and community diversity. Those barriers include discrimination by private and public actors, whether proven as intentional or having a needlessly discriminatory effect. They also include policies that perpetuate segregation or fail to apply government resources to promote integration, still a pressing need given the entrenched legacy of segregative federal programs. Domestically, the American public has a strong and longstanding interest in integration and fair housing choice, and the establishment of a legal framework to promote those rights was a hallmark success of the 1960s civil rights movement. This historical focus, still resonant today, has been required

largely because of the role of federal programs in enforcing, reinforcing, and incentivizing segregation.⁷¹

Federal law prohibits housing discrimination based on your race, color, national origin, religion, sex, familial status, or disability. The nationwide HUD survey reports that real estate agents and rental housing providers recommend and show fewer available homes and apartments to minority families. For example, agents tell African American about 11% fewer available units and show 4% fewer units than they show white renters. When trying to buy a home, African Americans are told about 17% fewer available homes and are shown 18% fewer units than are white homebuyers. The Washington Post reports that in the Washington area blacks pay \$262 more than whites for rental move-in costs, yearly incentives are lower by \$168 for black renters, and the average first-year net cost is \$402 higher for blacks. About 11.6% of white renters in the region were told that rent was negotiable, but only 7.2% of black renters were told so.



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“The two most common forms of injunctive relief requested under the Fair Housing Act (FHA) seek either to prohibit the offending party from engaging in future acts of housing discrimination or to impose upon that party certain affirmative duties to atone for past discrimination and prevent recurrence of such acts.”⁷³ In a recent case the court ruled for a non-profit community-based developer of affordable housing and community reform organization that sued a village and its board of trustees, alleging that defendants

⁷¹ NAACP 2014

⁷² Washington Post, Housing Discrimination Persists http://www.washingtonpost.com/business/economy/housing-discrimination-persists-in-more-subtle-ways-hud-report-says/2013/06/11/ee0a6542-d2c1-11e2-8cbe-1bcbee06f8f8_story.html

⁷³ Fair Housing Act, § 801 et seq., 42 U.S.C.A. § 3601 et seq.

discriminatorily re-zoned certain land to prevent developer from building low- and middle-income housing on the land. The court held that defendants violated the Fair Housing Act (FHA) and were liable under §§ 1981, 1983, and the Equal Protection Clause, and developer and organization failed to state a claim under § 1982.⁷⁴ Still, the violations committed against individuals and low-income families are rarely reported.

In the late 2000's, the U.S. Department of Housing and Urban Development (HUD) put out several significant policy statements in support of integration. HUD's comprehensive 2010-2015 Strategic Plan, setting the agenda across federal housing programs, calls for subsidized housing to "expand families' choices of affordable rental homes located in a broad range of communities"⁷⁵ and focuses on housing as a "platform for improving quality of life"⁷⁶ in order to "increase the number of HUD-assisted households with school-aged children who have access to schools scoring at or above the local average"; "improve the health of HUD-assisted residents"; and "increase the average income of HUD-assisted households."⁷⁷ HUD also announced new fair housing requirements for its grantees, in which grant applicants are encouraged to identify specific activities and outcomes that affirmatively further fair housing by decreasing segregation and concentrated poverty.⁷⁸

As a positive measure, HUD took the significant regulatory step of implementing the Fair Housing Act's discriminatory effects standard, which includes activities or policies that reinforce segregation. The regulation clarifies the legal standard to be used in enforcing these long-standing protections of the FHA and has broad applicability.⁷⁹

However, HUD has taken only tentative steps with other needed regulations—most significantly, one that would provide structure and accountability for HUD grant recipients' obligation to affirmatively further fair housing. HUD is required to enforce and oversee the AFFH mandate across federal housing programs, and the mandate applies directly to its

⁷⁴ *MHANY Management Inc. v. Incorporated Village of Garden City* United States District Court, E.D. New York. December 06, 2013, F.Supp.2d 2013 WL 6334107 (2013).

⁷⁵ *Id.* at 11.

⁷⁶ *Id.* at 24.

⁷⁷ *Id.* at 25.

⁷⁸ Notice of HUD's Fiscal Year (FY) 2010 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2010 NOFAs for Discretionary Programs, 75 Fed. Reg. 33323 (June 11, 2010), available at <http://edocket.access.gpo.gov/2010/pdf/2010-14004.pdf> (announcing the availability on HUD's website of its FY2010 NOFA Policy Requirements and General Section to HUD's FY2010 NOFAs for Discretionary Programs (June 4, 2010), available at <http://archives.hud.gov/funding/2010/gensec.pdf>).

⁷⁹ 24 C.F.R. 100 (implementing the FHA's discriminatory effects standard); see also 78 Fed. Reg. 11460 (Feb. 15, 2013), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>

recipients as well. In July 2012, HUD issued a proposed AFFH regulation intended to provide a clear, data-driven system for fair housing planning and compliance among grantees. Regulatory comments on this proposed regulation closed in September 2013, and there has been no clear commitment to a date for finalization.

The Section 8 Housing Choice Voucher Program (HCV) is the United States' largest low income-housing program, serving over 2 million families. Unfortunately, a number of program's design features have the effect of steering low income families into lower opportunity areas. Wrong incentives in voucher administration: The current PHA Section 8 assessment system (called SEMAP)⁸⁰ prioritizes quick "utilization" of vouchers and maximum use of voucher budget authority, which is sometimes misinterpreted by PHAs in the field as a reason to house families as quickly as possible, without regard to location issues. SEMAP gives PHAs little or no credit or incentive for helping families move to less racially isolated, higher opportunity areas. The de-concentration "bonus" in SEMAP is only worth a few points, and is not even used by many PHAs. If families move across PHA borders to a lower poverty community, they are not counted at all. And because it is only a bonus, HUD does not evaluate PHAs poorly if they have highly segregated and concentrated programs. The current system will perpetuate segregation unless HUD amends the SEMAP rule to provide much stronger incentives for PHAs to promote de-concentration (including across jurisdictional lines).

The Low Income Housing Tax Credit program is the largest federal low income housing development program, with 1,539,619 units placed in service between 1995 and 2009.⁸¹ Yet this program still lacks meaningful civil rights guidance. This vacuum continues despite advocates' repeated urging that HUD and Treasury formulate regulations and guidance to implement Title VIII's AFFH mandate, as well as Title VI of the 1964 Civil Rights Act (prohibiting discrimination in federally-funded programs) and other civil rights laws.⁸² These rules are needed to provide guidance to the state housing finance agencies

⁸⁰ 24 C.F.R. Part 98550.

⁸¹ See HUD Office of Policy Development & Research, New Low Income Housing Tax Credit Data Available, Table 2, at <http://www.huduser.org/portal/datasets/lihtc/topical9509.pdf>.

⁸² See, e.g., Letter to Michael Barr, U.S. Dept. of the Treasury, re Title VI, Section 504, and Title VIII Regulations and Guidance at the Dept. of the Treasury (Oct. 26, 2010), available at www.prrac.org/pdf/civil_rights_letter_to_Michael_Barr_10-26-10.pdf; Letter to Assistant Attorney General Thomas Perez, DOJ Civil Rights Division (Aug. 9, 2010), available at www.prrac.org/pdf/LIHTC_letter_to_AAG_Perez_8-9-10.pdf; Letter to

(HFAs) that administer the program, and to provide applicants to the program with equal access to program benefits, and access to non-segregated communities and high performing schools.

GSEs (Government Sponsored Enterprises) have unnecessarily relied upon credit profile factors that bear modest relationships to credit risk but have a disparate impact on borrowers of color. At the discretion of their regulator, the Federal Housing Finance Agency (FHFA), the GSEs have adopted pricing policies that divide loans into categories based on a variety of factors, including down payment (loan to value ratio), credit score, and product type.⁸³ Based on these factors, they impose additional fees for purchasing a mortgage from the originating lender that rely on the amount of down payment provided and credit score of the borrower, which has a disparate impact on borrowers of color.

As communities of color continue to disproportionately endure harm from the foreclosure crisis and minorities still experience discrimination in the housing market, it is important that the Department of Justice vigorously enforce the Fair Housing Act and Equal Credit Opportunity Act against servicers, lenders, brokerages, and other companies engaging in discriminatory practices, including when it comes to the maintenance, marketing, and auctioning of Real Estate Owned (REO) properties.⁸⁴

Education

African Americans are more likely to attend high-poverty schools, public schools where more than 75% of the students are eligible for free or reduced-price lunch and are less likely to graduate from high school and attend college. Two thousand high schools in the United States produce more than half of all dropouts, and a recent study suggests that in the 50 largest cities, only 53% of students graduate on time. Research shows that children of color attend such “dropout factories” at significantly higher rates. Although there is great disparity when it comes to education and race, the dropout rates for whites, African Americans, and Latinos declined between 1980 and 2007. For each year during that period, the dropout rate

Michael Stegman, U.S. Dept. of the Treasury (May 15, 2012), *available at* www.prrac.org/pdf/Letter_to_Michael_Stegman_re_fair_housing_regs_5-15-12.pdf.

⁸³ These are known as loan level price adjustments, or LLPAs. Fannie Mae’s current LLPA fees are available at www.fanniemae.com/content/pricing/llpa-matrix.pdf Accessed June 17, 2014.

⁸⁴ NAACP 2014

was lower for whites compared with African Americans and Latinos. The rate for Asian/Pacific Islanders was also lower than rates for Latinos and African Americans between 1989 and 2007. Of all the racial groups, African American students are most likely to attend a school that does not offer advanced placement (AP) courses. For example, 19% of African American students attend such schools, compared with only 6% of Asian, 12% of Latino, and 15% of white students. In 2005–06, less than half of all African American male students received diplomas with their cohort. The rate at which African American males are dropping out and being placed in special education far exceeds the rate at which they are graduating and reaching high levels of academic achievement.

Race and family income is highly correlated with whether a student immediately enrolls in college. The immediate college enrollment rates of high school graduates from low- and middle-income families trailed those of their peers from high-income families by more than 10 percentage points in each year between 1972 and 2007. In 2007, the immediate college enrollment rate was 70% for white high school graduates and 61% for Latino high school graduates, compared with 56% for African American high school graduates.⁸⁵

White children are twice as likely to get their associate degrees than African American children.⁸⁶ Pell Grants are awards provided by the Federal government on a need-based basis to low-income undergraduate and certain post baccalaureate students in order to promote access to education. Unlike student loans, Pell Grants do not need to be repaid and are thus increasingly important, as student debt is a growing reality for too many Americans. More than 60% of African-American undergraduates and half of Hispanic undergraduates rely on Pell Grants to attend school. Despite the obvious benefits of Pell Grants, over the last five years Congress has approved their diminishing capacity. As recently as in the 1980s, the maximum Pell Grant covered more than half the cost of attending a four-year public college. In the next school year, however, the maximum Pell Grant (\$5,730) is expected to cover less than one-third of the cost of a public 4-year college—the lowest purchasing power level since the start of the program.⁸⁷

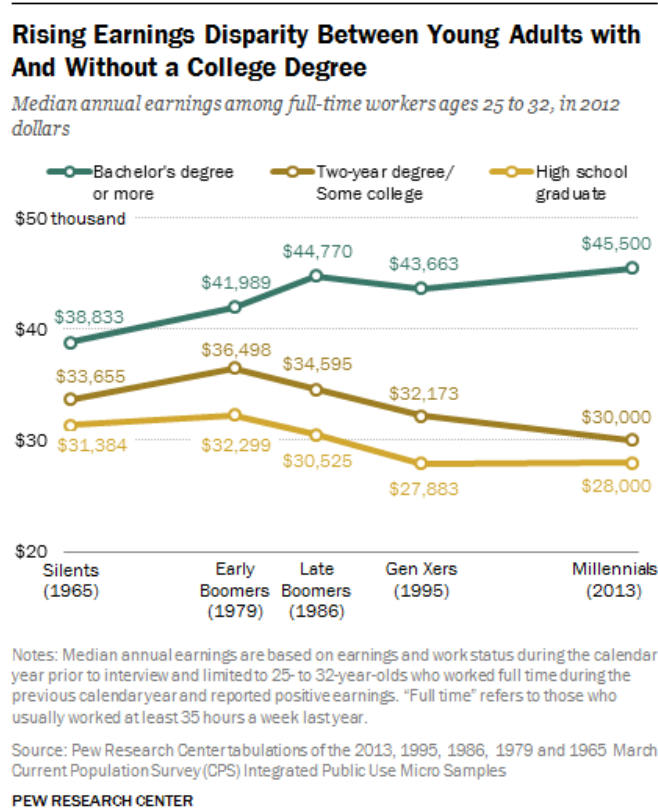
A 2014 Pew Research on Social and Demographic Trends found that college graduates ages 25 to 32 who are working full time earn more annually, about \$17,500 more, than

⁸⁵ NAACP Fact Sheet African Americans and Education

⁸⁶ Race for results <http://www.aecf.org/resources/race-for-results/>

⁸⁷ NAACP

employed young adults holding only a high school diploma. The pay gap was significantly smaller in previous generations. College-educated young adults also are more likely to be employed full time than their less-educated counterparts (89% vs. 82%) and significantly less likely to be unemployed (3.8% vs. 12.2%). Among those ages 25 to 32, fully 22% with only a high school diploma are living in poverty, compared with 6% of today’s college-educated young adults. In contrast, only 7% of Baby Boomers who had only a high school diploma were in poverty in 1979 when they were in their late 20s and early 30s. A college diploma is now extremely important but what students have to pay for tuition is continuously increasing. In 2013 US News reported that tuition and fees continued to increase but federal grant aid declined by 10 percent at a time when many families were still recovering from financial rains

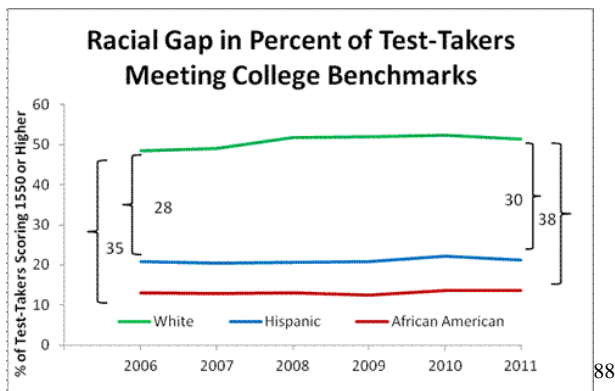


brought on by the recession.

This deep racial segregation is compounded by socioeconomic segregation. In fact, the correlation is so strong that almost every supermajority-minority school is associated with high levels of poverty, which is not the case for White-dominated schools. Today, “the typical Black student attends a school where almost two out of every three classmates [64%]

are low-income, nearly double the level in schools of the typical White . . . student [37%].” This “double segregation” has a deep lifelong academic impact on the students who experience it, as studies show that the concentration of poverty within schools plays a significant role in determining student achievement—even more than the poverty status of individual students.

High-minority and high-poverty schools often also have the added burden of lower levels of funding, lower teacher quality, and higher dropout rates. The result is that students whose families already face hardship are placed at an even greater disadvantage. For example, according to the U.S. Department of Education, in schools where more than three-quarters of the students were classified as low-income, “there were three times as many uncertified or out-of-field teachers in both English and science.” In addition—regardless of whether funding has been equalized—high-poverty and high-minority schools often fail to provide opportunities for many students to achieve at the highest level, including courses required by many universities. Even comparing similar courses, majority-minority schools tend to teach a less demanding curriculum than wealthier, non-minority schools. On average, these schools provide lower-quality teachers with a greater rate of turnover.



Schools’ Use of Force

Over the past two decades, school resource officers (SROs) have become common. Despite their prominence in schools, significant investigation into their arrest-

⁸⁸ State of New Jersey Department of Education <http://www.nj.gov/education/news/2012/0209gap.htm> (2012).

making behavior has not occurred. Studies continue to produce mixed results when testing whether discrimination plays a factor in arrest decision making, but one recent meta-analysis of such studies strongly suggests that race is an important factor (Kochel et al., 2011). Race is a central feature in the criminalization of school discipline (e.g., Advancement Project & Civil Rights Project, 2000; Skiba, Michael, Nardo, & Peterson, 2000; Wolf & Kuhn, 2012).⁸⁹

For example, several civil rights groups filed a federal complaint Wednesday charging that police officers who work in Wake County schools routinely violate the Constitutional rights of minority students. The complaint says that the school system's policing policies "unnecessarily and unlawfully punish and criminalize minor misbehaviors and disproportionately harm African-American students and students with disabilities," asks the U.S. Department of Justice's Civil Rights Division to investigate policing in North Carolina's largest school system, and cites statistics to back a claim that students wind up too often in the criminal justice system.

Of all delinquency complaints filed in Wake County during the 2012-13 school year, 42% took place at schools. For 2011-12, 90% of the 763 school-based complaints were based on alleged misdemeanor offenses, the complaint says. "The alleged 'crimes' for which WCPSS students are routinely being pushed into the juvenile and criminal system are exceedingly minor and include offenses such as throwing water balloons, stealing paper from a recycling bin and play-fighting with a friend," according to the complaint. The complaint says that African-American students accounted for 74.4% of school-based delinquency complaints but only about 25% of the school system's population. A major issue for concern is that North Carolina charges 16-year-olds as adults.

Other complainants include the American Civil Liberties Union of North Carolina, the Center for Civil Rights Remedies at the Civil Rights Project at UCLA, the Coalition of Concerned Citizens for African-American Children, N.C. HEAT, the North Carolina Justice Center, the North Carolina chapter of the NAACP and the University of North Carolina Center for Civil Rights.

⁸⁹ Youth Violence and Juvenile Justice 00(0) 1-15
<http://www.ncjfcj.org/sites/default/files/Final%20Arrest%20Decision%20Making%20by%20School%20Resource%20Officers.pdf>

In 2014, the U.S. Department of Education issued new guidelines to schools calling for them to ease up on zero tolerance policies and not to arrest students for minor disciplinary infractions. U.S. Attorney General Eric Holder said African-American students were disciplined more harshly and more frequently because of their race.⁹⁰



⁹⁰ News Observer <http://www.newsobserver.com/2014/01/22/3555022/groups-file-federal-complaint.html> (2014)

⁹¹ Fact Sheet PBS <http://www.pbs.org/wnet/tavissmiley/tsr/education-under-arrest/school-to-prison-pipeline-fact-sheet/> (A 2007 study by the Advancement Project and the Power U Center for Social Change says that for every 100 students who were suspended, 15 were Black, 7.9 were American Indian, 6.8 were Latino and 4.8 were white).

Health Disparities

The 2010 Affordable Care Act effectively addressed disparities in health care by mandating the following: by improving and extending insurance coverage to millions of Americans; ending pre-existing condition exclusions; lifting lifetime caps on care; covering clinical preventive costs; and increasing investments in public health and community-level prevention initiatives.

Yet unfortunately, health care disparities still exist between the races: infants born to African American women are 1.5 to 3 times more likely to die than those born to women of other races/ethnicities; African American men are more than twice as likely to die from prostate cancer than white men. Hispanic women are more than 1.5 times as likely to be diagnosed with cervical cancer; and African Americans, American Indians and Alaska Natives are twice as likely to have diabetes as white individuals.

Furthermore, African Americans are contracting HIV / AIDs in disproportionately high and record numbers. African Americans accounted for an estimated 44% of all new HIV infections among adults and adolescents (aged 13 years or older) in 2010 despite representing only 12% of the U.S. population; this represents a population rate that is 8 times that of White Americans. African Americans also accounted for half of all new AIDS diagnoses (49%) in 2011. In 2010, HIV was the 5th leading cause for Black men and the 7th for Black Women, ages 25 – 44, ranking higher than their respective counterparts in any other racial or ethnic group. Even more alarming, it was found in 2010 that African American teen and young adults, ages 13 – 24, represented more than half (57%) of the HIV / AIDS infections in that age group. In 2010, African American women accounted for 29% of the estimated new HIV infections among all adult and adolescent African Americans. At some point in their lifetime, an estimated 1 in 16 African American men and 1 in 32 African American women will be diagnosed with HIV infection. By the end of 2010, an estimated 260,821 African Americans diagnosed with AIDS had died in the United States. The following year, in 2011, an estimated 15,958 African Americans were newly diagnosed with AIDS.

Childhood obesity also occurs among African American children at disproportionate rates: African American children and adolescents are more likely to be overweight and obese

than their Caucasian peers. Currently, over 35% of African American children ages 2 to 19 are overweight or obese, compared with less than 32% of the general population in the same age range. Furthermore, although the percentage has decreased, the current obesity rate, as defined as being in the 95th percentile for BMI (Body Mass Index) among African American youths is still higher by almost 4% than the national average of 16.9%. The consequences of this disparity are as glaring and as dangerous as you might expect. Overweight and obese children are more likely to suffer from serious, lifelong illnesses than their healthy-weight peers. The higher prevalence of overweight and obesity among African American children places them at a greater risk of developing chronic diseases including Type 2 diabetes, high blood pressure and other cardiovascular disease risk factors, asthma, sleep apnea, and social discrimination.

Voting Rights

- Reports showing violations to African Americans' right to participate in elections indicate a violation of Articles 1, 4, and 5 of the International Convention on the Elimination of all forms of Racial Discrimination In the area of Voting Rights and Political Participation. "In the twentieth century in the United States, African Americans were regarded both socially and politically as second-class citizens and were disenfranchised throughout the states".⁹² Despite efforts to end this form of prejudice and discrimination, last year the U.S. Supreme Court struck down Section 4 of the Voting Rights Act ignoring "extensive social science research that racial discrimination and prejudice remain prevalent especially in southern states, which Section 4 provided a mechanism that such covered jurisdictions get federal approval before changing voting laws".⁹³ As a result of the U.S. Supreme Court decision in *Shelby v. Holder*, states with a history of racial discrimination can now implement Voter ID laws, redraw district lines, or change the time, place, or manner of an election without having to first demonstrate to the federal government that it will not have a racially discriminatory impact. Thus states can once again dilute the voices of large populations of

⁹² Voting Rights, The Leadership Conference <http://www.civilrights.org/publications/reports/long-road/voting-rights.html>

⁹³ Latino Decisions, Everything Latino Politics <http://www.latinodecisions.com/blog/2013/06/26/supreme-court-ignores-extensive-social-science-evidence-of-voting-discrimination-against-blacks-and-latinos-in-section-5-jurisdictions/>

communities of color without federal oversight.

There is clear evidence that state felony disenfranchisement laws have a disparate impact on African Americans and other minority groups. At present, 7.7% of the adult African-American population, or one out of every thirteen, is disenfranchised. This rate is four times greater than the non- African- American population rate of 1.8%. In three states, at least one out of every five African- American adults is disenfranchised: Florida (23%), Kentucky (22%), and Virginia (20%). Nationwide, 2.2 million African-Americans are disenfranchised on the basis of involvement with the criminal justice system, more than 40% of whom have completed the terms of their sentences.

Information on the disenfranchisement rates of other groups is extremely limited, but the available data suggests felony disenfranchisement laws may also disproportionately impact individuals of Hispanic origin and others. Hispanics are incarcerated in state and federal prisons at higher rates than non- Hispanics: about 2.4 times greater for Hispanic men and 1.5 times for Hispanic women. If current incarceration trends hold, 17% of Hispanic men will be incarcerated during their lifetimes, in contrast to less than 6% of non-Hispanic white men. Given these disparities, it is reasonable to assume that individuals of Hispanic origin are likely to be barred from voting under felony disenfranchisement laws at disproportionate rates.

Proponents of felony disenfranchisement argue that such laws may deter crime, though disenfranchisement has not been shown to actually accomplish the goal of deterrence. One commentator, for example, has observed that, “[r]ecent research suggests a negative correlation between voting and subsequent criminal activity among those with and without prior criminal history.” Disenfranchisement, on the other hand, is likely to have the opposite effect by further marginalizing and alienating formerly incarcerated individuals from civil society. Other arguments in support of felony disenfranchisement are unpersuasive, as well. For example, some suggest that, if allowed to vote, individuals with felony convictions would constitute a cohesive voting bloc, which would distort criminal law. However, the fear that individuals with felony convictions may “distort” the law through voting is unfounded and certainly not an acceptable ground to prevent them from exercising that right. The Supreme Court, for example, has previously held – although not in a felony disenfranchisement case – that “[f]encing out’ from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.” In addition, little evidence exists to suggest that

former inmates of any sort would cohere into a constituency, or that, if they did, any viable candidate would specifically court their votes.

One of the most recent developments was in Virginia, which, historically, has had one of the most restrictive felony disenfranchisement laws in the country: persons convicted of felonies are barred from voting for life. Voting rights can be restored to individuals on a case-by-case basis, but this has required application to and affirmative intervention by the governor.

Virginia also has an extraordinarily high rate of disenfranchisement among adult African-Americans—at least 20%. Given this historically restrictive policy and its disparate impact on communities of color, it is notable that Virginia's Governor Bob McDonnell announced positive changes to the voting rights restoration procedure. As of July 15, 2013, Virginia started automatically (albeit individually) restoring the voting rights of any person convicted of a non-violent felony who is no longer under state supervision, does not have pending felony charges, and has paid off any financial obligations imposed by the court. As many as 100,000 people could be eligible to have their voting rights restored under Governor McDonnell's new policy. While Virginia's new procedure will restore voting rights to a substantial number of people, the fact that the change was achieved through a gubernatorial policy means it may be revoked or revised by future administrations.

The U.S. Supreme Court's decision in *Richardson v. Ramirez*, in which individuals with felony convictions who had completed their sentences argued that California's felony disenfranchisement law violated their equal protection rights, cemented this dichotomy. The Court held that "the exclusion of felons from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment," which was not present in other cases involving restrictions on the franchise. This ruling is especially difficult to reconcile because the Fourteenth Amendment's Equal Protection Clause has been successfully used to challenge laws that appear racially neutral on their face, but are racially discriminatory in practice. Despite this grim legal landscape, civil rights attorneys have tried to fight these laws by focusing on the misapplication of felony disenfranchisement laws, the ambiguity which exists in some state laws regarding which crimes are disenfranchising in the first place, and the racial disparities inherent in the criminal justice system that result in minorities being disproportionately prosecuted, convicted and, consequently, disenfranchised.

In a time when numerous states are considering or have already enacted legislation to restrict or suppress voter participation, Congressman John Lewis (GA) and 165 of his colleagues in the U.S. House of Representatives have introduced H.R. 12, the Voter Empowerment Act. Senator Kristen Gillibrand (NY) has introduced a companion bill in the Senate (S. 123). This important legislation would expand and protect voters' access to the polls and would increase accountability and integrity among election officials and poll workers. It also would expand eligibility to allow all ex-offenders who have been released from prison (even those who may still be on probation or parole) to register and vote in federal elections.⁹⁴

⁹⁴ NAACP 2014.

Recommendations

We ask The Committee to recommend the following:

- Guarantee early voting – require that every state establish early voting sites that are open at least 15 days prior to a general election day.
- Require automatic registration
- Allow same-day registration throughout the country and ensure on-line voter registration.
- Outlaw “voter caging” – makes illegal a practice by which mail is sent to a registered voter's address and, if the mail is returned as "undeliverable" or if it is delivered and the voter does not respond, his or her registration is challenged.
- Clarify and strengthen the use of provisional ballots – ensures that provisional ballots are counted.
- Make voter intimidation and deception punishable by law – with strong and tough penalties so that people who commit these crimes suffer more than just a slap on the wrist, and establish a process for reaching out to misinformed voters with accurate information so they can cast their votes in time.
- Re-enfranchise ex-offenders.
- Encourage youth voters.
- Assure voting by overseas residents.
- That the U.S. Government publicly supports the automatic restoration of voting rights to citizens upon their release from incarceration for felony convictions. This should include urging Congress to reintroduce and pass the Democracy Restoration Act, which would restore voting rights in federal elections to disenfranchised individuals upon their release from incarceration.
- Felony disenfranchisement laws should be modified so that ex- offenders have an opportunity to participate in the civic process.
- That the U.S. Government investigates the disproportionate impact of felony disenfranchisement laws on minority populations and issue a report of its findings and encourage states to inform criminal defendants of the voting rights implications of their arrest

or sentencing and to provide information on the voting rights restoration process upon release from prison and/or completion of criminal sentences.

- A study by the Federal Bureau of Prisons concluded that "the more actively the inmates successfully participated in prison education programs, the less likely they were to recidivate." A recidivism study conducted in Maryland, Minnesota, and Ohio revealed that participants in correctional education programs had statistically significant lower rates of re-arrest 48% when compared to the group of non-participants 57%. Higher education can improve conditions within correctional facilities, enhance prisoner self-esteem and prospects for employment after release, and function as a cost-effective approach to reducing recidivism.⁹⁵ States need to provide better education programs for the inmates.

- Prison staff and government authorities should not ignore reporting procedures need to have a real impact, and complaints by prisoners about sexual assault are. Officers need training to prevent sexual assault and to treat survivors.

- The U.S. Department of Education should monitor and enforce commitments made by states in their ESEA waiver plans and in other proposals connected to the receipt of federal financial assistance. The Secretary of Education should consider annual student achievement and graduation data when evaluating the impact of the waivers and during the review for renewal.

- The U.S. Department of Education should aggressively identify states and Local Education Agencies (LEAs) that report high rates and/or disproportionality in the following areas, and require the incidence be lowered and the gaps closed:

- Suspensions
- Expulsions
- Other overly-punitive disciplinary action
- Referrals to law enforcement
- Arrests and police searches and seizures on school property
- Corporal punishment
- Assignment to alternative education placements for disciplinary reasons
- Bullying and harassment

⁹⁵ The Oklahoma Literacy resource Office, Oklahoma Department of Libraries
<http://www.odl.state.ok.us/literacy/statistics/corrections.htm>

- Truancy (i.e. unexcused absences)
- Restraint and Seclusion
- The U.S. Department of Education should begin to aggressively enforce provisions in ESEA that are intended to mitigate some of the worst disparities in schools. These provisions include: The requirements in Sections 1111 and 1112 for both states and LEAs to ensure that low-income and minority students are not taught disproportionately by unqualified, inexperienced or out-of-field teachers. The fiscal requirements for comparability, “supplement-not-supplant,” and “maintenance of effort.”
- The federal government should promote the inclusion of comprehensive anti-bullying, harassment and cyber bullying initiatives as an ESEA priority. These initiatives should also respect the free speech rights of students as protected by the First Amendment to the Constitution.
- The U.S. Department of Education should end corporal punishment in schools receiving federal financial assistance, a practice still legal in 19 states. Tougher Enforcement of Civil Rights Laws.
- The U.S. Departments of Justice and Education should continue to identify and begin investigations in the states and LEAs with the worst records, e.g., those with persistent or growing disparities in per-pupil spending and specific resources (e.g., access to college-preparatory courses, school counselors, experienced teachers, etc.) that are associated with low achievement, poor high school completion rates and college-going rates, and continued school segregation.
- The U.S. Department of Education should conduct the Civil Rights Data Collection on an annual basis, instead of every two years; take steps to ensure greater accuracy in data reported by states and districts; and where school districts fail to report all or part of their data, deny competitive preference for grants and withhold portions of federal funding and strictly enforce the “supplement-not-supplant,” “maintenance of effort,” and related fiscal provisions of ESEA to ensure that Title I dollars are used to provide greater resources to disadvantaged students and communities.
- The Obama administration should continue to urge Congress to pass legislation that clearly and explicitly bars discrimination on the basis of actual or perceived sexual orientation and gender identity in all public elementary and secondary schools. The administration’s use

of existing civil rights laws barring sex discrimination to protect LGBT youth from discrimination and harassment has been commendable, but an explicit prohibition is also needed. Greater Federal Investment in Education

- The U.S. Department of Education, through the leveraging of federal funds, should incentivize schools and school districts to increase diversity and decrease racial and socioeconomic isolation.
- HUD is responsible for administering federal funding for fair housing enforcement and education to non-government fair housing organizations and city and state civil and human rights agencies. HUD has begun to take a greater systemic approach to fair housing enforcement. For years, HUD handled only individual cases of housing discrimination. However, in the last six years, HUD has worked closely with fair housing organizations and has directed its funding and staffing resources to pursuing enforcement activities that have a widespread impact of opening housing to many. However, the fair housing enforcement division at HUD remains significantly underfunded. To reasonably support heightened fair housing enforcement (including a new AFFH rule), and to be consistent with the findings of the National Commission on Fair Housing and Equal Opportunity,⁹⁶ we recommend that Congress increase funding for the Fair Housing Initiatives Program to at least \$52 million annually and the Fair Housing Assistance Program to at least \$40 million.
- HUD itself must have the necessary permanent enforcement and investigations staff in its Office of Fair Housing and Equal Opportunity to conduct proper and timely investigations of administrative complaints of housing discrimination as well as compliance reviews of states and cities efforts to comply with the Fair Housing Act's requirement to Affirmatively Further Fair Housing. We recommend that Congress provide appropriations to fund HUD's FHEO staffing with at least 750 Full Time Employees.
- Today, it is legal to discrimination against a person in housing based on their lawful source of income. This has a disparate impact on minorities. Congress must pass the Home Opportunities Made Equal Act (HOME Act), which would extend protections of the Fair Housing Act to persons based on their sexual orientation, gender identify, marital status and/or source of income. The bill also strengthens other portions of the Fair Housing Act.

⁹⁶ The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity, December 2008.

- Title VI of the 1964 Civil Rights Act prohibits discrimination on the basis of race in federally-funded programs and activities, but private parties currently are unable to access the judicial system for protection against discriminatory effects discrimination under Title VI: the statute does not extend a private right of action for disparate impact claims. As a result, the public must rely on federal agency enforcement—unlike in other areas of civil rights law for which they may access the courts directly to find redress. Congress should restore a right of action for disparate impact discrimination under Title VI, allowing members of the public to protect themselves fully from discrimination and ensure fairness and accountability in government-funded programs.⁹⁷
- Meaningful implementation of the affirmatively furthering obligation (including finalization of the regulation, if not yet issued). This includes strong ongoing oversight by HUD and additional enforcement resources.
- Issuance of civil rights standards for the Low Income Housing Tax Credit Program, including Title VI of the 1964 Civil Rights Act and the Fair Housing Act (including its affirmatively furthering provision). This should include siting standards directing a significant portion of family units to low poverty; non racially concentrated communities, while preserving units that are affordable to the lowest income families.
- Redesign federal housing programs to meet affirmative obligations to address segregation, with both strong standards (that is, mandatory requirements) and strong incentives for mobility and affordable housing siting. In the Section 8 program, HUD should implement small-area Fair Market Rents to increase the range of neighborhoods available to voucher holders. HUD should revise the Section 8 Management Assessment Program (SEMAP) and Section 8 Administrative Fee system to reward PHAs for improved opportunity outcomes for families. Additionally, the voucher portability process should be revised to minimize hurdles and information barriers for clients. Additional funding should be provided for mobility programs, particularly in segregated metropolitan areas. Increased staffing of HUD’s office of Fair Housing and Equal Opportunity to conduct additional compliance reviews of entitlement jurisdictions’ efforts to affirmatively further fair housing.

⁹⁷ The U.S. Supreme Court erased this right with its decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001); private parties previously were able to sue to enforce disparate impact regulations promulgated under Title VI.

- As the government noted in its submission, HUD has issued a regulation implementing the discriminatory effects standard of the Fair Housing Act and reinforcing the longstanding interpretation of that law. However, effective enforcement requires increased government support. Such increased support should include:
 - Reconvene the President’s Fair Housing Council. The Administration should implement Executive Order 12892 to reaffirm the Fair Housing Act’s mandate that all Federal programs and activities relating to housing and urban development affirmatively further fair housing. The President should reconvene the President’s Fair Housing Council consisting of the Secretaries, Directors, and Commissioners of the Federal departments and regulatory agencies, and appoint the Secretary of the Department of Housing and Urban Development as its chair. The purpose of the Council is to review the “design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing.”
 - The need for additional policy changes has been reinforced by the foreclosure crisis and its exposure of unfair lending practices. Reforms needed in this area include:
 - Reporting and public disclosure of data by mortgage servicers to report loss mitigation outcomes by protected class similar to the reporting requirements of the Home Mortgage Disclosure Act (HMDA).
 - Increased supervision and enforcement of mortgage originators and servicer activities for compliance with the Equal Credit Opportunity Act and the Fair Housing Act.
 - Amend the Consumer Financial Protection Bureau’s (CFPB) mortgage servicing rule to require loan servicers to offer loan modification options if it is in the best interest of the mortgage investor.
 - The CFPB must collect protected class data, including race, in its consumer complaint process, and make such data available in its public complaint database.
 - Federal repeal of all state Stand your Ground laws and a required modification of state self defense laws to include the removal of blanket immunity and a duty to retreat;
 - Federal enactment of safe, sane, sensible and effective gun violence prevention legislation to include: a ban on military-style assault weapons; a ban on the manufacture or sale of high-capacity ammunition clips; an increase in the effectiveness and comprehensiveness of background checks; and a ban on ‘straw purchasers’ of all sizes.

- Enactment of the federal End Racial Profiling Act to address the racially biased manner in which SYG and other laws are implemented through the U.S. criminal justice system.
- What can the federal government do in terms of strengthening gun laws to ensure that SYG laws do not continue to increase the level of gun violence and homicides?

Recommended Questions

- What further steps will the government take to ensure consistent, meaningful enforcement of the Fair Housing Act, including its disparate impact standard?
- How does the government intend to carry out its obligations under CERD, including that of addressing segregation, with specific regard to the Low Income Housing Tax Credit Program?
- What steps has the government taken with regard to the Committee's recommendation on eliminating obstacles to housing choice and mobility, and what additional steps does it plan to take?
- When will HUD release its final AFFH regulation and how does it plan to conduct a meaningful review of all Analyses of Fair Housing?
- How much federal funding goes to local law enforcement in states with "Stand Your Ground" laws and to what extent has the federal government examined the ways in which its funding contributes to a racially discriminatory prosecutorial apparatus that confers immunity on individuals who commit homicide?
- Given the data that shows SYG laws have been applied in a racially discriminatory manner, what will the federal government do to protect racial minorities from being targeted without recourse?
- Given the disproportionate effect of lengthy prison terms on people of color, what measures is the government undertaking to try to reduce the use of such sentences?
- In 2013 the U.S. Attorney General directed federal prosecutors to avoid charging defendants with charges that would lead to imposition of a mandatory minimum penalty in cases where the individual does not have a significant role in the drug trade or significant criminal history, and other factors. What has been the impact of this policy to date and has it had an effect on reducing racial disparities in prosecution?