Report of the International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States

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I. Executive Summary

1. The purpose of the Commission of Inquiry on Systemic Racist Police Violence (Commission) is to examine whether widespread and systematic racist violence in policing against people of African descent in the United States of America (U.S.) has resulted in a continuing pattern of gross and reliably attested violations of human rights and fundamental freedoms. The Commissioners find a pattern and practice of racist police violence in the U.S. in the context of a history of oppression dating back to the extermination of First Nations peoples, the enslavement of Africans, the militarization of U.S. society, and the continued perpetuation of structural racism.

2. The Commission was established in the wake of the public execution of George Floyd, after millions of people saw him tortured and choked to death by police officer Derek Chauvin. Massive protests against police violence towards people of African descent erupted throughout the U.S. and around the world. The families of Mr. Floyd, Breonna Taylor, Michael Brown and Philando Castile joined 600 rights groups and petitioned the United Nations (UN) Human Rights Council (HRC) to appoint a UN Commission of Inquiry to investigate systemic racist police violence and attendant human rights violations against people of African descent in the U.S. After succumbing to enormous pressure by the U.S. and its allies, the HRC instead directed the Office of the High Commissioner of Human Rights to prepare a report on systemic racism and violations of international human rights by police against Africans and people of African descent throughout the world.

> Under color of law, Black people are targeted, surveilled, brutalized, maimed and killed by law enforcement officers with impunity

3. The International Association of Democratic Lawyers, National Conference of Black Lawyers, and National Lawyers Guild then launched this Commission of Inquiry to examine systemic racist police violence against people of African descent in the U.S. The twelve Commissioners—judges, lawyers, professors and experts from Pakistan, South Africa, Barbados, Japan, India, Nigeria, France, Costa Rica, Antigua and Barbuda, the United Kingdom, and Jamaica—held public hearings from January 18 to February 6, 2021.

4. All cases selected for the hearings involved the egregious and unjustified killing or maiming of individuals of African descent in the U.S., including: (1) the killing of unarmed individuals who posed no threat of death or serious bodily harm; (2) the killing of individuals fleeing the police who posed no serious threat of death or serious bodily harm to the officers they were fleeing or others; (3) the use of, or threat to use, physical or psychological intimidation to extract confessions; and (4) the maiming of individuals fleeing the police and/or who posed no serious threat of death or serious bodily harm to others.

5. There has been a long-standing scourge of white supremacy and racial capitalism, as well as slavery and its legacy, in the U.S. in which two systems of law exist: one for white people and another for people of African descent. Under color of law, Black people are targeted, surveilled, brutalized, maimed and killed by law enforcement officers with impunity, as being Black is itself criminalized and devalued. Invariably, when a police killing of a person of African descent is known to have been unjustified, it is dismissed as merely the action or collective actions of "a few bad apples." This excuse obscures the real problem, however, which is structural racism, embedded in the U.S. legal and policing systems.

6. The Commissioners conducted hearings into the cases of 44 Black people, all but one of whom was killed by police. The individual not killed was left paralyzed by police. Family members, attorneys, activists, and experts testified about the details of the killings, how the killings affected the families and communities of the victims, impediments and lack of access to remedies and the resulting impunity for perpetrators. After hearing the testimony and reviewing national data, the Commissioners conclude that both the relevant laws and police practices in the U.S. do not comply with the international human rights obligations of the U.S.

Summary of Findings and Recommendations

7. The Commissioners find violations of the rights to: life, security, freedom from torture, freedom from discrimination, mental health, access to remedies for violations, fair trial and presumption of innocence, and to be treated with humanity and respect. The Commissioners find violations of the State's duty to provide medical care to detained persons; to ensure investigations of extrajudicial killings that are independent, competent, thorough and effective; and to provide prosecution of suspects and punishment of perpetrators to ensure that perpetrators are held accountable The Commissioners find that U.S. laws and police practices do not comply with the international standards on the use of force, which require legal basis, legitimate objective, necessity, precautions, proportionality, protection of life, non-discrimination, and accountability.

8. The Commissioners find that, within the cases they examined, a disproportionate use of excessive force by police led to the deaths of the 43 Black people in the cases they examined. This unlawful disproportionate use of force included shooting and the use of restraints and Tasers. The Commissioners find a alarming, national pattern of disproportionate use of deadly force not only by firearms but also by Tasers against people of African descent. The Commissioners similarly find a pattern of unlawful and excessive force employed against people of African descent by chokeholds and compression asphyxiation, by kneeling or standing on the victim, by cuffing the victim face down and by applying pressure to the victim's head and neck.

9. The Commissioners find that the use of force against unarmed people of African descent during traffic and investigatory stops is driven by racial stereotypes and racial biases resulting in U.S. law enforcement agencies routinely targeting people of African descent for questioning, arrest and detention based on racist associations between Blackness and criminality. Because law enforcement authorities are constitutionally enabled to engage in pretextual stops, Black drivers are targeted by police officers who suspect them of crimes for no reason other than the color of their skin. The Commissioners find that pretextual traffic stops are a common precursor to police killings and uses of excessive force against people of African descent.

10. The Commissioners find that race-based street stops, otherwise known as "stop-and-frisk," are a form of "order maintenance" policing that drives not only racially disparate rates of arrests, but also often triggers the use of deadly force by police. These stops are frequently based on police officers' racial suspicion rather than reasonable suspicion. The continual harassment of Black people via stop-and-frisk is reminiscent of the socially accepted practice during the era of the slave patrols, when every white person had the right to control the movements and activities of Black people.

11. While the Fourth Amendment could serve as an important bulwark against police violence in Black communities, the Supreme Court has interpreted the Fourth Amendment in a manner that expands state

power to inflict violence against Black people. After the landmark Civil Rights legislation of the 1960's, the Court gave police nearly unfettered power, which they employ liberally to stop people whom they assume to be criminals, with little or no evidence.

12. Nevertheless, the Commissioners find a pattern of police violations of the Fourth Amendment rights of Black people to be secure in their persons, houses and effects from unreasonable searches and seizures. These violations include the securing of warrants that lacked probable cause due to reckless disregard for the truth of the allegations, including some based on information from unreliable informants. The Commissioners find a proliferation of the use of risky no-knock warrants. Police illegally entered the homes of many Black people without a valid warrant or exigent circumstances. And police repeatedly stopped Black people with no reasonable suspicion of criminal activity. These Fourth Amendment violations invariably led to the use of excessive force, and ultimately, to police killings of Black people.

13. The Commissioners find that cis- and transgender Black women, girls and femmes are disproportionately killed by police in the United States. Cis- and trans Black women are routinely subjected to humiliating treatment, disrespect and mis-gendering by police who have injured or even killed them. The Commissioners find that the War on Drugs is a significant driver of police violence against Black women and girls. Numerous studies have concluded that Black women are disproportionately subjected to pretextual traffic stops, a law enforcement tactic otherwise known as racial profiling.

> Many Black people are killed in broad daylight to intimidate communities and because officers don't fear accountability

14. The Commissioners find that after victims of racist police violence are killed, their families and communities remain devastated. Many Black people are killed in broad daylight to intimidate communities and because officers don't fear accountability. Spouses are widowed, children grow up without parents, and relatives suffer unimaginable pain. Generations of Black families are traumatized. Black people often suffer post-traumatic stress disorder and other forms of inter-generational psychological and emotional trauma from witnessing racist police violence. Distrustful of police, Black people refrain from calling the police.

15. In case after case, the Commissioners find evidence of an alarming pattern of destruction, loss and manipulation of evidence, coverups, obstruction of justice, and collusion between various arms of law enforcement in connection with the unjustified killings of unarmed persons of African descent. Police officers and their unions, prosecutors, coroners and "independent medical examiners" are accomplices in the service of impunity. The Commissioners also find a troubling pattern of creating false narratives and smear campaigns directed at victims and their families.

16. The Commissioners note the lack of independent and impartial review of police killings including the absence of judicial review of prosecutors' virtually unfettered discretion. The Commissioners further note that the failure to remedy police misconduct amounts to condoning repeated instances of brutality that ultimately culminate in use of deadly force. The Commissioners find the police defense of qualified immunity amounts to condoning brutal police violence against persons of African descent, and creates a culture of impunity whereby offenders are not held accountable and families are left without redress.

17. The Commissioners find that the brutalization of Black people is compounded by the impunity afforded to offending police officers, most of whom are never charged with a crime. Those who do face charges are regularly acquitted or escape time in custody. Since prosecutors rely on officers for investigation and testimony, they have an inherent conflict of interest when reviewing police misconduct. The grand jury is often complicit through doing the prosecutor's bidding and refusing to indict officers who then get away with murder.

18. Since the advent of the so-called Global War on Terror, the U.S. has prosecuted endless illegal and expensive wars, which enrich defense contractors. U.S. domestic police forces have benefited from these endless wars as well. Under Section 1033 of the National Defense Authorization Act, the Pentagon has distributed $5.4 billion worth of military equipment to police agencies since the law was passed a generation ago. Of that amount, $980 million–or 18 percent–was disbursed in 2014 alone. That was the year Michael Brown, Eric Garner, and others were killed and when the Black Lives Matter movement intensified its opposition to police killings.

19. The Commissioners find a *prima facie* case of Crimes against Humanity warranting an investigation by the International Criminal Court (ICC). The crimes under the Rome Statute include: Murder, Severe Deprivation of Physical Liberty, Torture, Persecution of people of African descent, and other Inhumane Acts, which occurred in the context of a widespread or systematic attack directed against the civilian population of Black people in the U.S.

"The Commissioners find a *prima facie* case of Crimes against Humanity warranting an investigation by the International Criminal Court (ICC).

20. The International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States draws attention of the UN High Commissioner for Human Rights to the findings and recommendations in its report and urges the High Commissioner to support the following in her report mandated by the Human Rights Council in its Resolution 43/1:

    a. Constitution by the UNHRC of an independent Commission of Inquiry mandated to conduct full investigation into incidents of police violence against people of African descent in the United States and to determine, in particular, whether the level of violence constitutes gross violation of human rights and whether crimes under international criminal law have been and continue to be committed;

    b. In order to establish a continuous process to monitor systemic racist police violence in the United States, the appointment by the UNHRC of an Independent Expert on Systemic Racist Police Violence in the United States;

    c. Call for the demilitarization of law enforcement throughout the United States; and

    d. Call for an end to impunity and for accountability of police officials resorting to racist violence and unjustified force before independent civilian review boards and in criminal and civil proceedings of the justice system in the United States.

21. The Commissioners call on the Office of the Prosecutor of the International Criminal Court, upon receipt of the report of the Commission of Inquiry, to initiate an investigation into Crimes against Humanity (Article 7), pursuant to her/his powers under Rome Statute, Article 15.

22. The Commissioners call on the Executive Branch of the U.S. Government to:

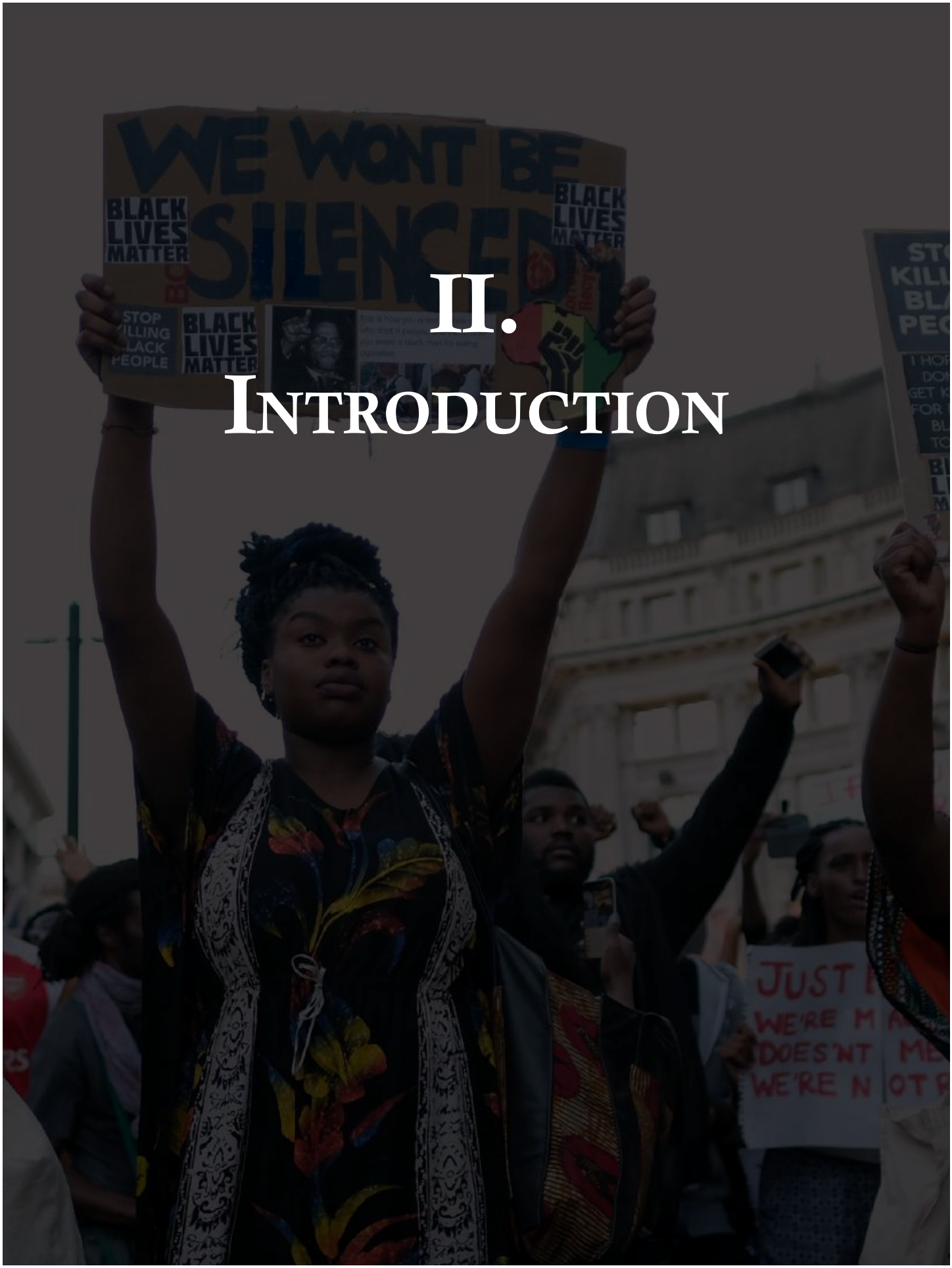
    a. Accept the jurisdiction of the ICC in relation to the U.S. under Article 12 with respect to any and all Crimes against Humanity as defined in the Rome Statute;
    b. Sign the Rome Statute of the ICC and transmit it to the U.S. Senate for consent to ratification;
    c. Remove the non-self-executing language in the ratification of the International Covenant on Civil and Political Rights and/or pass full implementing legislation of this treaty, including the provisions in Article 20, which prohibits propaganda for war and speech that promotes hatred of racial or religious groups or incites discrimination or violence against people of racial or religious groups;
    d. Fully enforce the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the U.S. has ratified.
    e. Ratify all other international human rights treaties, as well as regional treaties;
    f. Support legislation aimed at divesting federal resources from incarceration and policing as well as ending the criminal legal system-driven harms that have disproportionately criminalized Black and Brown communities, LGBTQIA people, Indigenous people, and disabled people, and instead, utilizing funding initiatives, and invest in new non-punitive and non-carceral approaches to community safety;
    g. Create an effective and robust system of combating institutionalized racism within all law enforcement agencies, to be monitored by an independently elected body, in consultation with civil society organizations committed to principles of civil liberties and non-discrimination;
    h. Remove the personal immunity that protects individual police officers from civil lawsuits filed by members of the public, and impose a clear duty on police officers to de-escalate all encounters before force is used; and
    i. Develop policies and support for legislation to demilitarize policing throughout the United States and accomplish a complete overhaul of current policies and training practices including, but not limited to: (i) outlawing use of force except in conformity with UN Guidance on Less Lethal Weapons in Law Enforcement during arrest, custody and assembly based on: precaution, necessity, and proportionality; (ii) outlawing chokeholds and outlawing other subduing tactics that cut off breathing or blood circulation; (iii) outlawing excessive use of Tasers; (iv) prohibiting no-knock warrants; and (vi) outlawing use of force except in conformity with UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including, for example:

        (a) Law enforcement officials, in carrying out their duty, shall, as much as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result; and

        (b) Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (1) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (2) minimize damage and injury, and respect and preserve human life; (3) ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; and (4) ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

23. The Commissioners recommend that the U.S. executive and legislative branches acknowledge that the transatlantic trade in Africans, enslavement, colonization and colonialism were Crimes against Humanity and are among the major sources and manifestations of racism, racial discrimination, Afrophobia, xenophobia and related intolerance. Past injustices and crimes against people of African descent in the U.S. must be addressed with reparatory justice.

24. The Commissioners also recommend that the U.S. Congress establish a commission to examine enslavement and racial discrimination in the colonies and the U.S. from 1619 to the present and recommend appropriate remedies. The Commissioners urge the U.S. to consider seriously applying analogous elements contained in the Caribbean Community's Ten-Point Action Plan on Reparations, which includes a formal apology, health initiatives, educational opportunities, an African knowledge program, psychological rehabilitation, technology transfer, financial support, and debt cancellation.



II. Introduction

"Nate was my perfect gift from God. When Nate was killed, every hope and dream in my head was destroyed, taken, and relegated to a statistic, a statistic that doesn't matter much in the United States of America."

—Dominic Archibald, mother of Nathaniel Pickett II[1]

"Jordan, obviously was running for his life. And to chase him into a trash strewn alleyway, and then you murder him. And you lay him down in trash and proceed to hogtie him and watch him bleed out."

—Janet Baker, mother of Jordan Baker[2]

"With six officers on top of her putting her in this torture device, do they realize at some point she had stopped moving... They failed to check on Kayla. Because her last breath, her last words were, 'Get off me, I can't breathe.' And they ignored her, her cries for help."[3]

—Maria Moore, sister of Kayla Moore

The Crisis of Systemic Racist Police Violence Against People of African Descent in the United States

25. On May 25, 2020, George Floyd was brutally killed by Derek Chauvin, a Minneapolis police officer, who knelt on Mr. Floyd's neck for nine minutes and 29 seconds despite repeated pleas by Mr. Floyd and onlookers to release him.

26. When the video of Floyd's murder went viral, massive uprisings erupted throughout the United States and around the world, with demands for reform, defunding and abolition of the police. Indeed, the public outrage over what has been termed a modern-day lynching was not only about the sheer horror of the torturous public execution of an unarmed Black man by police after his arrest for a low-level offense; it also stemmed from the frequency with which the murders of unarmed Black people by the police continues unabated in the United States.

27. In the same year Mr. Floyd was killed by Derek Chauvin, more than 1,100 people were killed by police, with Black people killed at more than twice the rate of others. "Black people are 3.5 times more likely than white people to be killed by police when Blacks are not attacking or do not have a weapon."[4] Today one out of every 1,000 Black men can expect to be killed by police violence over the course of his life, which is approximately 2.5 times the likelihood of white men being killed by police.[5] Black women are also significantly more likely to die in this manner than their white counterparts, as they are 1.4 times more likely to

1 Video and Transcript: *Hearing on the Case of Nathaniel Pickett II*, International Commission of Inquiry of Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 18, 2021), https://inquirycommission.org/video-and-transcript-nathaniel-pickett-ii-hearing-monday-january-18-international-commission-of-inquiry/ (hereinafter, "*Case of Nathaniel Pickett*").

2 Video and Transcript: *Hearing on the Case of Jordan Baker*, International Commission of Inquiry of Systemic Racist Police Violence Against People of African Descent in the United States (Feb. 2, 2021), https://inquirycommission.org/video-and-transcript-jordan-baker-hearing-tuesday-february-2-international-commission-of-inquiry/, (hereinafter "*Case of Jordan Baker*").

3 Video and Transcript: *Hearing on the Case of Kayla Moore.*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Feb. 5, 2021), https://inquirycommission.org/video-and-transcript-kayla-moore-hearing-friday-february-5-international-commission-of-inquiry/ (hereinafter "*Case of Kayla Moore*").

4 *See* Rashawn Ray, *How can we enhance police accountability in the United States*?, Brookings Institution (Aug. 25, 2020), https://www.brookings.edu/policy2020/votervital/how-can-we-enhance-police-accountability-in-the-united-states/.

5 *Id.*

be killed by police than white women.[6]

28. Mr. Floyd's dying plea, "I can't breathe," called out 28 times, was not only the cry of one Black man facing a brutal extrajudicial killing in broad daylight. It is also the collective refrain of people of African descent killed by law enforcement in the U.S., most often in the course of the victims' lawful activities, in encounters occasioned by racist targeting of communities of color for disparate policing and surveillance.

29. "I can't feel my insides," Mr. Floyd uttered. "I can't feel my legs." He called out for his mama, who had predeceased him by two years. Mr. Floyd said, "Tell my children I love them." Two other officers kneeled on Mr. Floyd's back and legs as a fourth officer stood guard to keep horrified citizens from intervening to save Floyd's life, threatening them with mace.

30. In his testimony before this Commission of Inquiry, Philonise Floyd, Mr. Floyd's brother, implored the Commissioners, "I'm asking you to let his legacy continue to build a brighter future from structural racism and police brutality . . . I'm asking and seeking justice for all Black and Brown men, women and children who have needlessly been killed by racism and police violence." He added, "Not only did my brother have the weight of three police officers on him, he had the weight of a nation plagued with centuries of systemic racism that stole his last breath."[7]

31. The killing of George Floyd shone a light on a long-ignored national scourge--the scourge of racial inequality, racial capitalism, white supremacy, slavery and its legacy in the U.S., in which two systems of law exist: one for whites, and another for Black people. Under color of law, Black people are targeted, surveilled, brutalized, maimed and killed by law enforcement officers with impunity, as Black life itself is criminalized and devalued.

32. Over the summer of 2020, family members of the victims, Black organizers, activists and allies joined together to form the largest protest movement in U.S. history.[8] The origins of this movement began after another unjust and glaring act of white supremacist impunity. Seven years earlier, Black Lives Matter became a rallying cry when Trayvon Martin's killer, George Zimmerman, was acquitted. In July 2014, Eric Garner was brutally choked to death by police officer Daniel Pantaleo of the New York Police Department: the entire event was recorded on cellphone video and released for all the world to see. The following month, video recordings captured the extrajudicial killing of 18-year-old Michael Brown in Ferguson, Missouri, as he walked in his neighborhood and was attacked by a police officer who shot him 12 times while his hands were raised. The police killing of young Michael Brown, who said, "Don't shoot," galvanized the Black Lives Matter movement.

33. Even as public extrajudicial killings of Black people in the U.S. by police have sparked nationwide protests, civil disobedience, community organizing, calls to defund the police, and demands for racial justice and accountability, time and time again justice has been denied. As police departments promise new training and are brought under federal consent decrees, police officers continue to unjustifiably kill Black people. Moreover, programs adopted by one of the country's largest police departments to curb racial targeting resulted in fewer stops, but produced no change in the discriminatory policing of Black people

6 Frank Edwards, Hedwig Lee, & Michael Esposito, *Risk of being killed by police use of force in the United States by age, race-ethnicity, and sex*, Proceedings of the National Academy of Sciences of the United States of America (Aug. 20, 2019), https://www.pnas.org/content/116/34/16793.

7 Video and Transcript: *Hearing on the Case of George Floyd*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 25, 2021), https://inquirycommission.org/video-and-transcript-george-floyd-hearing-monday-january-25-international-commission-of-inquiry/ (hereinafter "*Case of George Floyd*").

8 *See* Larry Buchanan, Quoctrung Bui, & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History* (July 3, 2020), https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html.

and the devaluation of Black lives. Police killings and the officers' subsequent impunity devastate Black communities. Spouses are widowed, children grow up without parents and siblings, and relatives suffer unimaginable loss. To add insult to injury, some families are harassed by police even after their loved ones are killed. Generations of Black families and broader Black communities are traumatized.

34. Failed by U.S. courts and laws reflective of systemic racism, the families and loved ones of victims of police killings continually find their recourse under domestic law lacking. Officers are protected by their unions and remain in their positions. Investigations are led by the same prosecutors who work closely with officer suspects and declinations are therefore frequent. U.S. constitutional standards for a finding of excessive force allow officers' subjective fear to govern the reasonableness of their conduct and dismissals are frequent. When families seek civil remedies, they are often blocked by the doctrine of qualified immunity.

35. With the killing of George Floyd, echoing the "I can't breathe" cry of a dying Eric Garner almost seven years earlier, and in the face of structural racism inadequately addressed by U.S. law and proposed reforms, the families of Black victims of police killings look to the international community to vindicate the human rights of their slain loved ones. They include the rights to life, security, fair trial and presumption of innocence, and to be free from discrimination, torture, and cruel, inhuman and degrading treatment by U.S. police due to their status as people of African descent.

36. The oppression of Black people and devaluation of Black lives has deep roots in the history of the U.S. where, from the time of the original North American colonies, Black people were caught in a nested loop of violence, dehumanization, structural racism and the systemic exploitation of their labor power. Violence, dehumanization and exploitation required a precise legal, military and ideation system. The necessity to police the movement of Black people and to extract wealth from them gradually cemented the racial division in the U.S. The unbroken links between the genocide of the First Nations peoples, the enslavement of Africans, the terror of the Ku Klux Klan, the violence of Jim Crow, the War on Drugs, COINTELPRO[9] and the current militarization of U.S. society has been obscured by the shibboleths of American exceptionalism.

37. In June 2020, the United Nations Human Rights Council (HRC) strongly condemned "the continuing racially discriminatory and violent practices perpetrated by law enforcement agencies against Africans and people of African descent," noting in particular the death of George Floyd on May 25, 2020 in Minnesota, and the deaths of other people of African descent. The HRC also condemned structural racism in the criminal justice system and passed a resolution[10] directing the High Commissioner for Human Rights to prepare a report on intentional law enforcement agencies' systemic racism, and violations of international human rights law against Africans and people of African descent by law enforcement agencies globally.

9 COINTELPRO (syllabic abbreviation derived from Counter Intelligence Program) (1956- unknown) was a series of covert and illegal projects conducted by the United States Federal Bureau of Investigation (FBI) aimed at surveilling, infiltrating, discrediting, and disrupting progressive political organizations. FBI records show COINTELPRO resources targeted groups and individuals the FBI deemed subversive, including feminist organizations, the Communist Party USA, anti–Vietnam War organizers, activists of the civil rights movement or Black Power movement (e.g. Martin Luther King Jr., the Nation of Islam, and the Black Panther Party), environmentalist and animal rights organizations, the American Indian Movement (AIM), independence movements (such as Puerto Rican independence groups like the Young Lords), and a variety of organizations that were part of the broader New Left.

10 H.R.C Res. 43/1 (June 19, 2020).

The Need for International Intervention and Attention from International Peace and Justice Advocates and the Genesis of the Commission of Inquiry

> *"We understand the necessity for global solidarity. For our struggle to be successful we need international pressure on the United States to end unaccountable police violence. In bringing this crisis to the United Nations, we are reminded that the last campaign of Malcolm X was to bring the struggles of Black people in the United States to the international arena of human rights [...]MAPB stands in that tradition, appealing to the 'world opinion and the conscience of mankind' to help us in our struggle for justice."*
>
> **—Collette Flanagan, Founder, Mothers Against Police Brutality**[11]

38. On June 8, 2020, the families of George Floyd, Breonna Taylor, Michael Brown and Philando Castile, together with more than 600 rights groups, petitioned[12] the HRC to convene a special session to appoint a Commission of Inquiry to investigate the on-going crisis of police violence and systemic racism in policing resulting in violations of international human rights laws against people of African descent in the United States.

39. Although the petition was supported by its 17-member African Group of Nations, the HRC succumbed to enormous diplomatic pressure from the U.S. and other allied countries and declined to establish a Commission of Inquiry to investigate the United States. The HRC instead passed a resolution,[13] mandating the Office of the High Commissioner of Human Rights to prepare a report on systemic racism and violations of international human rights law against Africans and people of African descent by law enforcement agencies globally. The HRC's refusal to convene a specific inquiry into the pattern and practice of police violence against people of African descent in the United States stands in stark contrast to its willingness to examine similar violations of member countries in the Global South.[14]

40. Recognizing that the killings and maimings of unarmed Black people by law enforcement agencies in the U.S. continue unabated and any effective domestic remedies are either non-existent or exacerbated by the policies of the U.S. government, and learning that the HRC would not convene a Commission of Inquiry to investigate these crimes, three non-governmental civil society organizations—the National Conference of Black Lawyers, the International Association of Democratic Lawyers, and the National Lawyers Guild—convened a Commission of Inquiry composed of distinguished expert members of the legal community from Africa, Asia, Europe, Latin America, and the Caribbean. The Commission of Inquiry's mandate was to conduct an independent inquiry into:

11 Video: *Collette Flanagan, Mothers Against Police Brutality*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 21, 2021), https://inquirycommission.org/?s=collette+flanagan (hereinafter "*Testimony of Collette Flanagan*").

12 *See* Coalition Letter – Request for U.N. Independent Inquiry into Escalating Situation of Police Violence and Repression of Protests in the United States (June 8, 2020), https://www.aclu.org/letter/coalition-letter-request-un-independent-inquiry-escalating-situation-police-violence-and?redirect=letter/coalition-letter-request-un-investigation-escalating-situation-police-violence-and-repression.

13 H.R.C Res. 43/1, *supra*. n. 10

14 *See* List of HRC-mandated Commissions of Fact-Finding Missions & Other Bodies, UN Human Rights Council (last updated Oct. 2019), https://www.ohchr.org/EN/HRBodies/HRC/Pages/ListHRCMandat.aspx (list of current or past inquiries by the Human Rights Council; To our knowledge, the United States has not been a subject of an inquiry related to human rights abuses of people of African descent despite the long and well-documented history of such racial abuses in the United States).

i. cases of victims of police violence, extrajudicial killings and maimings of people of African descent and entrenched structural racism in police practices throughout the U.S.; and
ii. structural racism and bias in the U.S. criminal justice system that results in the impunity of law enforcement officers for the violations of U.S. law and international human rights standards.

The Purpose of the Commission of Inquiry

41. The Commission of Inquiry was established to examine whether systemic racist violence in policing against people of African descent in the United States has resulted in a pattern of gross and reliably attested violations of human rights and fundamental freedoms. The Commissioners made findings regarding a pattern and practice of racist police violence in the U.S. within the context of a history of oppression dating back to the extermination of First Nation peoples, the enslavement of Africans and their descendants, the militarization of U.S. society, and the perpetuation of structural racism.

42. The Commission of Inquiry is forwarding its recommendations to the High Commissioner, the HRC, UN Member States, and all relevant stakeholders concerned about ending human rights violations, ensuring accountability, and providing reparative justice. Specifically, this report seeks to determine whether relevant domestic U.S. law meets the international law and standards, and whether the individual cases of police killings heard by the Commissioners form part of a pattern of deprivation of the human rights of people of African descent in the U.S. through extrajudicial killing by law enforcement.

The 1979 Predecessor to the Commission of Inquiry

43. The 2021 Commission of Inquiry is founded on the 1978 Petition alleging violations of human rights of minorities, filed on Human Rights Day, by the National Conference of Black Lawyers, National Alliance Against Racist and Political Repression, and the Commission for Racial Justice of the United Church of Christ. The Petition was filed pursuant to ECOSOC Resolution 1503 (XLVII) (Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms) and Resolution 1 (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The inspiration for the 1978 Petition was the 1951 Petition "We Charge Genocide: The Crime of Government Against the Negro People," submitted to the United Nations by Paul Robeson and William Patterson from the Civil Rights Congress (CRC).

44. A year later, in l979, International Association of Democratic Lawyers organized a Delegation of International Experts[15] to investigate the allegations of the 1978 Petition, and to present its findings to the UN Human Rights Commission. These jurists were asked to determine if there was a consistent pattern of gross violations of the human and legal rights of minorities, including policies of racial discrimination and segregation in the United States. The 2021 Commission of Inquiry is modeled after the 1979 Delegation.

15 Lennox S. Hinds, *Appendix I*, *in* Illusions of Justice, Human Rights Violations in the United States (2nd ed. 2019) (the Report and Findings of International Jurists Visit with Human Rights Petitioners in the United States, August 3-20, 1979. The members of the Delegation of International Experts included: Kader Asmal, then in exile from South Africa, later to be a member of the Mandela government; Mr. Justice Harish Chandra from India, a judge of the Delhi High Court; Chief Judge Per Eklund from Sweden, from the Court of Appeal; Richard Harvey from Great Britain, then a specialist in prisons and Southern Africa affairs; Ifeanyi Ifebigh from Nigeria, a practitioner before the Supreme Court of Nigeria; Sergio Insunza Barrios, then in exile from Chile, who had been the Justice Minister under President Salvador Allende; The Honourable Sir Arthur Hugh McShine from Trinidad-Tobago, former Chief Justice of the Court of Appeal; and Babacar Niang from the Senegal Bar Association).

The Convening Organizations of the Commission of Inquiry

45. The **National Conference of Black Lawyers (NCBL)** is a U.S. association, formed in 1968, to offer legal assistance to Black civil rights activists. NCBL is composed of judges, law students, attorneys, legal activists, legal workers, and scholars. The NCBL mission is: "To protect human rights, to achieve self-determination of Africa and African Communities and to work in coalition to assist in ending the oppression of all peoples." NCBL is a bar association whose primary focus is the welfare of the Black community. NCBL is the legal arm of the Movement for Black Liberation.

46. The **International Association of Democratic Lawyers (IADL)** is a worldwide non-governmental organization which has held consultative status with the UN Economic and Social Council since 1969. Since the founding of IADL in Paris in 1946, its members have participated in the struggles that have made the violation of the human rights of groups and individuals, as well as threats to international peace and security, legal issues under international law. From the organization's inception, IADL members throughout the globe have protested racism, colonialism, neocolonialism and economic and political injustice wherever they interfere with legal and human rights, often at the cost of these jurists' personal safety and economic well-being.

47. The **National Lawyers Guild (NLG)** is the United States' oldest and largest progressive bar association and was the first bar association in the U.S. to be racially integrated. The NLG's mission is to use law for the people, uniting attorneys, law students, legal workers, and jailhouse lawyers to function as an effective force in the service of the people by valuing human rights and the rights of ecosystems over property interests.

Commissioners

48. The Commission of Inquiry is composed of distinguished human rights experts from Africa, Asia, Europe, Latin America, and the Caribbean. There are 12 Commissioners, including prominent judges, lawyers, professors, advocates and UN special rapporteurs. The Commissioners are:

    Professor Sir Hilary Beckles, Barbados
    Professor Niloufer Bhagwat, India
    Mr. Xolani Maxwell Boqwana, South Africa
    Professor Mireille Fanon-Mendès France, France
    Dr. Arturo Fournier Facio, Costa Rica
    Judge Peter Herbert OBE, UK
    Ms. Hina Jilani, Pakistan
    Professor Emeritus Rashida Manjoo, South Africa
    Professor Osamu Niikura, Japan
    Sir Clare K. Roberts, QC, Antigua and Barbuda
    Mr. Bert Samuels, Jamaica
    Mr. Hannibal Uwaifo, Nigeria

49. Full details of the Commissioners' mandate and methodology, the transcripts and videos of the hearings it conducted, and the credentials of the Commissioners, Rapporteurs and Convening Organizations can be found at https://inquirycommission.org/. They are briefly summarized below.

Methodology of Case Selection

50. The cases heard by the Commissioners were representative cases that met the criteria listed below. All selected cases involved the egregious, unjustified killing or maiming of individuals of African descent in the United States, including:

    i. The killing of unarmed individuals who posed no threat of death or serious bodily harm;
    ii. The killing of individuals fleeing the police who posed no serious threat of death or serious bodily harm to the police or others;
    iii. The use of, or threat to use, physical or psychological intimidation to extract confessions; and
    iv. The maiming of individuals fleeing the police and/or who posed no serious threat of death or serious bodily harm to others.

51. The representative cases were selected from a larger pool, drawn from the cases listed in the August 3, 2020 civil society letter to the High Commissioner's Office, from the U.S. Mapping Police Violence database, and additional cases brought to the Commissions' attention by U.S. civil rights attorneys. The Commissioners specifically sought representation of cases involving Black women, both cis- and transgender.

52. The Commissioners examined the objective facts of each case to determine whether the case met the selection criteria for inclusion.

Structure of the Report

53. The report of the Commission begins with an examination of the background and context of systemic racist police violence and structural racism in the U.S., including historical forms of systemic exploitation and structural racism in policing.

54. It then presents the Findings of Fact establishing systemic racist police violence and impunity in the U.S. organized by 11 identified themes: (1) Pretextual Traffic Stops as Precursor to Police Killings and Excessive Force; (2) Maintenance of Order Policing Triggers Deadly Police Violence; (3) Killings of Black People after Committing Fourth Amendment Violations; (4) Excessive Use of Lethal Restraints; (5) Lethal Police Violence Exacerbated by Medical Apartheid; (6) Lethal Police Violence against Black People in Mental Health Crises; (7) Excessive Use of Force Against Cis- and Transgender Black Women, Girls, and Femmes; (8) Killing and Traumatizing of Black Children; (9) Racist Police Violence Traumatizes and Devastates Families and Communities; (10) Police Killings of Black Immigrants; and (11) Complicity of Legal Actors in Police Violence and Killings of Black People through Qualified Immunity and Systemic Impunity.

55. The report examines the relevant International Treaties and Conventions which guarantee human rights and fundamental freedoms to people of African descent.

56. The report also discusses how existing U.S. laws and practices do not comply with international law and standards and that the Commissioners' findings demonstrate a pattern of gross and reliably attested violations of human rights and fundamental freedoms of people of African descent in the U.S.

57. The report ends with conclusions and recommendations. A summary of each case that was heard is provided in the report.

Sources of Information for the Commission of Inquiry

i. *Public Hearings with Live Testimony from Family Members and Lawyers of Black Victims of Systemic Racist Police Killings and Maimings in the United States*

58. The Commission of Inquiry held public fact-finding hearings from January 18 to February 6, 2021. Due to travel restrictions resulting from COVID-19, the consultations, meetings, and hearings were conducted virtually. The Commissioners heard evidence in 44 cases from throughout the U.S. dating between 2000 and 2021. The cases were presented by attorneys for the family or estate of the victims and by family members. Further, the Commissioners received written submissions regarding each case, and broader written materials regarding patterns and practices within particular municipalities and states, as well as statistical evidence of the systemic nature of police killings.

a. *Focus of Hearings*

59. The Commission of Inquiry heard testimony from victims' families and community activists on the impact of systemic racist police violence perpetrated against themselves, their families, and their communities. The Commissioners also heard testimony from the lawyers representing the families, who provided details to the Commissioners regarding the response to the killings from police officers, prosecutors, judges, medical examiners, government officials and the media. In focusing on victim impact, the Commission aligned itself with the mandate of the High Commissioner for Human Rights, Michele Bachelet, who has expressed that central to her work are "the voices of victims of African descent and their families and communities. It is critical for us to hear and learn from their experiences, as we formulate recommendations that seek to bring about genuine and transformative change."[16]

60. The Commissioners examined police violence through an intersectional lens, ensuring representation from cis- and transgender Black women who were killed or injured by police. The Commissioners also assessed the ways in which police violence intersected with other forms of vulnerability, including immigration status, mental illness, and houselessness.

b. *Cases Heard*

61. The Commissioners heard evidence in the following cases:
    Clinton Allen
    Jimmy Atchison
    Jordan Baker
    Sean Bell
    Jayvis L. Benjamin
    Jacob Blake
    Tashii Farmer Brown
    Michael Brown, Jr.
    Aaron Campbell
    Damian Daniels
    Patrick Dorismond
    Manuel Elijah Ellis
    Malcolm Ferguson
    George Floyd

16 U.N. H.R.C., 45th Sess., U.N. Doc. A/HRC/45/L/47 (Oct. 2020).

Shereese Francis
Antonio Garcia, Jr.
Eric Garner
Barry Gedeus
Henry Glover
Casey Goodson
Ramarley Graham
Freddie Gray
Richie Lee Harbison
Jason Harrison
Botham Shem Jean
Marquise Jones
Linwood Lambert
Andrew Kearse
Juan May
Kayla Moore
Nathaniel Pickett II
Jeffery Price
Daniel Prude
Tamir Rice
Momodou Lamin Sisay
Mubarak Soulemane
Alberta Spruill
Darius Tarver
Breonna Taylor
Vincent Truitt
Shem Walker
Patrick Warren, Sr.
Tyrone West
Tarika Wilson
Ousmane Zongo

ii. *Recorded Testimony from Expert Witnesses*

63. In addition to the testimony of victims' families and attorney representatives, the Commission of Inquiry heard testimony from several eminently qualified experts, listed below.

64. Collette Flanagan, Founder of Mothers Against Police Brutality (MAPB), spoke about the experiences of families seeking accountability and reform. She appealed to the international community to seek redress for the national crisis people of African descent in the U.S. are experiencing.

65. Lakisha Alomaja, Esq. is an associate attorney at the Mayday Law Office in Houston, Texas, and a member of the advisory board of the Prairie View A&M University Texas Juvenile Crime Prevention Center. She is a co-author of the law review article, *When perceptions are deadly: Policing, given the summer in Ferguson, Missouri and other similar stories, before and since.* She provided information and testimony regarding the article.

66. Attorney Michael Avery, professor emeritus at Suffolk University Law School, former President of the National Lawyers Guild, co-founder of the National Police Accountability Project of the National Lawyers Guild, and author of *Police Misconduct: Law and Litigation*, testified before the Commissioners regarding

police targeting of Black people with mental health issues, as well as the deadly and disproportionate use of Tasers against people of African descent.

67. Professor Laura Cohen is Director of the Criminal and Youth Justice Clinic, and is the Justice Virginia Long Scholar at the Rutgers University School of Law—Newark, where she teaches courses in juvenile justice. She is also a faculty member of the Criminal and Youth Justice Clinic. Professor Cohen provided an overview of the criminal legal system in the U.S. She explained that this system is rooted in intrinsic race and class biases. She also detailed the obstacles to prosecuting offenders who operate under color of law.

68. Camille Gibson, Ph.D., C.R.C., is Interim Dean of the College of Juvenile Justice and Psychology at Prairie View A&M University and Executive Director of the Texas Juvenile Crime Prevention Center. She is a co-author of the law review article, *When perceptions are deadly: Policing, given the summer in Ferguson, Missouri and other similar stories, before and since*. She provided information and testimony regarding the article.

69. Camillo Perez Bustillo, Director of Research, Advocacy, and Leadership Development at the Hope Border Institute, testified regarding overlapping concerns between the Commissioners' inquiry on the systemic police violence against people of African descent in the U.S. and the discriminatory and xenophobic policies of U.S. immigration and border control.

70. Andrea Ritchie, a self-described "Black lesbian immigrant," is a police misconduct attorney and Researcher in Residence on Race, Gender, Sexuality and Criminalization at the Barnard Center for Research on Women, where she recently launched the Interrupting Criminalization: Research in Action initiative. Ms. Ritchie spoke to the Commissioners about police violence against women, LGBTQIA communities, and gender non-conforming people of color in the United States. Ms. Ritchie is also the author *of Invisible No More: Police Violence Against Black Women and Women of Color* and co-author of *Say Her Name: Resisting Police Brutality Against Black Women* policy report.

71. Attorney Flint Taylor of the People's Law Office of Chicago provided expert testimony with relevant background on the history of police killings in the U.S of people of African descent dating to the 1969 case of Fred Hampton, the 1971 massacre at the New York Attica Correction Facility, and systemic racist torture of African-Americans by the Chicago Police Department from 1972 to 1991. He is the author of *The Torture Machine: Racism and Police Violence in Chicago.*

72. Penny Venetis, Dickinson R. Debvoise Scholar at Rutgers Law School, where she is a Clinical Professor of Law and the Director of the International Human Rights Clinic, spoke regarding the effect of qualified immunity on civil liability under U.S. law, as well as other barriers in domestic law to accountability for killings by police officers.

iii. *Research on International Law and U.S. Laws*

73. The Commissioners reviewed relevant U.S. and international law and standards applicable to the vindication of the rights of the victims and their families under international law. They also undertook a review of applicable domestic law to determine compliance with the international law and standards.

iv. *Literature Review*

74. In addition to hearing factual testimony, and receiving written submissions of evidence, the Commissioners also reviewed recently compiled reports on police killings, along with those spanning many decades,

by various civil society organizations, listed below. Citations to other relevant source materials are included throughout this report. Literature reviewed included:

The Black Alliance for Just Immigration (BAJI) and the NYU Law School Immigrant Rights Clinic, *The State of Black Immigrants*, 2016[17]

University of Chicago Law School, *Deadly Discretion: The Failure of Police Use of Force Policies to Meet Fundamental International Human Rights Law and Standards*, 2020[18];

Julian Scott, Camile Gibson, Lakisha Alomaja, Ashley Minter and Leanna Davis, *When perceptions are deadly: Policing, given the summer in Ferguson, Missouri and other similar stories, before and since*, Ralph Bunche Journal of Public Affairs, Spring 2017;[19]

The Written Submission of the American Civil Liberties Union (ACLU) to the Office of the United Nations High Commissioner for Human Rights (OHCHR) pursuant to Human Rights Council resolution 43/1;[20]

The Written Input on Human Rights Council Resolution 43/1 by The International Network Of Civil Liberties Organisations (INCLO);[21]

The Inter-American Commission on Human Rights (IACHR) *Report on Police Violence Against Afro-descendants in the United States* (2018);[22] and

The Report and Findings of International Jurists Visit with Human Rights Petitioners in the United States, August 3-20, 1979.[23]

17 Juliana Morgan-Trostle & Kexin Zheng, *The State of Black Immigrants*, NYU Law School Immigrant Rights Clinic and Black Alliance for Just Immigration 5 (2016), https://www.immigrationresearch.org/system/files/sobi-fullreport-jan22.pdf (last accessed March 1, 2021).

18 University of Chicago Law School – Global Human Rights Clinic, Deadly Discretion: The Failure of Police Use of Force Policies to Meet Fundamental International Human Rights Law and Standards, (University of Chicago Law School, 2020), https://chicagounbound.uchicago.edu/ihrc/14/ (hereinafter "Deadly Discretion").

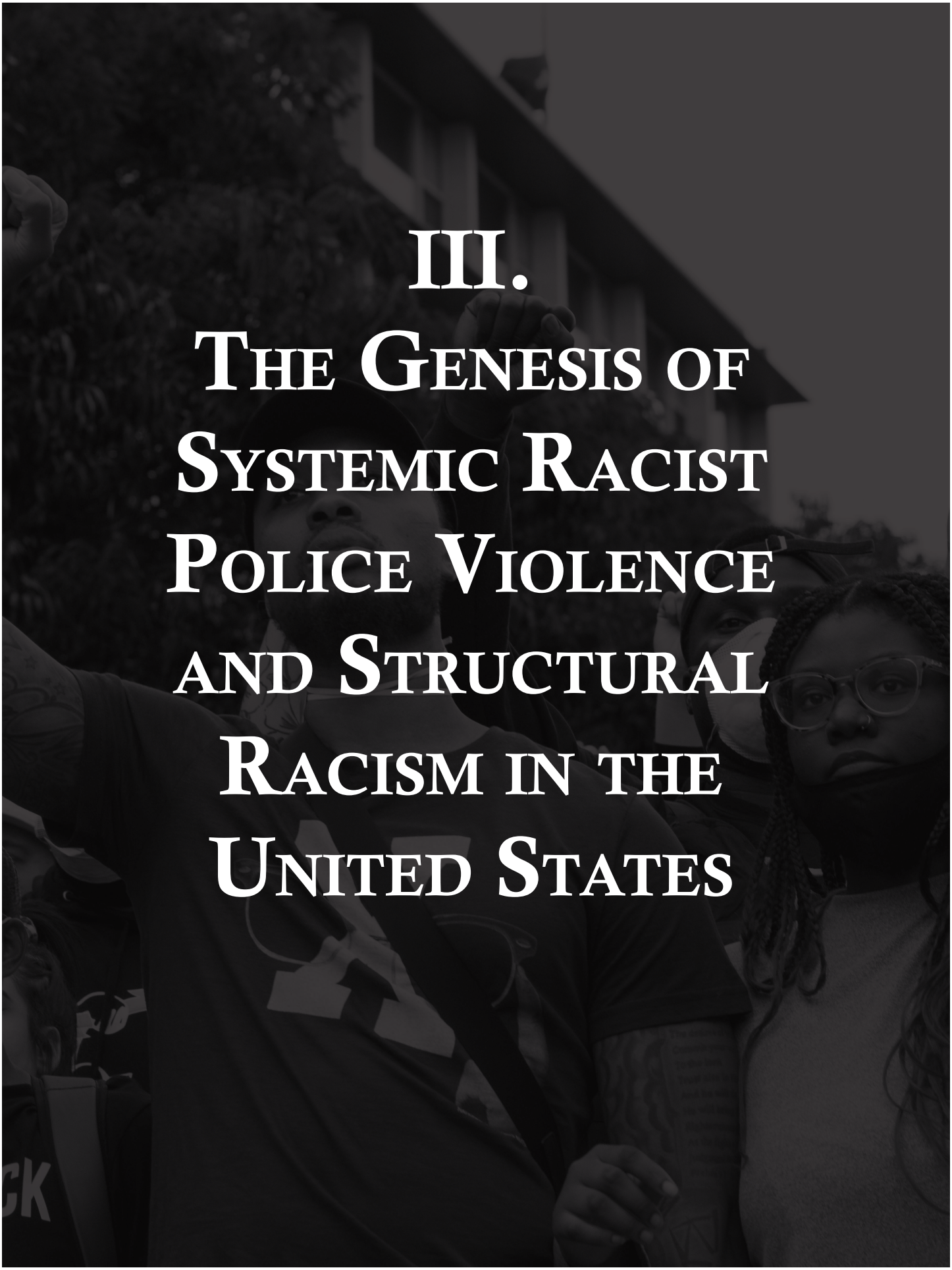
19 Julian Scott, et al., *When perceptions are deadly: Policing, given the summer in Ferguson, Missouri and other similar stories, before and since*, 6 RALPHE BUNCHE J. PUB. AFF. 1 (Spring 2017), https://digitalscholarship.tsu.edu/rbjpa/vol6/iss1/4/.

20 *See* American Civil Liberties Union, *Written Submission of the ACLU to the OHCHR on Human Rights Council Resolution 43/1* (Dec. 15, 2020), https://www.aclu.org/other/written-submission-aclu-ohchr-human-rights-council-resolution-431.

21 *See Written Input on Human Rights Council Resolution 43/1 by the International Network of Civil Liberties Organisations (INCLO)*, INCLO (Dec. 15, 2020), https://files.inclo.net/content/pdf/32/201215%20-%20International%20Network%20of%20Civil%20Liberties%20Organisations%20-%20Written%20Submission%20on%20Human%20Rights%20Council%20Resolution%2043.1%2017Dec.pdf.

22 OAS IACHR, *Police Violence Against Afro-descendants in the United States* (Nov. 26, 2018), http://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf.

23 Hinds, *supra*.



III.
The Genesis of Systemic Racist Police Violence and Structural Racism in the United States

> *"Racism is not the whole but the most visible, the most day-to-day, the crudest element of a given structure....We must look for the consequences of this racism on the cultural level. Racism, as we have seen, is only one element of a vaster whole: that of the systematized oppression of a people."*
>
> —**Frantz Fanon**[24]

75. The recent uprisings against police violence have brought fresh attention to the roots of racist policing and the killings of innocent Black and Brown people. The book, *An Indigenous Peoples' History of the United States*, by Roxanne Dunbar-Oritz, provides a complete and comprehensive history of the founding of the United States of America and its militaristic, genocidal roots. The most instructive aspect of this body of work associates the identity of whiteness with the mass killings of First Nations peoples. This same license to kill, which validated whiteness, was refined in the enslavement of Africans in the United States.

76. At the beginning of the building of the U.S. slave economy, indentured whites were contract laborers. But with the expansion of the transatlantic slave trade and the accompanying construction of Blackness with inferior status, whiteness became synonymous with being superior to Black people. As Ed Baptist noted,

    > Throughout the 17th century the slaveholders successfully convinced the European-descended (i.e., white) population as a whole to participate in the constant controlling of Africans' movements. By the dawn of the 18th century, racialized policing operationalized white racism on a daily basis: maintaining, dynamically enhancing both slavery and prejudice. Historians have documented how whites, who all possessed the sovereign right to kill runaway slaves, were not just like little kings, but also like very big "citizens." They were defined as legitimate "inhabitants," of the colonies, as they would later be called "citizens" in the constitutions of independent states. And they were so defined in no small part because they were expected to, required to, rewarded for, and did always participate in policing Africans.[25]

77. Black people were caught in a nested loop of violence, dehumanization and systemic exploitation of their labor power. Such violence, dehumanization and exploitation required a precise legal, military and ideation system. The necessity to police the movement of Black people and to extract wealth from them gradually cemented the racial division in the U.S. Baptist observed,

    > For police-citizenship built upon— and simultaneously, built—not only the expectation that all white folks will have a kind of membership in and acknowledgement by society that no African people can ever attain. But also; that Black folks will forever be suspected fugitives, people in need of surveillance and containment. So also emerged was another expectation among many whites, one that grew stronger and more expansive over the eighteenth century: that all whites will have a kind of egalitarian status above that of enslaved Africans and even fr ee people of color. For police citizenship wasn't then and isn't now just for police professionals. Colonial slave codes gave all whites the duty and the right to exercise ever more systematic surveillance of the enslaved, or presumed-enslaved.[26]

78. This tradition of control and surveillance of Black people by whites survives to the present day where police are given the extraordinary power to stop individuals, question them and search their persons or belongings if police officers have reasonable suspicion that a crime is being or is about to be committed by the individual.[27] The policy implementation of the principle that whites could apprehend Black people in Virginia dates back to 1630, very soon after the establishment of the colony. In his study of early policing brought to the U.S. after 1619, Baptist explained that the South Carolina colony's 1690 Slave Code, borrowed from Barbados, explicitly granted whites the right to kill an escaping captive.

24 Frantz Fanon, *Racism and Culture, in* Toward The African Revolution 29 (Grove Press, New York, 1964).

25 Edward E. Baptist, *Forging the Zip Ties, in* Predators and Prey: Racialized Policing and Resistance in U.S. History, (unpublished manuscript) (on file with the author) (hereinafter "*Forging the Zip Ties*").

26 *Id.*

27 *Id.*

79. In an early "slave code," eight of the first 12 articles explicitly described how to hunt, capture, and hold runaways. For by law and custom, by 1770, throughout Britain's North American colonies, every person of any visible African descent—what we in the U.S. today would identify as "Black"—was considered a potentially disruptive fugitive until proven otherwise. And by law and custom, every white person had both the duty and the power to police Black people. This power did not stop with the policing of fugitives, or potential fugitives—although one could say that in the eye of white surveillance, every person of any apparent African descent was potentially a fugitive. And, again by law, whites could kill enslaved people who resisted punishment for not performing forced labor, or who allegedly resisted anything whites did at all. This culture gave whites the right to kill at will. The state of Virginia was where the political, legal and military traditions were forged.

> "Black people were caught in a nested loop of violence, dehumanization and systemic exploitation of their labor power

80. Whites did not need a warrant to question or seize African people—to police them—for any Black person might be a fugitive. The government promised to pay the cost of hunting runaways, eliminating some of the counter-incentives that might undermine the unity of the policing population. Meanwhile, as whites hunted runaways—sometimes to the death—they required enslaved Africans who traveled off their enslavers' properties to carry passes and present them to any whites who demanded them. Whites eventually demanded that free people of color carry documentation of their non-slave status, cementing the idea that any white person could police any movement by a Black person.

81. After the Haitian Revolution (1791-1804), the Louisiana Purchase doubled the size of the United States, while simultaneously frightening whites into opposing all forms of Black self-determination. The political economy of the U.S. was dominated by the appropriation of wealth from enslaved Africans. Enslavement "shaped every crucial aspect of the economy and politics" of the U.S.[28] The surpluses accumulated from unpaid labor were invested in all sectors of the economy and affected everyone, from textile manufacturers to manufacturers of farm implements; from textile workers, bankers, and shipbuilders in the North to the elite planter class, working-class slave catchers, and slave dealers in the South to the yeoman farmers and poor white people. There is currently a sharp debate among economic historians about the amount of capital extracted from Black bodies. Mainstream academics dispute the calculations which showed that "by the time the enslaved were emancipated, they comprised the second largest asset in the United States of America."[29] Poor whites were always reminded that they were superior to the African, whether free or enslaved.

28 *See* W.E.B. Dubois, Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played a Part in the Attempt to Reconstruct America, 1860-1880 (Free Press, 1997 edition, 1998) (made the argument that enslavement "shaped every crucial aspect of the economy and politics) (hereinafter "Black Reconstruction in America); *See also* Edward E. Baptist, The Half Has Never Been Told: Slavery and the Making of American Capitalism (New York: Basic Books, 2014) (deepened the argument that enslavement shaped U.S. economy and politics) (hereinafter "The Half That Has Never Been Told"); *See also* Olivia Paschal & Madeleine Carlisle, Read Ta-Nehisi Coates's Testimony on Reparations, The Atlantic (June 19, 2019), https://www.theatlantic.com/politics/archive/2019/06/ta-nehisi-coates-testimony-house-reparations-hr-40/592042/ (most explicit rendering of the argument).

29 *See* Edward E. Baptist, *Toward a Political Economy of Slave Labor*, *in* Slavery's Capitalism: A New History of American Economic Development (Sven Beckert and Seth Rockman, Philadelphia: University of Pennsylvania Press, 2016) (there is among economic historians a fierce debate over what percentage of total wealth was represented by slave property, though estimates are in a fairly narrow range (between 12 and 18% of total wealth). In terms of assets, Land was the largest percentage of the wealth of the society, and of course, 100% of the land was taken by violence from Indigenous people).

Slave Patrols as Antecedents of Modern Policing

82. Baptist's work, *The Half Has Never Been Told*,[30] documented that the 400 percent increase in the daily yield of cotton-picking between 1800 and 1860 stemmed from the systematization of whipping and torture as a means of increasing production. Enslaved Africans resisted this systemic torture and organized on a day-to-day basis to oppose the whip. Enslaved people slowed work, disabled machinery, and developed inventive forms of resistance. The overt form of opposition was running away from plantations and coercive work. It was the mechanism to prevent escape from enslavement that deepened the policing of Black bodies. From the colonial period, slave patrols existed in all parts of settler colonialism.

83. In 1704, the South Carolina legislature passed a law requiring each of the colony's rural militia districts to create slave patrols composed of white men who would ride "from plantation to plantation, and into any plantation."[31] Virginia had enacted its first formal, organized patrols into law in 1727. North Carolina regularized them in 1753. Colonial laws cycled through different types of patrol organizations—sometimes paid, sometimes not, and sometimes riding at irregular intervals, sometimes at regular ones. From the period of the Slave Patrols to the Fugitive Slave Act, whites were empowered to control the bodies and movement of Black people. The statutes, which were later codified in the *Fugitive Slave Act* of 1850, [32] gave the federal government responsibility for locating and returning fugitive slaves, required local law enforcement to assist in the capture of slaves, and made assisting fugitive slaves a crime. The statutes passed by Congress in 1793 and 1850 provided for the seizure and return of runaway slaves who escaped from one state into another or into a federal territory. The 1793 law enforced Article IV, Section 2, of the U.S. Constitution by authorizing any federal district judge, circuit court judge, or state magistrate to decide, finally and without a jury trial, the status of an alleged fugitive slave.

84. From the colonial period to the Civil War of 1861, the essential features of the slave patrol did not change. Their first purpose was to regulate African people's movement through space— including those only presumably enslaved, for patrols often checked individuals who claimed to be free Africans for their papers. The other purpose was to invade and disrupt spaces that enslaved people might consider were their own: cabins and social gatherings such as funerals or African- inspired holiday celebrations. The ostensible reason for this aggression was the need to prevent any organization of revolts and rebellions. Yet the process was also supposed to remind enslaved people that their only protection was total submission.

85. The continuity between the slave patrols in the South and the development of professional police forces that emerged in urban centers was cemented with the concept that Black mobility was to be controlled at all times. As Baptist observed:

> Collectively the patrols and their dual purposes amount to an official program of active surveillance, one more intense than any free population experienced in the Western world before the emergence of totalitarian states. . . . Over time, as scholars of the emergence of "modern" policing—i.e., state-organized policing that also policed whites, even if not in the same way—remind us, slave patrols were the 18th century predecessors of professional police forces that only emerged in urban centers like New York in the 19th century. Charleston, South Carolina had a professional town police force beginning in the late 18th century. But slave patrollers, though they did not enjoy Fraternal Order of Police contracts, they did extract benefits—some of which extended from

30 The Half That Has Never Been Told, *supra*.n. 28

31 Sally E. Hadden, Slave Patrols: Law and Violence in Virginia and the Carolinas (Harvard Historical Studies, Cambridge, MA: Harvard University Press, 2001).

32 History.com Editors, Fugitive Slave Acts, History.com (last accessed March 15, 2021), https://www.history.com/topics/black-history/fugitive-slave-acts.

them to all white "inhabitants."[33]

86. Slave Patrols cemented the racial divide because being Black meant that one was presumed to be enslaved, so the law offered punishments for being Black. Cheryl Harris, in her important work *Whiteness as Property*,[34] linked white supremacy to the concept of property. Harris concludes that whiteness was tied to two fundamental concepts: the social identity of supremacy and subordinating others. Harris also argues that bourgeois democracy had naturalized whiteness in the U.S. This critique of the property basis for policing and the surveillance of Black people had been vigorously promoted by Africans who opposed the idea that they were considered property or simple chattel. The exploitation and extermination of Native American peoples were similarly accomplished by privileging white possession of land as legitimate property. Laws based on the conflation of race and property further led to the second level of connection between racial groups and private ownership: an actual property interest in whiteness itself. Whites have guarded whiteness as their private property by erasing the history of violence and exploitation against nonwhite people. The ideology has proven powerful precisely because it makes history invisible. By using this ideology, white people have denied the fact that they acquired their white skin privilege through institutionalized oppression.

From Slave Codes to Black Codes

87. In the book, *Black Reconstruction in America*, W. E. B. Dubois explained how legal struggles over the Fugitive Slave Act of 1850 and the *Dred Scott* decision[35] of 1857 forced the question of the citizenship and the rights of the free Black people. The small war in Kansas (initiated by the forces opposed to the expansion of slavery), the activities of the Underground Railroad, and the militancy of the abolitionists made the question of ending slavery the number one issue in U.S. society. As a coercive institution, the U.S. military was torn between the interests of the slave owners in the South and the manufacturers in the North who wanted free labor to purchase industrial goods. DuBois outlined the split in the military, and the extent to which the anti-racist and anti-slavery work of the abolitionists had inspired generals and officers with "abolitionist sentiments." This split continues to be instructive in the fight against the more conservative factions of the military, who celebrate the conquest of the lands of the people of Mexico and genocide against the First Nations peoples. The idea of white supremacy that lingers in the military is manifest in the reality that in 2021, more than one in five out of those storming the U.S. capital on January 6, 2021 were serving or ex-military forces.[36]

88. The split in the U.S. military ensured that the decisive factor of the Civil War (1861-1865) was the massive rush to the ranks of the military by the former enslaved. These forces shifted the tide of the war and ensured the victory of the Northern Industrialists and the Republican Party. Immediately after the Civil War, the federal government deployed the military to occupy the former Confederate states. The Army reorganized its jurisdictional structure into five geographic military divisions, which included 19 military departments.[37] The military was simultaneously "establishing" law and order under the Reconstruction Act and expanding permanent warfare against the First Nations peoples.

33 *Forging the Zip Ties*, *supra* n. 25

34 Cheryl Harris, Whiteness as Property, 134 America Harvard L. Rev. 1 (2020).

35 *Dred Scott v. John F.A. Sandford*, 60 U.S. 393 (1857) (U.S. Supreme Court ruled, 7–2, that an enslaved person (Dred Scott) who had resided in a free state and territory (where slavery was prohibited) was not thereby entitled to his freedom, and that African-Americans were not and could never be citizens of the United States). .

36 Tom Dreisbach & Meg Anderson, *Nearly 1 In 5 Defendants in Capitol Riot Cases Served In The Military*, National Public Radio (Jan. 21, 2021), https://www.npr.org/2021/01/21/958915267/nearly-one-in-five-defendants-in-capitol-riot-cases-served-in-the-military.

37 The Army was to reestablish law and order, ensure the public health and welfare, and supervise the return to normal economic activity. The Army had the additional responsibility of protecting the well-being of the Freedmen through the newly created Bureau of Freedmen and Abandoned Lands that Congress established and mandated that the War Department operate.

89. The Fourteenth Amendment was passed in June 1866 and ratified in 1868. It was designed to protect the rights of Southern Black people and restrict the political power of former Confederates. The Fifteenth Amendment gave the right to vote to African-American men. With the right to vote, the politics of the U.S. was temporarily altered with a burst of participation by Black males. Armed with the right to vote, to register, and to participate in the official political process, 1,465 Black elected officials held political office in the South over the following decade.

90. In slowly seeking to reestablish political and economic control over Black people, the Black Codes were promulgated in the former confederate states, and the Ku Klux Klan was formed as a paramilitary organization to lynch and oppress Black people. The first Black Codes were enacted in 1865, shortly after the ratification of the Thirteenth Amendment outlawing slavery. The codes were laws that specified how, when, and where the former enslaved could work and how much they would be paid. The system of policing under the Black Codes created a situation in which the impoverished Klan authorities could not feed and house the captive workers who were rented out in the Convict Lease System.[38] The states did not have enough capital to afford keeping inmates within the confines of prison facilities so the Black Codes became the façade for incubating the system of turning plantations into prisons.

91. Essentially, the Black Codes maintained the *de facto* structure of slavery without formally labeling it "slavery." There were the marauding actions of the Klan, and the economy of the South survived with a new form of Black and white economic relationship called sharecropping. As DuBois noted, "the slave went free, stood a brief moment in the sun: then moved back again toward slavery."[39] The legacies of the Convict Lease system and the prison plantations became a permanent feature of the society. They remain today with the prominent example of the 18,000-acre Angola prison in Louisiana, the poster child for this continuity.

92. The Ku Klux Klan was one of the preeminent organizations to enforce systemic racism, violence and sexual terrorism after 1866. Saturday night parties of lynching, castration, and burning the bodies of Black men concealed the even more profound and widespread rape and violation of Black women. Rape was one of the most forceful expressions of sexual terrorism and white supremacy. This terrorism was pervasive and intense for nearly a century, and served as the basis for the ideological coherence within a system of "racial dominance long marked by forced sex and procreation."[40] The Klan combined all aspects of policing terror in the history of the U.S: political, economic, racial, and sexual.

93. The Klan dominated the South and for nearly 50 years was a principal power broker in the two dominant political parties in the U.S. The former generals of the Confederacy who coordinated the activities of the Klan wrote the legal statutes that came to be known as the Black Codes. They restricted Black people's right to vote, circumscribing the movement of Black people how and where they could travel, and where they could live. Because many ex-Confederate soldiers had transitioned to working in policing or elsewhere in the criminal legal system (e.g., as judges), this system, including law enforcement, perpetuated the oppression of people of African descent.

94. The activities of the Klan set the standards for policing Black lives. Political terrorism facilitated the

38 The Convict Lease System was created at the end of slavery to provide a justification for prisoners to be leased by several states to private industries for cheap labor. The states did not have enough capital to afford to keep inmates within the confines of prison facilities. So they were outsourced to do work for railway contractors, mining companies, and large plantations in need of cheap hands for farming. Markets for convict laborers flourished, with speculators buying and selling convict labor leases. Unlike enslavement, employers had only a small capital investment in convict laborers, and little incentive to treat them well. Convict laborers were dismally treated, but the convict lease system was highly profitable for the states and the employers.

39 Black Reconstruction in America, *supra*. n. 28

40 Lisa Cardyn, Sexualized Racism/Gendered Violence: Outraging the Body Politic in the Reconstruction South in the Reconstruction South, 100 Michigan L Rev. 4 (2000).

violent disenfranchisement of Black people until the passage of the Voting Rights Act in 1965. The legal ecosystem of this form of oppression was codified into what were called Jim Crow laws and crowned by the 1896 *Plessy v. Ferguson*[41] decision that legalized segregation. Black people were denied the right to vote by grandfather clauses (laws that restricted the right to vote to people whose ancestors had voted before the Civil War), poll taxes (fees charged to poor Black people), white primaries (only Democrats could vote and only whites could be Democrats), and literacy tests.

95. In the South, the Klan and ideas of the hierarchy of whiteness merged with the general concept of policing throughout the U.S. by the beginning of the 20th century. Racist ideas flourished in U.S. society with the articulation of the theory that "social characteristics were heritable and deviant behavior was biologically determined."[42] Biological determinism took hold as the U.S. instituted punitive measures against Black people, justified by state officials on the grounds that there were biologically determined traits that predisposed Black people to criminal activity and "deviancy." By the end of the 20th century, and coinciding with the War on Drugs, biological determinism buttressed sexualized racism and was reinforced with an all-out war against Black people manifest in the repression that killed any public leader who opposed racism. Martin Luther King Jr., Medgar Evers, Malcolm X, and George Jackson were but some of those killed by the militaristic police.

The activities of the Klan set the standards for policing Black lives.

96. By the end of the 19th century, Manifest Destiny, Social Darwinism, whiteness, and eugenics congealed to fashion a particular brand of white racism. Throughout the 19th and 20th centuries, the growth of U.S. economic, military, and cultural hegemony meant that white people in the U.S. exercised a significant influence on practices and ideologies of anti-Blackness (and other kinds of racism) in various countries.

Racism and the Militarization of Policing

97. The political monopoly of the racists in the U.S. system ensured that the Senators in the southern part of the country maintained seniority in the political system and used society's resources to feed militarization. The history of Benjamin Tillman of South Carolina reveals the extent to which membership in the Klan, political leadership, and racial terror were combined. From his position as a member of the U.S. Senate Committee on Armed Services and Military Affairs and Chairperson of the Committee on Naval Affairs (1913–18), Tillman used his influence to extend the role of the armaments industry and championed the extension of the southern version of Reconstruction. By the time of the Second World War, military bases in the South propped up Jim Crow and reinforced the oppression of Black people. The Cold War deepened the militarization of the U.S. where the scare of communism was not only a pretext

41 *Plessy v. Ferguson*, 163 U.S. 537 (1896) (a landmark U.S. Supreme Court decision that upheld the constitutionality of racial segregation under the "separate but equal" doctrine. The case stemmed from an 1892 incident in which African-American train passenger Homer Plessy refused to sit in a car for Black people. Rejecting Plessy's argument that his constitutional rights were violated, the Supreme Court ruled that a law that "implies merely a legal distinction" between white people and Black people was not unconstitutional. As a result, restrictive Jim Crow legislation and separate public accommodations based on race became commonplace).

42 Dorothy Roberts, Killing the Black Body: Race, Reproduction, and the Meaning of Liberty 61 (Vintage Books 1997).

for repression, but also a way of smearing any Black leader who opposed racism. The COINTELPRO[43] program exposed this militarism against civil rights leaders and demonstrated how the political system orchestrated the War on Drugs to heighten policing and surveillance, particularly of Black and other disenfranchised people.[44]

98. Several years after the War on Drugs wreaked unprecedented havoc in Black and Brown communities, John Ehrlichman, former domestic advisor to Richard Nixon, admitted, "We created the War on Drugs to 'criminalize' Black people and the anti-war left." The War on Drugs was another justification for intensifying surveillance and policing of Black and Brown people. Its added benefit was that the War on Drugs boosted militarization at home and abroad. Ehrlichman told a journalist in 1994, "You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or Black people, but by getting the public to associate the hippies with marijuana and Black people with heroin, and then criminalizing both heavily, we could disrupt those communities."[45]

99. Gary Webb, in his book, *Dark Alliance: The CIA, the Contras, and the Cocaine Explosion*, exposed how the deepening militarization of Black communities emerged from the spread of crack cocaine in Black neighborhoods. The War on Drugs accelerated mass incarceration with Black people being defined as the state's enemy. The destruction unleashed by the War on Drugs has been labeled The New Jim Crow.

100. Militarism at home and abroad became central to the economic and cultural dominance of the U.S. Wars fought abroad are one component of the military management of the world system in which U.S. barons benefit from military forces backing the dollar as the currency of international trade and the militarization of the planet. Billions of dollars were directed towards the U.S. military, police, and prisons while suborning international organizations, such as the International Monetary Fund (IMF), to retain the structures of international finance to perpetuate U.S. dominance. The War on Drugs and the expansion of U.S. militarism merged after the Cold War when ideological management was insufficient to justify the presence of U.S. military personnel and bases throughout the world. The Global War on Terror became one iteration of global militarism that led to formation of the U.S. Patriot Act[46] and the National Defense Authorization Act of 2001 (NDAA).[47] It is no coincidence that under the NDAA, the U.S. oligarchs allocate their right to fight endless wars and receive the money that funds them. Congress has authorized more than $6 trillion for the endless and failed wars in Afghanistan, Iraq, Syria, Libya, and other parts of the world in the past two decades.[48]

101. U.S. domestic police forces have also benefited from these endless wars. It is not by accident that via Section 1033 of the NDAA, the Pentagon has distributed $5.4 billion worth of military equipment to police agencies since the law was passed a generation ago. Of that amount, $980 million–or 18 percent–was handed out in 2014 alone. That was the year Michael Brown, Eric Garner, and others were killed and

43 COINTELPRO (syllabic abbreviation derived from Counter Intelligence Program) (1956- unknown) was a series of covert and illegal projects conducted by the U. S. Federal Bureau of Investigation (FBI) aimed at surveilling, infiltrating, discrediting, and disrupting progressive political organizations. FBI records show COINTELPRO resources targeted groups and individuals the FBI deemed subversive, including feminist organizations, the Communist Party USA, anti–Vietnam War organizers, activists of the Civil Rights Movement or Black Power movement (e.g. Martin Luther King Jr., the Nation of Islam, and the Black Panther Party), environmentalist and animal rights organizations, the American Indian Movement (AIM), independence movements (such as Puerto Rican independence groups like the Young Lords), and a variety of organizations that were part of the broader New Left

44 Graham Boyd, The Drug War is the New Jim Crow, NACLA Report on the Americas (2007), https://nacla.org/article/drug-war-new-jim-crow

45 Frida Garza, *Nixon advisor: We created the War on Drugs to "criminalize" Black people and the anti-war left*, Quartz (Mar. 23, 2016), https://qz.com/645990/nixon-advisor-we-created-the-war-on-drugs-to-criminalize-black-people-and-the-anti-war-left/.

46 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. 115-272 (2015).

47 National Defense Authorization Act of 2001 (NDAA), Pub. L. 107-107 (2001).

48 Neta C. Crawford, *United States Budgetary Costs and Obligations of Post-9/11 Wars through FY2020: $6.4 Trillion*, Watson Institute of International and Public Affairs, Brown University (2019).

when the Black Lives Matter movement intensified its opposition to police killings.

102. For decades, the Pentagon has been training Special Forces in urban warfare. A report from the American Civil Liberties Union (ACLU) has similarly documented the use of Pentagon-supplied equipment in no-knock home invasions, including police officers driving up to people's houses in armored vehicles to launch these raids. The ACLU concluded that "the militarization of American policing is evident in the training that police officers receive, which encourages them to adopt a 'warrior' mentality and think of the people they are supposed to serve as enemies, as well as in the equipment they use, such as battering rams, flashbang grenades, and APCs [Armored Personnel Carriers]."[49]

103. The 1033 program has resulted in an increasingly militarized law enforcement, which has exacerbated police violence. According to a Research and Politics study, there is "a positive and statistically significant relationship between 1033 transfers and fatalities from officer-involved shootings across all models."[50] Additionally, a 2018 policy study[51] by R. Street notes that another reason for an increase in violence by a militarized law enforcement is that when issued access to military equipment, police are more likely to use it rather than other more appropriate and traditional law enforcement tools.

Militarism at home and abroad became central to the economic and cultural dominance of the U.S.

Race, Police Violence and the U.S. Constitution

104. Like the broader history of the United States, the U.S. Constitution is a document that has been shaped by race and white supremacy and that, in turn, reinforces racism and white supremacy. Nowhere is this truer than in the U.S. Supreme Court's jurisprudence regarding the power of police to stop, frisk, surveil, and use force against all civilians in general and people of African descent in particular.

105. For example, the Fourth Amendment prohibits "unreasonable searches and seizures" and requires that warrants be supported by probable cause for arrests and searches of people, places, and things. While it could serve as an important bulwark against police violence in Black communities, the Supreme Court has interpreted the Fourth Amendment in a manner that expands state power to inflict violence against Black people. In a series of cases beginning with *Terry v. Ohio*,[52] the Court created permissive standards for police to stop and search individuals they encounter in the community.

106. In *Terry*, the Court held that officers can stop an individual when they have "reasonable suspicion" to believe the person has committed a crime or is about to commit a crime and may conduct a limited pat down (frisk) if the officer has "reasonable suspicion" that the person is armed and presently dangerous to the officer or others. Although the *Terry* court stated that reasonable suspicion is more than a "hunch" and instead requires an articulable, reasonable basis for suspicion, this standard, however ill-defined, gives police nearly unfettered power to stop people whom they believe to be criminals based on little or

49 ACLU, *WAR COMES HOME: The Excessive Militarization of American Policing*, (2014), https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rel1.pdf.

50 Casey Delehanty, et al., *Militarization and police violence: The case of the 1033 program*, Research and Politics (2017).

51 David Bahr, *R Street Institute police study: Police should be armed like Batman, not G.I Joe*, R Street (Mar. 28, 2018), https://www.rstreet.org/2018/03/28/r-street-institute-policy-study-police-should-be-armed-like-batman-not-g-i-joe/.

52 *Terry v. Ohio*, 392 U.S. 1 (1968).

no evidence. Indeed, courts have found that an officer has reasonable suspicion to conduct a stop based on traffic and non-criminal infractions when an individual appears "out of place" or runs from the police, particularly in a high crime neighborhood. Courts have upheld stops and searches of individuals based on the fact that they were standing still or walking too quickly, or because they "appeared nervous" or evaded the gaze of police. Such a broad standard is an invitation for arbitrary and biased policing, which disproportionately impacts marginalized individuals and communities. In many ways, this is analogous to the power the 1793 Fugitive Slave Act gave to any federal or state judge to unilaterally determine the status of an alleged fugitive slave.

107. Black and Latino men, for example, are viewed as more likely to engage in criminal behavior and such stereotypes, in turn, justify police regulation and surveillance of their movements and their bodies. Black women's bodies have been associated with sexual deviance, poverty, crime, and a host of other social ills.[53] Native American women have been cast as the intergenerational propagators of corrupt cultural practices.[54] These sorts of stereotypical images and assertions disadvantage women of color by "creat[ing] an interlocking mythology with political implications."[55] Such stereotypes often lead police to target people of African descent and justify judicial findings of "reasonable suspicion." This form of "racial profiling" has operated in the U.S. without constitutional scrutiny. Instead, the Supreme Court has allowed law enforcement to use race as a factor in identifying individuals who are suspicious and therefore subject to police surveillance or interrogation. Two cases, *U.S. v. Brignoni-Ponce*[56] and *Whren v. United States,*[57] exemplify this trend in Fourth Amendment jurisprudence.

108. In *Brignoni-Ponce*, the Court held that it was a violation of the Fourth Amendment to rely exclusively on race as a basis for establishing reasonable suspicion in the context of a roving immigration patrol.[58] Nevertheless, the Court asserted that race may be used as a factor in reasonable suspicion determinations.[59] Permissibility of the use of race in police investigations and findings of reasonable suspicion was further expanded by the Court in *Whren v. United States*.

109. In *Whren*, the Court upheld a traffic stop of two young Black men, rejecting the idea that courts should be concerned about the "subjective" beliefs of the officers, even if they are racially motivated. In reaching this conclusion, the Court noted that its precedent "foreclose[d] any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved."[60] Instead, the Court held that if the officers had probable cause to believe a traffic infraction had occurred, even if a reasonable officer would not have stopped the driver absent some additional law enforcement objective, then a stop would not be found to run afoul of the Constitution.[61] Such a stop would be upheld even if the officer was subjectively motivated to make the stop based on the race of a motorist. The *Whren* decision thus enabled reasonable law enforcement objectives to serve as pretextual justification for race-based suspicion. In so doing, the Court invested significant discretion in the hands of police officers regarding what constitutes suspicion and which racial subjects should be seen as suspicious. The Court's failure to apply the Fourth Amendment to this form of racialized assessment of suspicion increased what Devon Carbado calls the "racial vulnerability" of Black and Brown people to police stops and searches.[62]

53 Daniel Patrick Moynihan, The Negro Family: The Case for National Action (Office of Policy Planning and Research, United States Department of Labor, 1965).

54 Rebecca Tsosie, Reclaiming Native Stories: An Essay on Cultural Appropriation and Cultural Rights, 34 Ariz. St. L.J. 299, 319 (2002).

55 *Id.* at 49.

56 *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

57 *Whren v. United States*, 517 U.S. 806 (1996).

58 *Brignoni-Ponce*, 422 U.S. at 887.

59 *Id.*

60 *Whren*, 517 U.S. at 813.

61 *Id.* at 812-814.

62 Devon Carbado, *(E)racing the Fourth Amendment*, 100 Mich L. Rev. 946, 976 (2002).

110. The Court's decisions in *Brignoni-Ponce* and *Whren* also affected the ability of people of African descent "to move freely about their city and to visit white neighborhoods."[63] Indeed, the link between race and suspicion attaches not only to bodies but to spaces, as racialized people have been found to face increased levels of "stop[s] and search[es] when they are racially out of place."[64] Even in the context of the Fourteenth Amendment—the doctrinal vehicle for race-based discrimination claims—racial incongruity has been upheld as a basis for suspicion.[65] The Court's sanctioning of the use of race as a basis for suspicion to engage in pretextual stops that rely upon race and racialized policing of space, provides the doctrinal grist for a broad regime of racial profiling that renders Black and Brown people criminalizable at the discretion of law enforcement.

111. The Fourth Amendment also prohibits unreasonable "seizures" of individuals. Like the Supreme Court's jurisprudence on race and police stops, the Court has interpreted the Fourth Amendment in ways that grant police expansive powers to use force against civilians who are disproportionately Black, poor, and disabled. In other words, the Court has constructed a jurisprudential regime that empowers the state and leaves vulnerable communities to bear the brunt of state violence.

112. In *Tennessee v. Garner*, the Court held that the Fourth Amendment prohibits the use of deadly force by police when faced with a "fleeing felon."[66] The Court, however, created an exception to this bright-line rule if law enforcement officials can demonstrate that they have probable cause to believe that the individual poses a danger to the officer or the public, or that the individual committed a crime involving the infliction or threatened infliction of serious physical harm. The Court continued this permissive posture toward the use of force by law enforcement officials in *Graham v. Connor*.[67]

113. In *Graham v. Connor*, the Court held that the use of force by police must be "objectively reasonable" in light of a number of factors including the nature of the crime the individual is suspected of committing, whether they are resisting or attempting to evade the officer, and whether the individual poses an immediate threat to the safety of officers or others. Significantly, officers do not have to be correct about their assessment of the need to use force; their fear need only be reasonable, even if incorrect.

Race and the Fourteenth Amendment

114. The Equal Protection Clause of the Fourteenth Amendment[68] prohibits state-sponsored racial discrimination. Given how race has so thoroughly pervaded police practices generally and use of force particularly, one would think that this is precisely the kind of discrimination that is constitutionally impermissible. The Court, however, has interpreted the Equal Protection Clause in such a manner as to foreclose any meaningful regulation of racially disparate police use of force.

115. In a series of cases, the Court has ruled that racially disproportionate impact alone is insufficient to establish a Fourteenth Amendment violation. In *Washington v. Davis*,[69] Black police officers sued the District of Columbia Metropolitan Police Department, alleging that the standardized test used for hiring and promotion had a discriminatory impact on African-Americans. The plaintiffs argued that the high cutoff for the promotion score was a proxy for race given the broader racial disparities in educational attainment. Further, the plaintiffs maintained that the racial disparity was not justified by business necessity because the testing instrument had not been validated. The Court rejected their claim, instead ruling that

63 Evan Gerstmann, *Where Is Equal Protection? Applying Strict Scrutiny to Use of Race by Law Enforcement*, 29 Harv. J. Racial & Ethnic Just. 1, 12 (2013).
64 *Id.*
65 *Brown v. City of Oneonta*, 195 F.3d 111 (2nd Cir. 1996)
66 *Tennesee v. Garner*, 71 U.S. 1 (1985).
67 *Graham v. Connor*, 490 U.S. 386 (1989).
68 U.S. Const. amend. XIV, cl. 1.
69 *Washington v. Davis*, 426 U.S. 229 (1976).

litigants must present evidence of intentional discrimination to establish a violation of the Equal Protection Clause.

116. The Court's decision in *Davis* has had a pernicious effect on the ability of the Constitution to limit racial disparities in the context of the criminal legal system. In *McClesky v. Kemp*,[70] for example, the Court considered a Fourteenth Amendment challenge to the administration of the death penalty brought by Warren McClesky, a Black man sentenced to death in the state of Georgia. In support of the challenge, McClesky presented the findings of a study conducted by David Baldus, Charles Puleski, and George Woodworth ("Baldus Study")[71] that analyzed approximately 2,000 death penalty cases in Georgia from 1970 to 1980. After taking 39 non-racial variables into account, the Baldus Study found significant racial disparities in the imposition of the death penalty. For example, the study determined that defendants charged with killing white victims were 4.3 times more likely to receive the death penalty than those who killed Black victims. Most strikingly, the study concluded that Black defendants who killed white victims were 22 times more likely to be sentenced to death than Black defendants who killed Black victims. While the Court did not dispute the Baldus Study's finding of racial disparity, it nevertheless rejected McClesky's claim citing the absence of proof of intentional discrimination or the explicit use of racial classifications in his particular case.

117. Implicit in the Court's intent-based, anti-classification equal protection jurisprudence are several assumptions about how racial discrimination functions. First, race must be used explicitly; if a policy or practice is facially neutral, any racial disparity associated with said policy must be intended. Second, social inequality may render individuals vulnerable to state violence without running afoul of the Constitution. Third, racial disparities are insufficient to establish a constitutional violation.

From the Past to the Present

> *"Perhaps if I had not killed him, he would have killed me."*
>
> **—Moses Riggs, 1770**

118. On the morning of November 9, 1770, in Accomack County, Virginia, a seven-year-old Black boy, Stepney, was playing on the road when he was brutally beaten to death by Moses Riggs. When brought before the judge and questioned as to why he had killed the boy who could not have offended him by word because he could not speak or by actions because he was too small, Riggs responded to the judge, "Perhaps if I had not killed him, he would have killed me."[72] This justification for the killing of Black people has been routine in the U.S. for more than 300 years and has been one of the prime justifications for police killings: that those who kill Black people were acting in *de facto* self-defense. Even more egregious has been the use of the self-defense narrative by police to justify the killing of Black children and youth in the U.S.

119. Fast forward to November 22, 2014 when 12-year-old Tamir Rice was shot and killed while he was playing with a toy gun in a park in Cleveland, Ohio.

120. The continuity of the self-defense narrative can be seen in the majority of the cases heard by the Commissioners. The historical evidence demonstrated that while whiteness was implicated in the genocidal history of the U.S., the refinement of the ideation systems of white supremacy accelerated with enslavement and Jim Crow. From the Slave Patrols to the Convict Lease System, to the KKK, the ideas of controlling

70 *McCleskey v. Kemp*, 481 U.S. 279 (1987)

71 Baldus, Pulaski, & Woodworth, Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience, 74 J. Crim L. & C. 661, 674, n. 56 (1983).

72 Edward E. Baptist, *Forging the Past*, (chapter in forthcoming manuscript on the history of policing in the United States) (on file with author).

the bodies and movements of Black people became generalized in the society and were linked to the mode of capital accumulation in the U.S., or put differently, the U.S. business model. Police departments throughout the U.S. were trained in the ideas of white supremacy, with police forces and the discipline of criminology becoming infused with eugenic ideas.

121. The unbroken links between the genocide of First Nations peoples, enslavement of Africans, terror of the Ku Klux Klan, Jim Crow violence, the War on Drugs, COINTELPRO, and the current militarization of U.S. society have been obscured by the ideation system of liberty and freedom that masked the depth of the violence and dehumanization. The recent uprisings against police violence have brought fresh attention to the roots of racist policing and the killings of innocent Black and Brown peoples. Societal ideas about white supremacy and security ensure that Black people are being policed in ways similar to the era of Slave Patrols when control over the bodies and movement of Black people was central to the stability of capital accumulation.

122. Since the popularization of the 1619 Project[73] and a more precise understanding of the role of chattel slavery in the U.S. economy, the academic and political establishment has issued a sharp denial of the reality of systemic racism in the United States. This denial has given rise to the narrative that police violence can be attributed to a "few bad apples." That phrase has become a defense for police misconduct. Politicians and the corporate media used the formulation "rogue cops" after the Rodney King beating in 1991, the 2014 fatal shooting of Michael Brown, the fatal shootings of Alton Sterling and Philando Castile, and are doing so now in the midst of protests over the killings of Breonna Taylor and George Floyd.

123. The Findings of Fact disprove the notion that weeding out rogue police officers will end the epidemic of police violence against people of African descent in the U.S. These factual findings are based on hearings featuring representatives of victims in 44 different cases as well as supporting statistical evidence. They provide compelling evidence of the systemic racism, police violence, and structural racism wielded against people of African descent in the United States.

124. The chart below lists (in alphabetical order) the cases heard by the International Commission of Inquiry between January 18 and February 6, 2021, noting the attorney(s), family/community member(s), and students who presented each case. Following the chart are brief descriptions of each case. Fuller descriptions of the cases can be found in Appendix 1.

Cases Heard by the International Commission of Inquiry					
Year	Victim	City or County		Presenting Attorney(s) and Students	Family/Community Member
2019	Atchison, Jimmy	Atlanta	GA	Gerald Griggs	Jimmy Hill
2014	Baker, Jordan	Houston	TX	David Owens, Billy J. Mills	Janet Baker
2006	Bell, Sean	New York	NY	Sanford Rubenstein	Nicole Paultre Bell, Laura Harper
2013	Benjamin, Jayvis L.	Decatur	GA	Patrick Megaro	Montye Benjamin

73 *See* Nicole Hannah- Jones, *The 1619 Project*, New York Times (Aug. 17, 2019), https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html (In 2019, the New York Times launched a series of articles to mark 400 years of the Black presence in the United States).

2020	Blake, Jacob	Kenosha	WI	Ben Crump, Jasmine Rand	Jacob Blake
2014	Brown, Jr., Michael	Ferguson	MO	Ben Crump, Jasmine Rand, Chad Steen, Nabeha Shaer	Lezley McSpadden
2017	Brown, Tashii	Las Vegas	NV	Andre Lagomarsino	
2010	Campbell, Aaron	Portland	OR	Tom Steenson	Marva Davis
2020	Daniels, Damian	San Antonio	TX	Lee Merritt	Annette Walker, Brendan Daniels
2000	Dorismond, Patrick	New York	NY	Derek Sells	
2020	Ellis, Manuel Elijah	Tacoma	WA	James Bible	Monet Carter-Mixon, Jamika Scott
2000	Ferguson, Malcolm	New York	NY	Seth Harris	
2020	Floyd, George	Minneapolis	MN	Ben Crump, Jasmine Rand	Philonise Floyd
2012	Francis, Shereese	New York	NY	Steve Vaccaro	
2017	Garcia, Jr., Antonio	Leavenworth	KS	Derek Sieck, Jasmine Rand	Jasmine Roberson, Heather Garcia
2014	Garner, Eric	Staten Island	NY	Jonathan Moore	Gwen Carr
2020	Gedeus, Barry	Ft. Lauderdale	FL	Lee Friedland, Greeny Valbuena	Alexis Hill
2005	Glover, Henry	New Orleans	LA	Courtney Wilson	
2020	Goodson, Casey	Rosedale	OH	Sarah Gelsomino	Tamala Payne
2012	Graham, Ramarley	Bronx	NY	Royce Russell	Constance Malcolm
2015	Gray, Freddie	Baltimore	MD	William Murphy	
2016	Harbison, Richie Lee	Hendersonville	NC	Jeremy Adams, Kyle Brazile, Prof. Michael Avery	
2014	Harrison, Jason	Dallas	TX	Geoff Henley	
2019	Jean, Botham Shem	Dallas	TX	Daryl Washington	Allison Jean

2014	Jones, Marquise	San Antonio	TX	Daryl Washington	Deborah Jones-Bush
2017	Kearse, Andrew	Schenectady	NY	Sanford Rubenstein, Cory Dalmata	Angelique Negroni-Kearse, Ares Davoice, Hank Newsome
2013	Lambert, Linwood	South Boston	VA	Thomas Needham Sweeney	
2014	May, Juan	Arlington	TX	Anthony Eiland	Jindia Blount
2013	Moore, Kayla	Berkeley	CA	Adante Pointer	Maria Moore
2015	Pickett II, Nathaniel	Barstow	CA	Dale Galipo	Ms. Dominic Archibald
2018	Price, Jeffery	Washington	DC	David Shurtz	Denise Price
2020	Prude, Daniel	Rochester	NY	Donald Thompson	Joseph Prude
2014	Rice, Tamir	Cleveland	OH	Billy J. Mills	Samaria Rice
2020	Sisay, Momodou Lamin	Snellville	GA	Abdul Jaiteh	Lare Sisay, Diminga George
2020	Soulemane, Mubarak	New Haven	CT	Sanford Rubenstein, Mark Arons	Omo Klumsum Muhammad, Rev. Kevin McCall
2003	Spruill, Alberta	New York	NY	Derek Sells	
2020	Tarver, Darius	Denton	TX	Lee Merritt	Kevin Tarver, Sr.
2020	Taylor, Breonna	Louisville	KY	Lonita Baker, Jasmine Rand	Tamika Palmer
2020	Truitt, Vincent	Atlanta	GA	Maria Banjo, Gerald Griggs	Venethia Cook
2009	Walker, Shem	New York	NY	Sanford Rubenstein	Rev. Kevin McCall
2021	Warren, Patrick, Sr.	Killeen	TX	Lee Merritt	Patrick Warren, Jr., Dwayne Palmer
2013	West, Tyrone	Baltimore	MD	Nana Gyamfi, Christopher Lawrence, Jasmine Smith	Tawanda Jones
2008	Wilson, Tarika	Lima	OH	Derek Sells	
2003	Zongo, Ousmane	New York	NY	Sanford Rubenstein	

CASES HEARD BY THE INTERNATIONAL COMMISSION OF INQUIRY

March 1, 2000, Malcolm Ferguson, New York, NY

125. Drug officers allegedly "noticed some movement" in the hallway of a public housing building and investigated. Malcolm Ferguson, who was unarmed, ran up the stairs. "At some point, on the second-floor landing, there was a struggle," Chief John Scanlon said. "The officer's firearm discharged." **Aftermath**: Officer Louis Rivera was cleared of wrongdoing. Mr. Ferguson's mother, Juanita Young, was awarded $10.5 million as a result of her wrongful death suit against the New York Police Department (NYPD) and the city.

March 15, 2000, Patrick Dorismond, New York, NY

126. Patrick Dorismond was a law-abiding 29-year-old when he was killed by the New York Police Department after refusing the demands of two undercover cops who assumed, because he was Black, that he was a drug dealer, and they harassed him to sell them drugs. When Mr. Dorismond's protests became more vigorous, he was shot, then handcuffed while no medical attention was provided. **Aftermath**: No officer was charged. Mr. Dorismond's family was paid $2.25 million as a settlement of the civil lawsuit they filed.

May 16, 2003, Alberta Spruill, New York, NY

127. Police knocked down 57-year-old Alberta Spruill's door, apparently acting on bad information, which they failed to properly confirm, that there were drugs and guns inside the veteran city employee's apartment. They threw a concussion grenade into her home. She died of a heart attack. **Aftermath**: The city paid Ms. Spruill's family $1.6 million as a settlement for the wrongful death lawsuit they filed.

May 22, 2003, Ousmane Zongo, New York, NY

128. Ousmane Zongo was shot four times (twice in the back) by officer Bryan Conroy during a police raid in a storage facility where Mr. Zongo worked. Mr. Zongo was unarmed and his business (art and musical instrument reparation) had nothing to do with what the police were investigating (CD and DVD piracy). **Aftermath**: Conroy was convicted of criminally negligent homicide. He received five years probation and lost his job as a police officer. Mr. Zongo's family received $3 million in a wrongful death suit.

September 2, 2005, Henry Glover, New Orleans, LA

129. Henry Glover was shot and killed by a New Orleans policeman during the chaos following Hurricane Katrina. A Good Samaritan, William Tanner discovered the mortally wounded Mr. Glover and took him for treatment to a disaster relief area where he was met by New Orleans Police Department officers. The officers assaulted Mr. Tanner and burned his car with Mr. Glover inside. Afterwards, the car was placed behind the New Orleans Police Department's North District precinct. Henry Glover's skull was removed from the burnt vehicle. Officers David Warren and Greg McCrae were identified as being involved with burning Tanner's car. McCrae and Travis McCabe were found responsible for falsifying police reports. **Aftermath**: David Warren was sentenced to 25 years and nine months on a manslaughter conviction. McCrae was sentenced to 17 years and three months for obstruction of justice. A year and a half later, the Fifth Circuit Court of Appeals vacated Warren's convictions and two of McCrae's, ordering new trials. Warren was acquitted in the retrial. Mr. Glover's family received $450,000 to settle their civil lawsuit.

November 25, 2006, Sean Bell, New York, NY

130. On the morning of Sean Bell's wedding, he and his friends attempted to flee the scene of escalating tension with the police. The police fired about 50 shots into Mr. Bell's car, killing him in the process. **Aftermath**: All three officers were acquitted on all charges. They and their commanding officer were fired/forced to resign. New York City agreed to pay Mr. Bell's family $3.25 million to settle their wrongful death suit.

January 4, 2008, Tarika Wilson, Lima, OH

131. A SWAT team arrived at Tarika Wilson's home with the intention of arresting her companion for dealing drugs. When they opened fire, they shot and killed Ms. Wilson and injured her baby, who she was holding at the time. Ms. Wilson had walked upstairs to protect her children and stay away from the police-instigated situation. **Aftermath**: Sgt. Joe Chavalia, who shot Ms. Wilson, was acquitted of two misdemeanors: negligent homicide and negligent assault. Ms. Wilson's family received a $2.5 million wrongful death settlement.

July 11, 2009, Shem Walker, New York, NY

132. Shem Walker was shot while he was trying to eject an undercover officer from his mother's stoop, whom he believed to be a drug dealer. Mr. Walker, who was an Army veteran, was unarmed. **Aftermath**: No indictment was issued for the officer. New York City paid $2.25 million to settle with Walker's family.

January 29, 2010, Aaron Campbell, Portland, OR

133. Aaron Campbell was shot in front of his apartment after being reported to the police as suicidal and possessing a gun. Mr. Campbell was unarmed and was walking backward with his hands behind his head. Officer Frashour told Mr. Campbell to put his hands straight in the air. When Mr. Campbell did not comply, Frashour shot him. **Aftermath**: No indictment was issued for Frashour. He was fired for not following protocol, but then reinstated. Portland paid Campbell's family $1.2 million to settle their civil suit against the city.

February 2, 2012, Ramarley Graham, Bronx, NY

134. Eighteen-year-old Ramarley Graham was shot and killed by police in the Bronx who had followed him into his home without a warrant. He was unarmed. **Aftermath**: The officer, Richard Haste, was initially indicted in 2012, but the indictment was later dismissed. A second grand jury decided not to indict Haste. The Graham family sought compensation for emotional damages due to their mistreatment by the NYPD following the shooting. After Mr. Graham was killed, his grandmother, Patricia Hartley, was detained at the local precinct for seven hours and forced to give a statement against her will. Haste also allegedly threatened to shoot her. Ms. Hartley received $450,000. Mr. Graham's brother, who was also home during the shooting, received $500,000. Mr. Graham's mother received $40,000 and his estate was awarded $2.95 million.

March 15, 2012, Shereese Francis, New York, NY

135. Shereese Francis, a woman who suffered from schizophrenia was not taking her medication on the day police encountered her. She became "increasingly emotionally distraught" after an argument with her mother. Her sister called 311, hoping for an ambulance to arrive to provide medical care. Four police officers responded instead and chased Ms. Francis through her home. All four officers allegedly pinned her down as they handcuffed her and she stopped breathing soon after. She was pronounced dead at the hospital. **Aftermath**: Her family was paid $1.1 million to settle the lawsuit they filed against the city.

January 18, 2013, Jayvis L. Benjamin, Decatur, GA

136. Police allegedly observed a driver speeding and behaving recklessly so they turned to follow and came upon a crashed vehicle. Police claimed that Jayvis Benjamin moved in a threatening manner when attempting to exit the crashed vehicle. He attempted to remove himself from the vehicle while suffering from injuries and being issued conflicting and contradictory instructions. He was unarmed. Sgt. Lynn Thomas fired one shot, hitting Mr. Benjamin in the chest. **Aftermath**: Although a criminal grand jury recommended charging Sgt. Thomas, the charges were dropped in 2016.

February 12, 2013, Kayla Moore, Berkeley, CA

137. Kayla Moore's friend called for mental health assistance for Ms. Moore, a transgender woman living with mental illness. The officers who responded checked a database and found someone with Ms. Moore's birth name, though 20 years older. Instead of responding to the request for mental health assistance, officers arrested Ms. Moore. They threw her, face down, onto a futon to handcuff her after she said she would make a phone call to clear up the mistaken identity issue. She died of asphyxiation. No medical aid was sought. **Aftermath**: The Ninth Circuit Court of Appeals upheld the dismissal of the Moore family's lawsuit.

May 14, 2013, Linwood Lambert, South Boston, VA

138. Linwood Lambert, who lived with mental illness, called the police to be taken to the hospital after some erratic behavior. A video recording shows Mr. Lambert, upon arrival at the hospital, kicking out a passenger window of the squad car in which he was placed, escaping from the backseat, and running toward the ER door—still in handcuffs. At that point, officers officially arrested Mr. Lambert, discharging their Tasers several times at him. The officers claim he continued to behave erratically and used their stun guns several more times while he remained shackled in the backseat. The officers stunned Mr. Lambert nearly 20 times before he died. Despite this incident taking place outside the doors of a hospital emergency room, Mr. Lambert was taken to the police station instead of the hospital and not provided any medical treatment. **Aftermath**: Charges against the officers were dismissed. The city settled a suit filed by the family for $25 million, but details about the settlement were not made public.

July 18, 2013, Tyrone West, Baltimore, MD

139. Along with a passenger, Tyrone West was pulled over on a traffic stop by two plainclothes officers in an unmarked car. The police claimed to have seen a bulge in his sock, which they alleged could contain drugs. After Mr. West shooed one of the officer's hands away from his foot, the officers physically attacked him. During this confrontation, the officers accidentally pepper-sprayed themselves. Other police arrived and the beating of Mr. West continued after he had been subdued and handcuffed. He died at the scene. **Aftermath**: No charges were filed against the officers. The city and state paid $1 million to settle a civil lawsuit filed by the family.

January 16, 2014, Jordan Baker, Houston, TX

140. An off-duty police officer thought Jordan Baker fit the description of robbery suspects, simply because both they and he were wearing black hooded sweatshirts. A scuffle and foot chase ensued. Mr. Baker, who was unarmed, was fatally shot. **Aftermath**: No charges were filed against Officer J. Castro. When U.S. Magistrate Judge Nancy Johnson refused to dismiss the municipal liability claim, she wrote, "A jury could reasonably find that defendant city had an unofficial policy and custom of turning a blind eye to its officers' excessive uses of force." The city of Houston paid $1.2 million in 2020 to settle a lawsuit brought by the family.

February 28, 2014, Marquise Jones, San Antonio, TX

141. Marquise Jones was the passenger in a car involved in a minor accident at a drive-through restaurant. Mr. Jones exited the vehicle and attempted to leave the area. An off-duty, uniformed police officer working security shot him in the back. He claimed that he believed Mr. Jones had a weapon. Many witnesses dispute the officer's account. **Aftermath**: No officer was charged. A wrongful death lawsuit was dismissed by a jury.

June 14, 2014, Jason Harrison, Dallas, TX

142. Jason Harrison's mother called 911 when he was dealing with symptoms of mental illness, seeking hospital transportation for her son. Video footage shows Mr. Harrison's mother opening the door to awaiting officers while Mr. Harrison appears behind her twiddling a screwdriver. The officers immediately demanded he drop the tool and within seconds fired several shots, killing Mr. Harrison before he was able to react. **Aftermath**: No officers were charged. A civil lawsuit filed by the family was dismissed.

June 22, 2014, Juan May, Arlington, TX

143. A scuffle occurred between two people at the close of a birthday celebration. One was an off-duty policeman who broke away to retrieve a gun from his car. Mr. Juan May, also an attendee at the party, tried to intervene to calm the situation down, but was shot by the police officer, who did not call for medical assistance. **Aftermath**: The officer was not indicted. The civil suit filed by the family was dismissed. The off-duty police officer received the protections of an on-duty officer despite the personal nature of the conflict.

July 17, 2014, Eric Garner, Staten Island, NY

144. Police alleged they saw Eric Garner selling illegal untaxed cigarettes, but witnesses at the scene said he was stopped because he broke up a fight. After an argument, Officer Daniel Pantaleo placed Mr. Garner in a chokehold. He died of neck compression from the chokehold along with "the compression of his chest and prone positioning during physical restraint by police." **Aftermath**: The New York City medical examiner ruled Mr. Garner's death a homicide. Pantaleo was not indicted. The City paid $5.9 million to settle a wrongful death lawsuit filed by the family.

August 9, 2014, Michael Brown, Jr., Ferguson, MO

145. Michael Brown, 18, was crossing the street with a friend when Officer Darren Wilson ordered him to get off the street and shot him in the hand. Mr. Brown ran and Wilson fired 10 more shots at Mr. Brown, then left his body on the street for four hours without calling for medical help. **Aftermath**: Wilson was not indicted by a grand jury. He resigned from the Ferguson police force. Mr. Brown's parents, Lezley McSpadden and Michael Brown Sr., received a $1.5 million settlement in a wrongful death lawsuit in June, 2017.

November 22, 2014, Tamir Rice, Cleveland, OH

146. Officer Tim Loehmann shot and killed Tamir Rice, 12, who was holding a toy gun in a public park. A 911 caller reported that someone, likely a minor, was pointing a pistol at random people at a park, but mentioned the gun was likely fake. Dispatchers didn't did not tell officers the gun was likely fake nor that the person was a minor. Within seconds after arriving at the park, Officer Loehmann shot Tamir and refused to let his sister go to his aid, nor did Loehmann call for medical assistance. **Aftermath**: No charges were filed against the officers. Cleveland agreed to pay $6 million to Tamir's family.

April 19, 2015, Freddie Gray, Baltimore, MD

147. Freddie Gray died from injuries sustained during a "rough ride" in a police van while handcuffed and shackled on the floor. He was arrested after catching the eye of a police officer while walking and hanging out with his friends, and then running away from the officers. **Aftermath**: Six officers were charged with crimes, including murder, for killing Mr. Gray. Two officers were acquitted. The trial for one officer ended in a mistrial; and charges against the other three officers were dropped. Baltimore settled with Mr. Gray's family for $6.4 million in 2015.

November 19, 2015, Nathaniel Pickett II, San Bernardino County, CA

148. Nathaniel Pickett II, who was unarmed, was walking across the street, in a crosswalk when he was stopped by Deputy Kyle Woods for no apparent reason. Woods alleged that Mr. Pickett fought him and punched him, but video evidence shows that Woods was not telling the truth. Woods shot a second unarmed person in January 2018. **Aftermath**: A jury awarded $33.5 million to Mr. Pickett's family for wrongful death and punitive damages. However, the final settlement was approximately $15.5 million, after punitive damages were disallowed by the judge.

November 8, 2016, Richie Lee Harbison, Hendersonville, NC

149. Police received a call about a vehicle crash involving multiple parked cars at an apartment complex. Deputies found the driver of the wrecked vehicle naked in the middle of the road. The four officers claimed Richie Harbison was not compliant and "acting extremely irrational." Rather than providing medical assistance or calling for medical help, the police officers tasered him several times and he died shortly thereafter. **Aftermath**: No officer was charged. The estate file is sealed from the public.

May 11, 2017, Andrew Kearse, Schenectady, NY

150. Andrew Kearse was briefly chased by officers regarding a traffic violation. When they caught up to him, he was unable to stand or walk and it took three officers to carry him to the police car. Mr. Kearse was in the back seat for 17 minutes. He pleaded for help 70 times, repeating, "I can't breathe." Mr. Kearse's cries for help were disregarded. He asked that the window be opened but the officer refused. Instead of taking Mr. Kearse to a hospital, which was located eight minutes away, officers decided to go to the police station. Mr. Kearse died of a heart attack before reaching the station. **Aftermath**: A grand jury refused to indict the arresting officer. The City of Schenectady settled the wrongful death lawsuit filed by the family for $1.3 million.

May 14, 2017, Tashii Farmer Brown, Las Vegas, NV

151. Although Tashii Farmer Brown had not committed a crime, an officer felt he was suspicious because Mr. Brown "was sweating," even though his officer partner was also sweating due to the heat of the day. As Mr. Brown walked away. the officer chased him and tasered him seven times. The officer beat Mr. Brown and used a chokehold on him. The coroner listed the cause of death as homicide by asphyxiation. **Aftermath**: A grand jury refused to indict the officer. The family received $2.2 million to settle the lawsuit they filed against the city.

July 17, 2017, Antonio Garcia, Jr., Leavenworth, KS

152. An officer put his hand on his gun as he approached Antonio Garcia's car and tried to open the car door. Mr. Garcia shut his car door. He did not have a gun nor did he threaten the officer. The officer never warned Mr. Garcia that he intended to use his gun, but as he walked away, the officer began firing at him. The officer prevented Mr. Garcia's wife, a nurse, from providing medical assistance to her husband.

Aftermath: The officer is awaiting trial on involuntary manslaughter. The City of Leavenworth settled a wrongful death lawsuit brought by the family for $1 million.

May 4, 2018, Jeffery Price, Washington, DC

153. Jeffery Price, who was riding his dirt bike, died after crashing into a police cruiser which witnesses say deliberately ran a stop sign in order to cause the collision. The Price family's attorney has collected over 200 affidavits from Black people who have been hit or chased by police officers while on their bikes, driving them into dangerous paths. **Aftermath**: No charges have been filed against any officer.

January 22, 2019, Jimmy Atchison, Atlanta, GA

154. While Jimmy Atchison was visiting his child's mother, the Fugitive Task Force arrived to arrest him for a robbery that never occurred. Mr. Atchison jumped out a window and hid in a closet in a neighboring apartment. He was unarmed, on his knees with his hands up when Officer Kim shot him under his eye, killing him. **Aftermath**: District Attorney Paul Howard said the city are prepared to present the case to a grand jury, but this has been delayed due to COVID. Mr. Atchison's family has filed a wrongful death suit.

September 6, 2018 Botham Shem Jean, Dallas, TX

155. Dallas police officer, Amber R. Guyger, said she walked into an apartment that wasn't hers, mistaking it for her own, and shot and killed the legitimate occupant, Botham Shem Jean, when he allegedly didn't comply with the order she issued upon invading his home. Mr. Jean was eating ice cream and watching TV in his apartment when Guyger entered it, shooting and killing him. **Aftermath**: Guyger was found guilty of murder and sentenced to 10 years in prison. The civil suit filed by the family was dismissed.

January 15, 2020, Mubarak Soulemane, West Haven, CT

156. Mubarak Soulemane, a mentally ill 19-year-old, was driving an allegedly stolen car. Although instructed not to chase the car, State Trooper Brian North chased Mr. Soulemane's car and trapped it to a standstill. Video shows North approaching the car with his gun drawn and shooting Mr. Soulemane seven times through the window while the victim was just sitting in the car. **Aftermath**: The officer remains on the force and no result of an internal investigation has been released.

January 21, 2020, Darius Tarver, Denton, TX

157. Darius Tarver's roommate called for mental health assistance a week after Mr. Tarver suffered brain damage and severe injuries to his face and head in a car accident. Four officers responded to the call. As Mr. Tarver slowly descended stairs with a frying pan in his hand, he refused the order to drop it. The officers then tasered him. He fell and tried to get up but was tasered again before being fatally shot by police. The officers delayed getting medical assistance and Mr. Tarver died. **Aftermath**: A grand jury refused to indict any officer.

March 3, 2020, Manuel "Manny" Elijah Ellis, Tacoma, WA

158. Manuel Ellis was walking home from a corner store when a police car approached him. After a brief conversation, an officer slammed the car door against Mr. Ellis, throwing him to the ground. Several officers then hit, punched, choked and tasered him. When Mr. Ellis said he couldn't breathe, they put a spit mask over his head. He was dead moments later. Pierce County Medical Examiner's Office determined that Mr. Ellis died of respiratory arrest due to hypoxia caused by physical restraint. **Aftermath**: No charges have been filed against the officers. A civil lawsuit is planned.

March 12, 2020, Barry Gedeus, Ft. Lauderdale, FL

159. Officers were called in reference to an alleged sexual battery. Police met with the victim, who provided a description of her attacker and said that he rode off on a bicycle. An officer saw Barry Gedeus nearby on a bicycle and thought he matched the description. After Mr. Gedeus attempted to leave the area, Officer Roger Morris shot and killed him. Morris has had 84 complaints filed against him since he joined the force in 2006. **Aftermath**: A grand jury has not yet been impaneled. A civil lawsuit will be filed.

March 13, 2020, Breonna Taylor, Louisville, KY

160. At approximately 1:00 a.m., officers went to Breonna Taylor's home for an alleged narcotics investigation of a third party who did not live in her home. Although they had a "knock and announce" warrant, officers did not identify themselves. Kenneth Walker, Ms. Taylor's boyfriend, fired a warning shot at the unidentified intruders. Police then fired 32 rounds into the apartment and killed Ms. Taylor and arrested Mr. Walker. Subsequent information released in the case revealed that a bullet that hit an officer was not fired by Mr. Walker. **Aftermath**: A grand jury refused to indict any officer for killing Ms. Taylor but did indict Officer Hankison on three counts of wanton endangerment for endangering Ms. Taylor's neighbors with his shots. The City of Louisville paid the family $12 million to settle a wrongful death lawsuit.

March 30, 2020, Daniel Prude, Rochester, NY

161. Daniel Prude, a 41-year-old man, was fatally injured after being physically restrained by Rochester, New York police officers who had been called by family to provide mental health assistance. Mr. Prude was suffering from a mental health episode, walking naked in the street. The officers put a spit hood over his head after he began spitting. They held him face down on the pavement for two minutes and 15 seconds, and he stopped breathing. Mr. Prude received CPR on the scene and later died of complications from asphyxia after being taken off life support. **Aftermath**: A grand jury refused to indict any officer. A wrongful death lawsuit has been filed by the family.

May 25, 2020, George Floyd, Minneapolis, MN

162. Police responded to a call from a grocery store that claimed George Floyd had used an allegedly counterfeit $20 bill to make a purchase. When police came upon Mr. Floyd sitting in his car, they said he resisted officers. Cell phone video showed Officer Derek Chauvin kneeling on Mr. Floyd's neck for over nine minutes until he died. Three other officers were present and did not stop the assault, despite multiple civilians around them warning that they were killing Mr. Floyd. The four officers were fired the day after the killing. **Aftermath**: Murder charges have been filed against all four officers. The City of Minneapolis settled the family's wrongful death lawsuit for $27 million.

May 29, 2020, Momodou Lamin Sisay, Snellville, GA

163. Momodou Lamin Sisay, a Gambian Muslim, was pulled over for an expired car license. Frightened of the police because of the George Floyd case, Mr. Sisay continued to drive. Officers forced his car off the road and shot him in while inside the vehicle because he refused to comply with verbal orders. More than 200 bullet holes were found on Mr. Sisay's car. **Aftermath**: The Gambian government has called for a "transparent, credible, and objective investigation" into the killing.

July 13, 2020, Vincent Truitt, Atlanta, GA

164. Vincent Truitt, a 17-year-old, was a passenger in an allegedly stolen vehicle forced off the road by police. Vincent then fled on foot and was shot twice in the back by a Cobb County officer who has never been identified. As he lay dying, Vincent asked, "Why did you shoot me?" **Aftermath**: A grand jury refused to

indict an officer for this killing.

August 25, 2020, Jacob Blake, Kenosha, WI

165. After police were called regarding a domestic dispute involving Jacob Blake, officers stopped Mr. Blake while he was in a car with his children on his son's eighth birthday. When Mr. Blake got out of his car, police tasered him. Mr. Blake, who had no gun, tried to get back in his car and was shot in the back seven times at very close range by police; his three young children were watching from the backseat. Mr. Blake has been left paralyzed from the waist down. **Aftermath**: No officer has been charged with a crime. The U.S. Department of Justice is conducting an investigation. The family is considering filing a civil suit.

August 25, 2020, Damian Daniels, San Antonio, TX

166. The family of Damian Daniels, a 30-year-old veteran suffering from paranoia, called police for the third day requesting mental health help for him. On the third police visit, officers spoke with Mr. Daniels for 30 minutes and then attempted to arrest him to force his transport to a facility. In the process, Officer Jonathan Rodriguez shot and killed Mr. Daniels. **Aftermath**: Rodriguez, who previously killed another unarmed citizen in 2010, has been placed on paid administrative leave.

December 4, 2020, Casey Goodson, Franklin County, OH

167. Frustrated at having failed to serve a warrant at a nearby house, Officer Jason Meade assaulted Casey Goodson as he was returning home from the dentist. Mr. Goodson was shot a total of six times (three times in the back) as he entered the back door of his home. Although Mr. Goodson had a gun with him, he had completed his concealed-carry class and had a license to carry a concealed weapon. Meade has publicly espoused his belief that his religion authorizes him to "hunt people." **Aftermath**: The case is under investigation at this time; Meade is on paid administrative leave.

January 10, 2021, Patrick Warren, Sr., Killeen, TX

168. The day prior to the killing of Patrick Warren, Sr., a Mental Health Resource Officer was dispatched to Mr. Warren's home, along with a police officer, in response to a request for help from Mr. Warren's family. That encounter was handled appropriately. However, when the family called for help the next day, no Mental Health Resource Officer was available. Officer Contreras displayed a weapon as he approached Mr. Warren and, when the mentally ill man did not comply with orders, Contreras tasered and shot Mr. Warren. **Aftermath**: Contreras's actions were ratified by the Killeen Chief of Police. A civil suit is planned.

IV. Findings of Fact

1. PRETEXTUAL TRAFFIC STOPS ARE A COMMON PRECURSOR TO POLICE KILLINGS AND USES OF EXCESSIVE FORCE AGAINST PEOPLE OF AFRICAN DESCENT

"...systematic racism in America is a huge burden and obstacle for many who yearn for the American dream."

—Abdul Jaiteh, attorney for the family of Momodou Lamin Sisay[74]

"Ramarley was in his home. . . it's a sacred place, and he was supposed to be safe. But that never happened. His life was snuffed right in front of his, his sibling's face, his grandmother. And this officer was allowed to resign without any consequence."

—Constance Malcolm, mother of Ramarley Graham [75]

"I'm also here to stand in the gap for mothers who have gone through the unimaginable pain of burying a child. . . My message today echoes Miss Fannie Lou Hamer. I'm sick and tired of being sick and tired. We must stop talking about police brutality and systemic injustice and move swiftly with a new purpose and a real solid plan of action. We must change the laws."

—Lezley McSpadden, mother of Michael Brown[76]

"I believe it is clear that there are two police forces in Baltimore, one for its Black residents and one for its white residents."

—Christopher Lawrence, law student[77]

169. The Commissioners find that pretextual traffic stops are a common precursor to police killings and uses of excessive force against people of African descent. Indeed, 6 of the 44 cases heard by the Commissioners involved police use of deadly force during a traffic stop. This figure is consistent with national trends. According to a study conducted by *National Public Radio*, more than a quarter of the police killings in 2018 occurred during traffic stops.[78] The use of force against civilians, however, is not commensurate with the level of risk confronted by law enforcement during stops. According to a study by legal scholar Jordan Woods, "the rate for a felonious killing of an officer during a routine traffic stop was only 1 in every 6.5 million stops."[79] Conversely, a report by ProPublica found that Black men were killed at a rate of 31.17 per every one million stops.[80]

74 Video and Transcript: *Hearing on the Case of Momodou Lamin Sisay*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Feb. 5, 2021), https://inquirycommission.org/video-and-transcript-momodou-lamin-sisay-hearing-friday-february-5-international-commission-of-inquiry/ (hereinafter "*Case of Momodou Sisay*").

75 Video and Transcript: *Hearing on the Case of Ramarley Graham*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 22, 2021), https://inquirycommission.org/video-and-transcript-ramarley-graham-hearing-friday-january-22-international-commission-of-inquiry/ (hereinafter, "*Case of Ramarley Graham*").

76 Video and Transcript: *Hearing on the Case of Michael Brown*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 29, 2021), https://inquirycommission.org/video-and-transcript-michael-brown-hearing-friday-january-29-international-commission-of-inquiry/ (hereinafter "*Case of Michael Brown*").

77 Video and Transcript: *Hearing on the Case of Tyrone West*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 30, 2021), https://inquirycommission.org/video-and-transcript-tyrone-west-hearing-saturday-january-30-international-commission-of-inquiry/ (hereinafter "*Case of Tyrone West*").

78 Cheryl W. Thompson, *Fatal Police Shootings on Unarmed Black People Reveal Troubling Patterns*, National Public Radio (Jan. 25, 2021), https://www.npr.org/2021/01/25/956177021/fatal-police-shootings-of-unarmed-black-people-reveal-troubling-patterns.

79 Jordan Blair Woods, Policing, Danger Narratives, and Routine Traffic Stops, 117 Mich. L. Rev. 635 (2019) (the rate for an assault that results in serious injury to an officer was only 1 in every 361,111 stops).

80 Ryan Gabrielson, Eric Sagara, & Ryann Grochowski Jones, *Deadly Force, in Black and White*, ProPublica (Oct. 10, 2014), https://

Use of Force against Unarmed People of African Descent during Traffic and Investigatory Stops is Driven by Racial Stereotypes and Racial Biases

170. The Commissioners find that use of force against unarmed people of African descent during traffic and investigatory stops is driven by racial stereotypes and racial biases. Under U.S. law, police are given the extraordinary power to stop individuals, question them, and search their persons or belongings if police have reasonable suspicion that a crime is being or is about to be committed by the individual.[81] Existing law grants police a wide degree of latitude and discretion in deciding whom to stop for an offense like speeding and whom to search for weapons or other contraband. Such broad discretion enables racial bias, both implicit and explicit, to shape how police use their latitude to make stops, how thoroughly to investigate potential crimes, and how much force to use during an encounter with a civilian. Indeed, studies have found that Blackness is associated with perceived criminality and violence.[82] As a result, whites are more likely to perceive Black people as armed when presented with images of Black people holding a harmless item.[83] Black men's behavior is more likely to be interpreted as aggressive or hostile[84] while Black women are often stereotyped as intimidating or "insane" when they question authority.[85] Black children are viewed as "mature" or "adult-like" by whites.[86] This perception of Black children, in turn, is used as a justification by police when they use force against them as they are viewed in ways that are similar to Black adults.As a result of these racialized perceptions of threat and danger, people of African descent experience the highest rates of use of force during contacts with law enforcement.[87]

171. Several witnesses who appeared before the Commission linked the disproportionate police killings of people of African descent with chattel slavery and what historian Saidiya Hartman calls "the afterlife of slavery."[88] Prior to the abolition of slavery, communities in the South utilized informal slave patrols to regulate enslaved Africans and to put down insurrections among enslaved populations. Following the Civil War and the abolition of slavery, slave patrols were reconstituted as formal police departments tasked with a similar mission: suppressing Black populations through enforcement of Black Codes and *de jure* segregation.[89] Many of the witnesses argued that while slavery and Jim Crow have ended and the

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www.propublica.org/article/deadly-force-in-black-and-white.

81 *See generally Terry*, 392 U.S. 1.

82 *See* American Psychology Association, *People See Black Men as Larger, More Threatening Than Same Sized-White Men* (Mar. 13, 2017), https://www.apa.org/news/press/releases/2017/03/black-men-threatening.

83 *See* Joel Schwarz, *Blacks more likely to be shot than whites even when holding harmless objects*, University of Washington News (July 8, 2003), https://www.washington.edu/news/2003/07/08/blacks-more-likely-to-be-shot-than-whites-even-when-holding-harmless-objects/; *See also* Washington University in St. Louis, *Mere Presence of a Black Face Can Lead People to Mistake Objects For Weapons More Often*, Study Says, ScienceDaily (May 21, 2001), https://www.sciencedaily.com/releases/2001/05/010521072157.htm; *See also* B. Keith Payne, Weapon Bias: Split-Second Decisions and Unintended Stereotyping, SAGE Journals (Dec. 1, 2006), https://journals.sagepub.com/doi/10.1111/j.1467-8721.2006.00454.x.

84 *See* Mary Beth Oliver, African-American Men as "Criminal and Dangerous": Implications of Media Portrayals of Crime on the "Criminalization" of African-American Men, 7 J. African Am. Studies 3-18 (Sept. 2003), https://www.jstor.org/stable/41819017?seq; *See also* Devon Carbado & Patrick Rock, What Exposes African-Americans to Police Violence? 51 Harv. Civ. Rts. Civ. Liberties L. Rev. 159 (2016), https://harvardcrcl.org/wp-content/uploads/sites/10/2009/06/HLC104_crop.pdf.

85 Video: *Andrea J. Ritchie, Expert Presentation*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 21, 2021), https://inquirycommission.org/?s=andrea+ritchie (hereinafter "*Andrea Ritchie Expert Presentation*").

86 Priscilla A. Ocen, *(e)Racing Childhood: Examining the Racialized Constructions of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. Rev. 1586 (2015).

87 Erika Harrell, Ph.D. & Elizabeth Davis, *Contacts Between Police and the Public, 2018 – Statistical Tables*, Bureau of Justice Statistics, U.S. Department of Justice (Dec. 2020), https://www.bjs.gov/content/pub/pdf/cbpp18st.pdf.

88 This is a "racial calculus" that devalues Black lives and remains in the "afterlife of slavery" which includes "skewed life chances, limited access to health and education, premature death, incarceration, and impoverishment."

89 Olivia B. Waxman, *How the U.S. Got Its Police Force*, TIME (May 18, 2017), https://time.com/4779112/police-history-origins/ ("during Reconstruction, many local sheriffs functioned in a way analogous to the earlier slave patrols, enforcing segregation and the disenfranchisement of freed slaves")

laws may have changed, the "New Jim Crow" has continued to operate in much the same way as its predecessors.[90]

People of African descent experience the highest rates of use of force during contacts with law enforcement.

U.S. Law Enforcement Agencies Routinely Target People of African Descent Based on Racist Associations between Blackness and Criminality

172. The Commissioners find that U.S. law enforcement agencies routinely target people of African descent based on racist associations between Blackness and criminality.[91] Police, however, do not explicitly rely on race to justify such stops. Instead, they use traffic infractions ranging from speeding to littering to expired registration tags as the legal basis for these stops. This practice, known as use of a "pretextual stop," enables police to stop, surveil, and harass people of African descent. Although this practice is discriminatory and immoral, it is legal under U.S. law. In a series of cases, the U.S. Supreme Court has found that as long as officers have an "objectively reasonable" basis for the stop (i.e., a traffic infraction), their subjective motivation for the stop (i.e., racial prejudice or stereotyping) is irrelevant.[92]

173. Because law enforcement is constitutionally enabled to engage in pretextual stops, Black drivers are targeted by police officers that suspect them of crimes for no reason other than the color of their skin or phenotype. This racially disparate form of policing is reflected in statistics on police stops. According to testimony by one witness, "[i]n the state of Maryland, Black people make up slightly less than one third of the population. Yet year after year, Black citizens accounted for approximately half of all traffic stops."[93]Partially due to the racially disparate rates of contact, during traffic stops, Black people experience higher rates of police use of force.[94]

174. These are not abstract problems within policing. Racial profiling affects real people and causes significant harm, up to and including death. The Commissioners heard testimony from the representatives of *Tyrone West*, a Black man killed in 2013, in Baltimore, Maryland, a city rife with racial disparities in stops and policing. At the time, Mr. West was giving one of his neighbors a ride to work using his sister's 1999 Mercedes. Mr. West and his neighbor were followed by two officers in an unmarked police vehicle. The officers initiated a traffic stop, citing "suspicious" behavior. They asked Mr. West and his neighbor if

90 *See Testimony of Attorney Jaiteh*, *in Case of Momodou Sisay*, *supra* (some argued that explicit racial animus was responsible for many of the racist practices of law enforcement agencies, citing FBI reports of white supremacist infiltration of U.S. law enforcement agencies).

91 ACLU, *Racial Profiling: Definition*, https://www.aclu.org/other/racial-profiling-definition, ("racial profiling" refers to the discriminatory practice by law enforcement officials of targeting individuals for suspicion crime based on the individual's race, ethnicity, religion or national origin. Criminal profiling is the reliance on a group of characteristics that police believe to be associated with crime).

92 *Whren*, 517 U.S. at 813.

93 *Testimony of Christopher Lawrence, Law Student*, *in Case of Tyrone West*, *supra*

94 Darwin Bond Graham, *Black people in California are stopped far more often by police, major study proves*, The Guardian (Jan. 3, 2020), https://www.theguardian.com/us-news/2020/jan/02/california-police-black-stops-force (a study of traffic stops in California found that officers were more likely to stop Black motorists and to use force against them).

either of them was carrying drugs and asked them to step out of the car and onto the curb. There are conflicting reports about what happened next. Some eyewitnesses say that Mr. West and the neighbor just exited the car, and others say that the police were abusive, pulling Mr. West out of the car by his dreadlocks. The officers then shouted expletives at Mr. West and told him to get on the ground. They tasered him on his neck at least four times. They then searched Mr. West's car and found no drugs. The officers later claimed they saw something bulging out of Mr. West's sock. When one of the officers reached for Mr. West's foot, he brushed the officer's hand away. Mr. West was handcuffed and pepper sprayed. When Mr. West reacted to the resulting pain, officers began striking him with fists and batons. At some point during the beating, Mr. West stopped breathing because, witnesses allege, multiple officers were on his neck and back for up to five minutes. It took 30 to 45 minutes for the paramedics to arrive and then transport Mr. West to the hospital where he died of cardiac arrhythmia.[95]

175. The Commissioners heard testimony from the family and representatives of *Sean Bell*, who was murdered by police in a hail of 50 bullets the night before his wedding, after he and his friends left his bachelor party. According to witnesses, the undercover detectives never identified themselves to Mr. Bell or those who were in the car as they approached the men with their weapons drawn, nor did they warn Mr. Bell before opening fire.

Photo: Sean Bell's car after police shot 50 bullets at him and his friends as they left his bachelor party. Photo via Sanford Rubenstein, attorney for the Bell family.

176. The Commissioners received written evidence from representatives of *Tavis Crane*, who was murdered by a police officer following a pretextual stop. Mr. Crane was driving when his two-year-old daughter accidentally dropped a piece of candy out of the rear passenger side window. Shortly thereafter, Mr. Crane was pulled over for a traffic stop. His car was quickly surrounded by three officers who shined flashlights into his car and asked him to come out. When Mr. Crane asked what he had done wrong, an officer pulled out his gun and pointed it at the car and at Mr. Crane. At the same time, an officer named Roper told everyone in the car to raise their hands and they complied. Roper then entered the vehicle through the rear driver's side door, climbed over another passenger, placed his arm around Mr. Crane's neck, pointed his gun at Mr. Crane's face, and told him to turn off the car or he would kill him. At all times, Mr. Crane's hands were visible and it was clear he was unarmed, but Roper nevertheless shot him at close range. A dash cam video revealed that Mr. Crane was shot several times. He sustained multiple injuries and died.

95 Juliet Linderman, *New autopsy: man in police struggle died of asphyxiation*, Associated Press (Dec. 14, 2016), https://apnews.com/article/f5efce80091645928c6f34298de9142e.

177. A similar use of deadly force occurred in the case of *Momodou Sisay* following a traffic stop. An officer tried pulling him over for an expired tag. Mr. Sisay, shaken and scared by the recent murder of *George Floyd*, continued to drive. The officer followed Mr. Sisay and then administered a highly controversial practice known as a position intervention (or PIT) maneuver, with his squad car, forcing Mr. Sisay's car off the road and into some trees and bushes, leaving it hanging over the ledge of a cliff. Squad cars then surrounded Mr. Sisay's vehicle. Mr. Sisay told his girlfriend on the phone, "I'm surrounded by armed officers. I think they're going to kill me." At least 100 officers arrived at the scene and the SWAT team was called. Police allege that as they approached Mr. Sisay's hanging car, he refused to comply with verbal orders and flashed a handgun at officers. However, Mr. Sisay's family disputes that Mr. Sisay brandished a gun at the officers. Officers fired three rounds of shots at Mr. Sisay, killing him. More than 200 shots hit Mr. Sisay's car. The officers had body cameras on during the killing but have not released the footage.

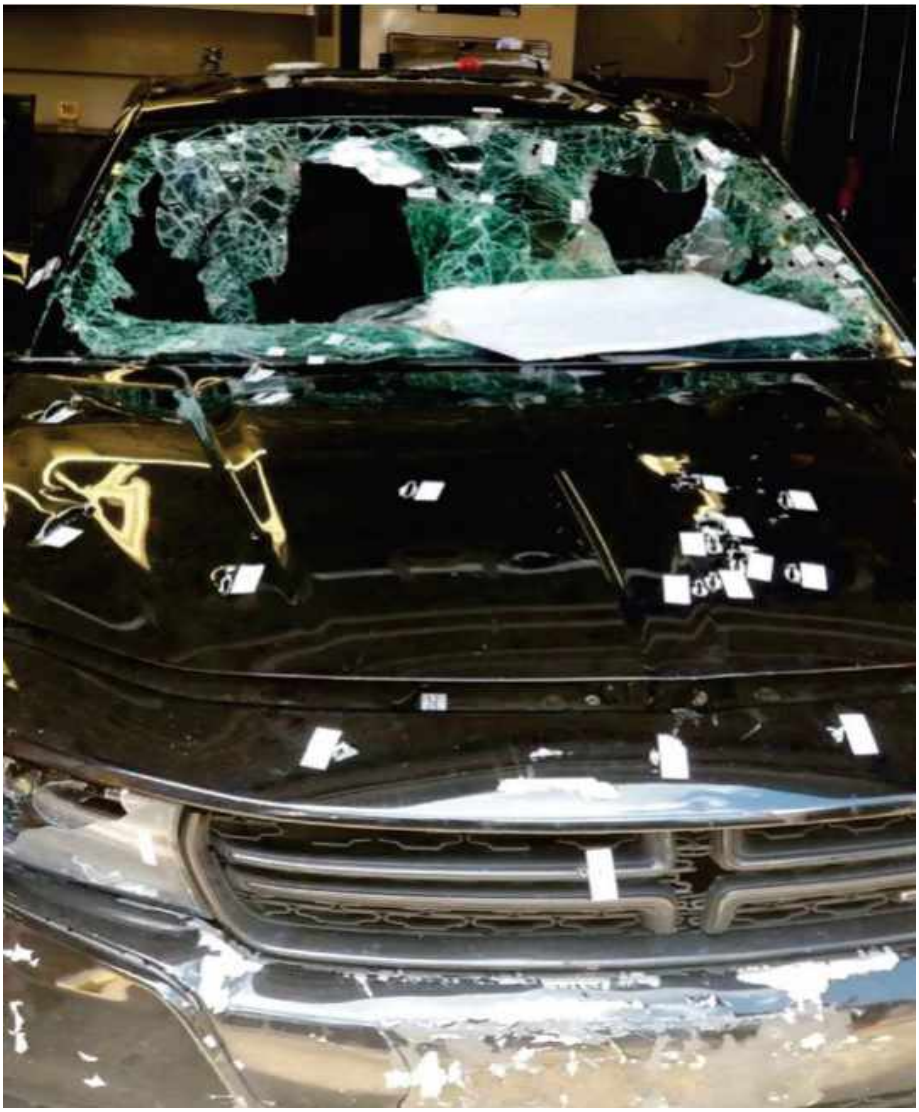

Photo: Momodou Lamin Sisay's car, after over 100 police fired more than 200 shots at his car, killing Mr. Sisay. Photo via Abdul Jaiteh, attorney for the Sisay family.

2. "BROKEN WINDOWS" OR "ORDER MAINTENANCE" POLICING TRIGGERS DEADLY POLICE VIOLENCE AGAINST PEOPLE OF AFRICAN DESCENT

178. Modern U.S. policing has particularly concerned itself with maintaining order in the public domain by proactively targeting enforcement efforts at low-level offenses and infractions.[96] This mode of policing is known as "broken windows"[97] or "order maintenance" policing. It is based on the now-debunked theory that the presence of "disorder" and "disorderly people" indicates that spaces and communities are unsafe and function as a gateway to more serious criminal offenses. Police, therefore, direct their attention at these forms of disorder, seeking out individuals engaged in activities such as panhandling, loitering, selling drugs, or simply appearing out of place.[98] Indeed, a recent study by *The New York Times* found that officers in four large police departments spent the bulk of their time on low-level officer-initiated calls and less than four percent on investigating violent crime.[99]

179. While the concept appears race-neutral on its face, the Commissioners find that this mode of policing relies on racialized assumptions about what constitutes disorder and which communities are disorderly. The Commissioners also observed that policing of low-level offenses increases police contact with residents of poor, Black communities and such encounters often escalate into violence. One need look no further than the circumstances that led to the high-profile police murders of *George Floyd* for allegedly using a counterfeit $20 bill and *Eric Garner* for selling loose cigarettes for examples of this dynamic. In each instance, police targeted these Black men because they were accused of low-level, non-violent crimes, despite the fact that they were not a threat to anyone in their communities, including law enforcement.

Race-based Street Stops and "Stop-and-frisk" Policies Drive Racially Disparate Rates of Arrest and Trigger Deadly Police Violence against People of African Descent

180. The Commissioners find that race-based street stops, otherwise known as "stop-and-frisk," are another form of "order maintenance" policing that drives not only racially disparate rates of arrests, but often triggers the use of deadly force by police.[100] The Supreme Court has interpreted the Fourth Amendment of the Constitution to permit officers to stop an individual if they have a reasonable, articulable basis to suspect that the person has or will commit a crime. In addition, the police may conduct a limited pat down search or "frisk" if they reasonably believe the person to be presently dangerous and carrying a weapon.[101] As noted by Jonathan Moore,[102] the attorney for Eric Garner's estate, the stop of Mr. Garner was consistent

96 Wendy Sawyer, *Ten key facts about policing: Highlights from our work*, Prison Policy Initiative (June 5, 2020), https://www.prisonpolicy.org/blog/2020/06/05/policingfacts/ ("[m]ost policing has little to do with real threats to public safety: the vast majority of arrests are for low-level offenses. Only 5% of all arrests are for serious violent crimes.")

97 George L. Kelling & James Q. Wilson, *Broken Windows: The police and neighborhood safety*, The Atlantic (Mar. 1982), https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/.

98 *See Id.*

99 Jeff Asher & Ben Horowitz, *How Do the Police Actually Spend Their Time?*, The New York Times (June 19, 2020), https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html.

100 Devon W. Carbado, *Terry v. Ohio's* Pathway to Police Violence, 64 UCLA L. Rev. 1508 (2017) (hereinafter "Pathway to Police Violence").

101 *See Terry*, 392 U.S. at 21; *Rodriguez v. United States*, 575 U.S. __ (2015) (held that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation.").

102 Video and Transcript: *Hearing on the Case of Eric Garner*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 18, 2021), https://inquirycommission.org/video-and-transcript-eric-garner-hearing-monday-january-18-international-commission-of-inquiry/ (hereinafter "*Case of Eric Garner*").

with the illegal stop and frisk pattern and practice of the New York Police Department, which disproportionately stops and frisks people of color. From about 2008 to 2012, there were four million documented stops and frisks on the streets of New York, 90% of which were directed at people of color, and 90% of which led to no further investigative activity. Yet, even though Black people were stopped at a higher rate than whites, contraband was found on white people at a higher rate than that of Black people. Since New York entered a consent decree[103] in the stop and frisk case, although the number of stops has decreased, the percentage of people being stopped is still the same in terms of the racial breakdown, which indicates that officers are still making decisions based on race more than any other factor. These stops were likely based on racial suspicion rather than reasonable suspicion.

181. The cases that the Commissioners heard revealed a similar pattern of stops based on little to no evidence of criminality and leading to police killings of civilians. In the case of *Michael Brown*, a Black teenager whose murder by Ferguson, Missouri police officer Darren Wilson galvanized the Black Lives Matter movement, the basis for the stop was that Mr. Brown was walking with a friend in the middle of the street in violation of a Ferguson City ordinance. After ordering Mr. Brown "to get the F off the street," the officer attempted to grab Mr. Brown through the window of his patrol car door. Following a brief struggle, Mr. Brown tried to run away and was shot 12 times as he held his hands in the air pleading, "Don't shoot. I don't have a gun, I'm unarmed." Mr. Brown's body was then left on the ground for four hours in broad daylight with onlookers assembled.

182. Similarly, *Nathaniel Pickett II* was crossing the street in a marked crosswalk, having committed no crime. Mr. Pickett was stopped by a deputy sheriff, who claimed that Mr. Pickett "glanced" at him strangely while he was crossing the street, which was the basis for his suspicion. Mr. Pickett ran from the officer, who chased him and tried to grab him.[104]

183. As Mr. Pickett attempted to run away, he fell down some steps and injured himself. The officer threatened to taser Mr. Pickett and then began forcefully punching him in his body, head, and face. Although the officer claimed that Mr. Pickett punched him 10 or 20 times, this was not corroborated by the civilian passenger in the officer's car. The officer shot Mr. Pickett twice in the chest at point blank range while he was on the ground and obviously unarmed. The officer never called for medical care for Mr. Pickett, who bled to death from his wounds.

184. In the case of *Shem Walker*, an undercover officer who was working in an anti-drug operation was sitting on the stoop of Mr. Walker's mother's apartment building. Other officers were working as "ghosts," police parlance for undercover officers whose job is to provide backup for another officer doing "buy-and-bust" work. Mr. Walker, an Army veteran, was known for shooing away loiterers or drug dealers from the property. In this case, the undercover detective never revealed himself as a police officer to Mr. Walker before drawing his gun and firing three shots, killing Mr. Walker on the sidewalk in front of his mother's home.

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103 A consent decree is a court-ordered agreement after a major Department of Justice investigation designed to correct long-standing unconstitutional practices in police departments.

104 Although officers often cite attempts to flee as another basis for suspicion that a crime has been committed, the Massachusetts Supreme Court recently found that running from an officer cannot be the sole basis for suspicion. *See Commonwealth v. Warren*, 475 Mass. 530 (2016). Instead, the Court observed that Black people have good reason to run from the police:

> Such an individual, when approached by the police, might just as easily be motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal activity. Given this reality for Black males in the city of Boston, a judge should, in appropriate cases, consider the report's findings in weighing flight as a factor in the reasonable suspicion calculus.

Id. at 540.

185. The Commissioners heard testimony regarding the murder of *Freddie Gray* by Baltimore police officers. Mr. Gray and two of his friends were walking in a poor, Black neighborhood. They were not engaged in any illegal activity, just talking to each other while walking. Two policemen on bike patrol rapidly rode toward them on their bikes. To avoid being stopped, questioned, frisked, harassed, searched, assaulted, arrested, and prosecuted without cause, they ran from the officers. Eventually, Mr. Gray was arrested and killed while in police custody.

3. POLICE KILLINGS OF PEOPLE OF AFRICAN DESCENT SYSTEMATICALLY FOLLOW VIOLATIONS OF THEIR FOURTH AMENDMENT RIGHTS

"I say it is too late for my son. They killed him. It is no justice for him. But we must still stand for justice. We must get justice for those who come behind him."

—Gwen Carr, mother of Eric Garner[105]

186. In hearing after hearing, Commissioners find a pattern of police violations of the Fourth Amendment rights of Black people to be secure in their persons, houses and effects from unreasonable searches and seizures. These violations included the securing of warrants that lacked probable cause due to reckless disregard for the truth in the allegations, some based on information from unreliable informants. The Commissioners find a proliferation of the use of risky, no-knock warrants. Police illegally entered the homes of many Black people without a valid warrant or exigent circumstances. These Fourth Amendment violations led invariably to the use of excessive force, and ultimately, to police killings of Black people.

Police Agencies' Recklessness in Securing Warrants or Dispatching Officers Encourages Violence against Black People

187. A valid warrant must be supported by probable cause of criminal activity.[106] If an officer is reckless or lies when including allegations in an affidavit, the warrant the judge signs may not be supported by probable cause. In some cases, allegations by unreliable informants have led to the unjustified killings of Black people.[107]

188. Fifty-seven-year-old *Alberta Spruill* was killed after officers mistakenly forced their way into her apartment. Police secured a no-knock warrant based on information from an unreliable, decertified informant. Although several officers had serious doubts about the informant's credibility, they did not conduct a background check or relay their doubts to other officers. The officers executing the warrant knocked the door off its hinges, threw Ms. Spruill to the ground, and handcuffed her so violently that blood vessels burst in her shoulders. She died of cardiac arrest.

189. Twelve-year-old *Tamir Rice* was in a park playing with a toy gun. A 911 caller reported that someone—likely a minor—was pointing a pistol—likely fake—at random people. The police dispatcher failed to tell the officers who responded to the call that the gun was likely fake or that Tamir was a young boy. Officers fired two shots only seconds after their arrival, killing him.

105 *Case of Eric Garner*, *supra*.

106 U.S. Const. amend. IV.

107 *See*, e.g., Video and Transcript: *Hearing on the Case of Alberta Spruill*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 22, 2021), https://inquirycommission.org/video-and-transcript-alberta-spruill-hearing-friday-january-22-international-commission-of-inquiry/ (hereinafter "*Case of Alberta Spruill*").

Risky "No-Knock Warrants" Proliferate in Cases of Police Violence against People of African Descent

190. When executing a warrant, an officer is required to knock and announce his or her presence before entry.[108] Officers frequently ask a judge for a no-knock warrant, which obviates the need to knock and announce, resulting in forced entry. A product of the "War on Drugs," these dangerous no-knock warrants have resulted in the killings of several Black people, as the Commissioners find. No-knock entries have a particularly harmful effect on Black women. This is exemplified by the cases of *Breonna Taylor* and *Tarika Wilson*.

191. Officers secured a no-knock warrant, which was changed to a knock-and-announce warrant, to search Ms. Taylor's apartment based on an investigation of a third party (neither Ms. Taylor nor her boyfriend, Kenneth Walker). Plainclothes officers violated the warrant and used a battering ram to forcibly enter the apartment, where Ms. Taylor was sleeping with Mr. Walker. Believing it was a home invasion, they asked who was there. Hearing no response, Mr. Walker fired a warning shot with a gun he legally possessed, allegedly striking one officer in the thigh, although evidence later gathered indicated that the bullet that hit the officer was fired by police, not Mr. Walker. The officers shot 32 rounds into the apartment. Six shots hit Ms. Taylor, killing her as she slept.

Photo: Protesters in Baltimore, Maryland, call for justice and accountability after the police killing of Freddie Gray. They hold posters of victims of police violence, including Tarika Wilson. Photo credit: Stephen Melkisethian/Flickr.

108 *Wilson v. Arkansas*, 514 U.S. 927 (1995).

192. Ms. Wilson was killed under similar circumstances. She was holding her 14-month-old baby when police shot her dead in front of her six children, ages one through eight. Ms. Wilson lived with her boyfriend, whom police suspected of drug dealing. Claiming that Ms. Wilson's boyfriend was dangerous, officers secured a no-knock warrant for his arrest. They burst into the home, set off stun grenades, and shot a semi-automatic rifle that ripped off the baby's finger before killing Ms. Wilson, who had retreated upstairs with her children after the arrival of the police.

There is a Pattern of Police Killings Following Home Invasions without a Warrant or Exigency

193. The Fourth Amendment requires that police have a valid warrant to enter a home unless there are exigent circumstances.[109] Yet in many cases, officers forcibly entered homes with no warrant or exigency, killing Black people without legal justification. This is particularly egregious as people should be afforded maximum privacy in their own homes.

194. *Botham Jean* was in his apartment eating ice cream when he was killed by an officer who claimed she mistakenly entered the apartment, thinking it was hers. Another officer admitted that Mr. Jean's death resulted from a "web of mistakes." Eighteen-year-old *Ramarley Graham* was killed in his family home in front of his grandmother and six-year-old brother by an officer who unlawfully entered the home without a warrant or exigency. Police, who were surveilling other activity unrelated to Mr. Graham, began following and chasing Mr. Graham and tried to knock down the door of his home, eventually gaining entrance.

4. POLICE ROUTINELY USE EXCESSIVE AND LETHAL RESTRAINTS AGAINST PEOPLE OF AFRICAN DESCENT

> *"During this entire incident, my brother begged, he begged the officers, please save his life. . . he told police officers that he could not breathe at least 12 times, including within the first few, they're going to kill me and called out but his mother to save him yelling Mama, Mama. My brother said, 'Tell my kids, I love them. I'm dead.' His last words were, 'I can't breathe.'"*
>
> —Philonise Floyd, brother of George Floyd[110]

195. The Commissioners heard evidence, in approximately a third of the cases presented, regarding lethal application of restraints such as compression asphyxia and lateral vascular neck restraint (chokehold), as well as the deadly use of Tasers and vehicles by police against unarmed persons of African descent. Indeed, such brutal killings have formed the rallying cry of anti-police brutality activists and the Black Lives Matter movement: "I can't breathe." The Commissioners heard expert witness testimony on the disproportionate use of Tasers by police officers nationwide against people of color. Taken together, the Commissioners find a pattern of excessive and unnecessary restraints used against people of African descent.

196. In addition to this national pattern, the Commissioners heard evidence of local patterns and practices employed by particular police departments, such as "rough rides" used by the Baltimore Police Department and the use of vehicles by the Metropolitan Police Department of the District of Columbia to kill and maim Black victims on motorcycles. *George Floyd* was killed by officers in the Minneapolis Police Department (MPD). The attorney for the Floyd family testified that officers in the MPD receive "Killology

109 *Missouri v. McNeely*, 569 U.S. 141 (2013).
110 *Case of George Floyd*, *supra*.

training." They are instructed to kill rather than de-escalate conflict situations. Killology training was also connected to the 2016 police killing of Philando Castile, who was shot seven times at a traffic stop, the attorney said. During the five-year period from 2015 to 2020, the MPD reported that its officers used violence against Black people at seven times the rate that they used violence against white people.

Tasers Are Used Disproportionately by Police Against Black People and Constitute a Form of Deadly Force

197. In more than a dozen cases, the Commissioners heard evidence that victims were subjected to excessive force by tasering. Tasers are electrical weapons that "deliver pulses of electrical charge that cause the subject's muscles to contract in an uncoordinated way, thereby preventing purposeful movement. This effect has been termed 'neuromuscular incapacitation.' The charge is delivered through metal probes that are fired towards the subject but which remain electrically connected to the device by fine wires."[111]

198. As noted in the *Guidance on Less Lethal Weapons in Law Enforcement* by the United Nations Human Rights, Office of the High Commissioner, "The risk of significant injury or even death is increased in certain conditions, including where the individuals who have been electrically shocked have heart disease; have taken certain prescription or recreational drugs, or alcohol, or both; or are for other reasons more susceptible to adverse cardiac effects."[112] While some local police forces require the use of nonlethal force where possible, Tasers are nonetheless routinely employed as a first line of defense, despite their lethal nature. Moreover, while police ostensibly seek compliance from victims through the use of Tasers, the Commissioners heard evidence that Tasers render victims unable to respond to commands due to neuromuscular incapacitation. Indeed, the Commissioners find that tasering often is escalated to include use of additional deadly force such as asphyxiation and/or shooting. For example, the Mr. Lee Merritt, the attorney for the family of *Patrick Warren, Sr.* discussed the use of a similar weapon, a stun gun:

> Patrick Warren Sr. was shot to death by officer Reynaldo Contreras . . . following a request for mental health services. . . . Officer Contreras discharged 50,000 volts of electricity by use of stun gun after Warren failed to comply with Contreras' order to get down on the ground upon exiting his home. The stun from Contreras's electric weapon caused Warren to fall to the ground in great pain. However, the weapon was ineffective in neutralizing Warren's manic condition. Warren remained conscious, mobile, and increasingly irritated by Contreras's actions. Officer Contreras escalated the encounter by brandishing his firearm and shooting more than three times in rapid succession until Warren collapsed to the ground a second time. Contreras's actions were later ratified.[113]

199. The Commissioners find a nationwide pattern of disproportionate use of deadly force by Taser against people of African descent based on the testimony of expert witness attorney, Michael Avery. Drawing from a Reuters survey[114] on Taser-related deaths through the end of 2018, Mr. Avery testified that of the 1,081 people who have died in the United States as a result of Taser use, "32% were Black, although Black people constitute only 14% of the United States population. On the other hand, 29% were white, although whites constitute 60% [of the U.S. population]."[115] Mr. Avery further discussed marked findings

111 UN For Human Rights Office of the High Commissioner, Guidance on Less Lethal Weapons in Law Enforcement, 31 (Sep. 2020).

112 *Id.* at 33.

113 Video and Transcript: *Hearing on the Case of Patrick Warren, Sr.*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 27, 2021), https://inquirycommission.org/video-and-transcript-patrick-warren-sr-hearing-wednesday-january-27-international-commission-of-inquiry/.

114 *See* Linda So, *Black Americans disproportionately die in police Taser confrontations*, REUTERS (June 15, 2020), https://www.reuters.com/article/us-minneapolis-police-protests-tasers-in/black-americans-disproportionately-die-in-police-taser-confrontations-idUSKBN23M16E (last accessed Mar. 9, 2021).

115 Video and Transcript: *Hearing on the Case of Richie Harbison.*, International Commission of Inquiry on Systemic Racist Po-

of racially disproportionate use of Tasers in some states and localities. For example, in Connecticut, "police use Tasers against African-Americans 56% of the time, although in Connecticut, they make up only 19% of the population. So we see that across the country, Taser use is much greater against African-Americans than against whites,"[116] he said.

Pattern of Unlawful and Excessive Force against People of African Descent from Chokeholds and Compression Asphyxiation

200. The Commissioners similarly find a pattern of unlawful and excessive force against people of African descent from chokeholds and compression asphyxiation, by either kneeling or standing on victims, and by cuffing victims face down and applying pressure to their heads and necks. These deadly techniques were often applied in tandem, not only with handcuffing, but at various times with the practice of hog-tying victims or subjecting them to "wrap top" practices.

201. *Eric Garner* was placed in a chokehold by New York Police Department officer, Daniel Pantaleo, and asphyxiated after an unlawful stop, while multiple officers restrained him face down, pressing their weight on him. The medical examiner determined that the cause of death was a combination of neck and chest compression. In the case of *George Floyd*, the Commissioners received graphic evidence showing Mr. Floyd being killed by Officer Derek Chauvin who placed his knee on Mr. Floyd's neck for over nine minutes. An independent medical examiner determined Mr. Floyd's cause of death to be mechanical asphyxia due to neck and back pressure by the officer. In the face of this overwhelming evidence, the Hennepin County Medical Examiner incredibly made no physical findings to support a cause of death of traumatic asphyxia or strangulation. *Tashii Farmer Brown* was tasered and placed in a chokehold for more than one minute in the presence of three other officers from whom he had originally sought aid. Mr. Brown's cause of death was declared homicide by asphyxiation. *Manuel Elijah Ellis* was killed by police after an unlawful stop while he was walking home after purchasing doughnuts. After Mr. Ellis was stopped, slammed with a police car door, kicked, tasered, and then brutally choked by police, he was hogtied and left for dead on the sidewalk. Like so many other victims of fatal police violence, his last words were, "I can't breathe."

202. In testimony from Mr. Benjamin Crump, the attorney for the Floyd family, the Commissioners heard: "The chokehold is legal in most cities in America, many people don't know that. And many people don't know the chokehold, over 75% of the time, is applied on men of color."[117]

203. In addition to the use of the chokehold, the Commissioners heard testimony about police officers using their weight to compress the bodies of people of African descent, brutally crushing and suffocating them.

204. *Daniel Prude* died from a brain injury administered at the hands of police officers, after the naked Mr. Prude was handcuffed, placed face down, and restrained by two officers while a third officer executed a "triangle push-up" on the side of his head, pressing it into the sidewalk. *Tyrone West* was giving a neighbor a lift to work when he was stopped by an unmarked car for the "suspicious behavior" of backing into an intersection. After he and his neighbor were ordered out of the vehicle, Mr. West was savagely beaten and four officers then stomped on Mr. West's upper body and another officer placed a knee on his back for one minute. Mr. West stopped breathing and could not be resuscitated. At the time of his death, 10 to 25 officers were assembled at the scene.

205. While the Commissioners heard testimony regarding the disproportionate use of restraints on Black

lice Violence Against People of African Descent in the United States (Jan. 29, 2021), https://inquirycommission.org/video-and-trascript-richie-harbison-hearing-friday-january-29-international-commission-of-inquiry/ (hereinafter, "*Case of Richie Harbison*").

116 *Id.*

117 *Case of George Floyd*, *supra*.

people, it also received evidence of an unlawful pattern of using restraints against women and transgender individuals. For example, *Shereese Francis*—a mentally ill woman whose mother called 311 to get her daughter medical attention—was seized by four officers who chased Ms. Francis and beat her instead of seeking to de-escalate the situation given the mental health crisis she was experiencing. In an attempt to handcuff Ms. Francis, four police officers held her face down on her mother's bed while kneeling on her back, causing her to stop breathing due to compression asphyxia.

206. In the case of *Kayla Moore*—a transgender woman whose roommate had called in a wellness check—police arrived, stating they had an outstanding warrant for someone by Ms. Moore's birth name, even though the individual they sought was born 20 years before Ms. Moore. When Ms. Moore disputed that she had an outstanding warrant, six officers seized her and attempted to put her in a restraining device called a "wrap top." As her sister, Ms. Maria Moore, testified, "[W]ith six offers on top of her putting her in this torture device, do they realize at some point she had stopped moving... [T]hey failed to check on Kayla. Because her last breath, her last words were, 'Get off me, I can't breathe." And they ignored her, her cries for help."[118]

There Is a Pattern and Practice of "Rough Rides" by the Baltimore Police Department against Black People

207. In addition to finding a nationwide pattern of the use of unlawful restraints being disproportionately applied to people of African descent, the Commissioners heard evidence of a pattern and practice of "rough rides" used by the Baltimore Police Department. As the attorney for the Gray family explained, after *Freddie Gray* was stopped without cause, two officers "hog-tied him by cuffing his hand behind his back, shackling his feet together, bending his legs behind his back and fastening his shackled feet to his cuffed hands."[119] He was then placed in the back of a van without a seatbelt and taken for a "rough ride" for over half an hour, during which his body was battered against the walls of the van as the driver wildly drove and swerved. The attorney for the family testified, "police with amusement, especially the white police, referred to it as tossing, referred to it as about all other kinds of names. And many of these people who were in the same position as Mr. Gray that day, received serious and life threatening injuries as a result of being exposed to these rough rides."[120]

There Is an Emerging Pattern and Practice of Police Use of Vehicles as Deadly Weapons against People of African Descent: Washington, DC Metropolitan Police, and Others

208. The Commissioners also heard testimony about an emerging pattern and practice of police using vehicles to kill and maim people of African descent in Washington, D.C. An independent investigation revealed that Metropolitan Police (MP) officers deliberately chased *Jeffrey Price*, while he was on his dirt bike, into a calculated trap at the intersection where a police cruiser crashed into him, causing a fatal accident. The attorney for the family, Mr. David Shurtz, explained to the Commissioners that police officers in D.C. target young Black men on dirt bikes and hit them with government vehicles. The MP often fails to investigate such cases. When an investigator was appointed to investigate the Price case, it was a former police officer who was himself implicated in a previous motorcycle collision that led to the fatal injuries of another Black man.

118 *Case of Kayla Moore*, *supra*.

119 *Video and Transcript: Hearing on the Case of Freddie Gray.*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 18, 2021), https://inquirycommission.org/video-and-transcript-freddie-gray-hearing-monday-january-18-international-commission-of-inquiry/.

120 *Id.*

209. In other cases outside the D.C. area, the Commissioners heard evidence that officers used vehicles to pursue and run victims off the road without justification, as in the case of *Momodou Sisay*, who was forced off the road and shot by a SWAT team.

210. The Commissioners find an alarming, national pattern of the use of deadly restraints against people of African descent by Taser, compression asphyxia, and chokehold, as well as local practices, such as the Baltimore Police Department's "rough rides" and the D.C. Metropolitan Police's use of vehicles to disproportionately target people of African descent with excessive and deadly force.

5. LETHAL POLICE VIOLENCE AGAINST PEOPLE OF AFRICAN DESCENT IS EXACERBATED BY MEDICAL APARTHEID AND POLICE FAILURE TO PROVIDE MEDICAL ATTENTION

211. The history of medical apartheid has been well documented in the United States. In her study, *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present*,[121] Harriet Washington brought to the fore the absence of adequate health facilities among Black people, as well as the medical field's experimentation on Black bodies. Unscientific ideas about the threshold of pain that Black people can withstand have been handed down from one generation to the next and continue to guide the actions of the police in the U.S. today. The hearings documented the collusion between the police, the hospitals, the media, and legal ecosystem in the dehumanization and criminalization of Black people.

212. In 13 of the 44 cases that Commissioners heard, police denial of or failure to obtain timely medical attention contributed to the deaths. Even more damning were the cases in which the police actively prevented medical treatment from being administered. *Antonio Garcia* was bleeding out in his front seat of his car, while the officer who shot him stood nearby, doing little to assist. He prevented Mr. Garcia's wife, Ms. Heather Garcia, a registered nurse, from providing medical assistance to her husband. The experience of *Patrick Dorismond* in New York in 2000 gained international attention when it was revealed that after shooting him in the chest, the police handcuffed him while on the ground, instead of seeking to provide medical attention.

213. The experiences of untold hundreds of cases point to the deadly results of the failure to secure medical attention, especially of those who were undergoing mental stress.

214. The Commissioners heard evidence not only of the dehumanization of those shot or choked, but also the complete disregard for Black life. The case of *Andrew Kearse* graphically exposed the outcomes of lacking medical attention. Mr. Kearse was briefly chased by officers for a traffic violation. When they caught up to him, he couldn't stand or walk, and it took three officers to carry him to the car. Mr. Kearse was in the back seat of the police car for 17 minutes. During that time, he pleaded for help 70 times, repeating the words, "I can't breathe." Kearse's cries for help were disregarded. Mr. Kearse requested that the window be opened but the officer refused. He said that since Mr. Kearse could talk, he could breathe, and thus there was no medical condition or medical emergency. Ambulances were not summoned and no EMT's were called. Instead of taking Mr. Kearse to a hospital, located eight minutes away, officers drove him to the police station. He died of a heart attack one minute before they arrived at the station. The lawyers representing the family retained a medical expert, who concluded that if Mr. Kearse had been treated promptly, his life would have been saved. And there was a 78% to 80% chance he would not have suffered brain injury.

121 Harriet A. Washington, Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present (2006).

215. The Commissioners similarly heard that after 12-year-old *Tamir Rice* was shot, there was no effort to offer medical aid. When Tamir's sister attempted to rush to her brother's side to render assistance and comfort him, the police tackled her and placed her in the police car. Tamir died the next day from the gunshot wounds.

216. The Commissioners find that in case after case, the police's refusal to provide or allow medical assistance amounted to per se failure to secure medical attention.[122]

6. LETHAL POLICE VIOLENCE AGAINST PEOPLE OF AFRICAN DESCENT EXPERIENCING MENTAL HEALTH CRISES IS SYSTEMATIC

"They were not sent there to detain him. My brother was not under arrest. He had not committed a crime. He simply needed mental health. He needed mental health."

—Brendan Daniels, brother of Damian Daniels[123]

"What binds these cases is the tragic loss of life in circumstances in which the death could be avoided."

—New York Attorney General Letitia James [124]

"The justice system doesn't give a damn about us...That's not built for anyone in the community; that's built for the police to keep slaughtering people."

—Joseph Prude, brother of Daniel Prude[125]

217. The overwhelming weight of the testimonies before the Commissioners demonstrated that the police should not be the first responders for persons experiencing mental health crises: ""[T]he risk of being killed during a police incident is 16 times greater for individuals with untreated mental illness than for other civilians approached or stopped by officers."[126]

218. In case after case, the Commissioners were presented with evidence that police suffocated mentally ill persons to death. Police officers continue to respond in this manner to people experiencing mental health crises, in the United States, in general, and in Black communities, in particular. In these situations, the police are not adequately trained and they often react with deadly force, killing large numbers of mentally ill Black people.

122 The Andrew Kearse Act was signed into law in New York State in June 2020. It requires law enforcement officers to seek care for any person in their custody who is experiencing a medical episode or mental health crisis. If they fail to do so, officers can now be held civilly liable. At the federal level, The Andrew Kearse Accountability for Denial of Medical Care Act, which is currently pending in the U.S. Congress, would:

- Hold federal law enforcement officials criminally liable when they fail to obtain or provide medical care to individuals in their custody who are experiencing medical distress;
- Require training for federal law enforcement officials in assisting individuals in medical distress; and
- Direct the Inspectors General of the agencies that employ federal law enforcement officers to investigate potential violations and refer them to the Department of Justice for prosecution.

123 Video and Transcript: *Hearing on the Case of Damian Daniels.*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 29, 2021), https://inquirycommission.org/video-and-transcript-damian-daniels-hearing-friday-january-29-international-commission-of-inquiry/.

124 Sarah Maslin Nir, Jonah E. Bromwich, & Benjamin Weiser, *A Special Unit to Prosecute Police Killings Has No Convictions*, The New York Times (last updated Feb. 27, 2021),

125 *Id.*

126 *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters*, Treatment Advocacy Center (Dec. 2015), https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf

219. As the Commissioners heard in the case of *Damian Daniels*, police departments receive additional funding for emergency calls, so they seek to respond to mental health calls in place of more qualified and suitable agencies such as the American Red Cross. Indeed, there is no universal protocol in the U.S. for dealing with mental health calls.

220. Testimony before the Commissioners, drawing evidence from the American Psychiatric Association (APA), revealed that the incidence of mental illness among Black people is similar to that of the general population. But there are large disparities between the two in the receipt of mental health services. People of African descent receive poorer quality of care and experience a broader lack of access to critical care. As the APA report stated, "Only one in three African-Americans who need mental health care receive it."[127]

221. Regarding the absence of care, "police are more likely to approach African-American mentally ill persons as criminal subjects rather than as people having health problems,"[128] according to the APA. This conclusion was borne out repeatedly in the cases heard by the Commissioners.

222. Among the cases the Commissioners considered was the killing of *Darius Tarver*. Mr. Tarver, a university student and an aspiring law enforcement officer, had suffered a brain injury that affected his mood and daily life functions due to an auto accident one week prior to being killed. During an episode of emotional disturbance, he was repeatedly tasered by police before being shot to death. In a particularly egregious case, *Linwood Lambert*, a mentally ill man, called police on himself to take him to the Emergency Room (ER). When he arrived near the police car, Mr. Lambert became disturbed and agitated and three officers tasered him 20 times directly outside of the hospital. Rather than being taken inside the hospital for treatment, he was handcuffed, shackled, and placed in the back of the police car and transported to the police station where upon arrival, he was found dead after suffering a heart attack. Similarly, *Ritchie Lee Harbison*, an emotionally disturbed 62-year-old Black man, died of cardiac arrest after being tasered by police officers while he was naked and unarmed.

223. The Commissioners received testimony from Mr. Joseph Prude, the brother of *Daniel Prude*, who called 911 when he became concerned about his brother's safety during an apparent mental health crisis. Mr. Prude had been released from the hospital earlier that evening after expressing suicidal thoughts and later left his brother's house wearing thermal underwear and a tank top in below-freezing temperatures. Police eventually found him naked and acting irrationally in the street. Graphic police body camera footage shows officers confronting Mr. Prude with stun guns and ordering him to lie down on the snow-slicked road, then cuffing his hands behind his back when he complied. An increasingly agitated Mr. Prude began to yell and spit at officers and attempted to stand up. One of the seven officers on the scene placed a "spit hood" over his head. Officers then restrained Mr. Prude by pinning down his head and feet and kneeling on his back.

Police Violence against People of African Descent Experiencing Mental Health Crises Is Routine and Systematic

224. *Shereese Francis*, who lived with schizophrenia, was killed by New York City police officers. In the month leading up to her murder, Ms. Francis had stopped taking her medication because of its side effects. When Ms. Francis had refused her medication on prior occasions, her mother had called an ambulance, which transported her to a nearby hospital for treatment. On March 12, 2020, Ms. Francis experienced a mental health episode, causing her to become uncooperative with her family. Her sister called 311, the

127 *See* Division on Diversity and Health Equity, *Mental Health Facts for African-Americans*, American Psychiatric Association (2017), https://www.psychiatry.org/psychiatrists/cultural-competency/education/mental-health-facts (detailed footnotes provided in this document).

128 *Id.*

non-emergency number, and requested an ambulance to take Ms. Francis to the hospital. However, the 311 response team connected Ms. Francis's sister to a 911 operator. Within half an hour of the arrival of four police officers at the Francis residence, Ms. Francis was dead from asphyxia.

225. The Commissioners heard evidence in the case of *Jason Harrison*, who also needed to be admitted to the hospital. The police had been to the house at least ten times before the date on which officers killed Mr. Harrison. "Within 10 seconds of the front door being opened, Jason Harrison lay dying in his own driveway shot at least five times twice in the back by officers . . . Jason hadn't committed any crime, nor did he likely understand why officers were even there."[129]

226. *Mubarak Soulemane* was killed after being shot seven times through the window of his car by an officer following a car chase. Mr. Soulemane had suffered from schizophrenia for more than six years.

227. The police have contrived a questionable diagnosis called "excited delirium." This is "a misappropriation of medical terminology, used by law enforcement to legitimize police brutality and to retroactively explain certain deaths occurring in police custody," according to the findings[130] of the Brookings Institution. "Law enforcement officers nationwide are routinely taught that 'excited delirium' is a condition characterized by the abrupt onset of aggression and distress, typically in the setting of illicit substance use, often culminating in sudden death. However, this 'diagnosis' is not recognized by the vast majority of medical professionals. In fact, 'excited delirium' is not recognized by the American Medical Association, the American Psychiatric Association, or the World Health Organization, and it is not listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5)."

228. In the case of Mr. Prude, the police investigation found no wrongdoing by the officers, instead determining that Mr. Prude's death was caused by "excited delirium."

229. In all cases the Commissioners heard in which a Black person was experiencing a mental health crisis, police responded instead of trained medical professionals. And in every case, the police used gratuitous violence that led to the victim's death.

7. POLICE SYSTEMATICALLY USE EXCESSIVE FORCE AGAINST CIS- AND TRANSGENDER BLACK WOMEN, GIRLS, AND FEMMES

> *"Kayla was in distress. It was because she was Black, it was because she was transgender. That led to her death."*
>
> —**Maria Moore, Sister of Kayla Moore**[131]

> *"They use excessive force unnecessarily on Black women and girls to a much higher degree than they use white women and white girls."*
>
> —**Benjamin Crump, attorney for the family of Breonna Taylor**[132]

129 *Video and Transcript: Hearing on the Case of Jason Harrison.*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 22 2021), https://inquirycommission.org/video-and-transcript-jason-harrison-hearing-friday-january-22-international-commission-of-inquiry/.

130 Joshua Budhu, Méabh O'Hare, & Altaf Sadhi, *How "excited delirium" is misused to justify police brutality*, Brookings Institute (Aug. 10, 2020), https://www.brookings.edu/blog/how-we-rise/2020/08/10/how-excited-delirium-is-misused-to-justify-police-brutality/.

131 *Case of Kayla Moore*, *supra*.

132 Video and Transcript: *Hearing on the Case of Breonna Taylor*., International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 30, 2021), https://inquirycommission.org/video-and-transcript-bre-

> *"Black women and girls are direct targets of the War on Drugs."*
> **—Benjamin Crump, attorney for the family of Breonna Taylor**[133]

230. Although often marginalized in discussions of police violence against Black people, the Commissioners find that cis- and transgender Black women, girls, and femmes are disproportionately killed[134] by police in the United States.[135] According to the *Washington Post*, approximately 250 women were killed by police in the U.S. between 2015 and 2020.[136] While experts suggest that women are less likely to be shot and killed by police because they are perceived to be less threatening than their male counterparts, such perceptions do not extend to Black women and girls. Black women constituted approximately 48 of the 250 women killed by police between 2015 and 2020. This means that "Black women, who are 13 percent of the female population, account for 20 percent of the women shot and killed [by police] and 28 percent of the unarmed deaths [committed by police]."[137] One study found that unarmed Black women are most likely to be shot and killed by police than any other group, including Black men.[138]

Police Abuse of Cis- and Transgender Black Women Is Driven by Gender and Racial Stereotypes

231. The Commissioners heard testimony from numerous witnesses, particularly expert witness Andrea Ritchie, describing the ways in which racial and gendered stereotypes make Black women vulnerable to various forms of police violence. Historically, Black women have been stereotyped as angry and aggressive, which increases the likelihood that police will use force against them. Ms. Ritchie, the author of *Invisible No More: Police Violence Against Black Women and Girls*, described a number of harrowing instances in which police abused or killed vulnerable Black women, including those who were pregnant. In the case of Nicola Robinson, a police officer kicked the unarmed pregnant woman in the stomach, allegedly stating, "You're lucky I don't kill your baby."[139] Robinson had not committed any crime.

Police Violence against People of African Descent is Encouraged by "War on Drugs" Policies

232. The Commissioners find that the War on Drugs is a significant driver of police violence against Black women and girls. Numerous studies have found that Black women are disproportionately subjected to pretextual traffic stops, a law enforcement tactic otherwise known as racial profiling.[140] The Drug Policy

onna-taylor-hearing-saturday-january-30-international-commission-of-inquiry/ (hereinafter "*Case of Breonna Taylor*").

133 *Id.*

134 Edwards, Lee, & Esposito, *supra* n. 6.

135 Kimberlé Williams Crenshaw & Andrea J. Ritchie, *Say Her Name: Resisting Police Brutality Against Black Women*, African-Americans Policy Forum (2015), https://44bbdc6e-01a4-4a9a-88bc-731c6524888e.filesusr.com/ugd/62e126_9223ee35c2694ac3bd3f2171504ca3f7.pdf.

136 Marisa Iati, Jennifer Jenkins, & Sommer Brugal, *Nearly 200 women have been fatally shot by the police since 2015*, The Washington Post (Sep. 4, 2020), https://www.washingtonpost.com/graphics/2020/investigations/police-shootings-women/ (out of 5,600 people killed during the same period).

137 *Id.*

138 Odis Johnson, Jr., Ph.D., Keon Gilbert Dr.PH, Habiba Ibrahim, Ph.D., *Race, Gender and the Contexts of Unarmed Fatal Interactions with Police*, at 24, Washington University in St. Louis, https://cpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/1205/files/2018/02/Race-Gender-and-Unarmed-1y9md6e.pdf.

139 Nigel Roberts, *Pregnant Chicago Woman Accuses Angry Cop of Punching Her Belly*, The Root (May 21, 2015), https://www.theroot.com/pregnant-chicago-woman-accuses-angry-cop-of-punching-he-1790859916.

140 *Andrea Ritchie Expert Presentation*, *supra*.

Alliance reports that "[d]rug use and drug selling occur at similar rates across racial and ethnic groups, yet Black and Latina women are far more likely to be criminalized for drug law violations than white women."[141] Black women are not only more likely to be stopped, searched, and arrested for drug offenses than their white counterparts, they are also vulnerable to deadly police violence during drug investigations.

> "One study found that unarmed Black women are most likely to be shot and killed by police than any other group.

233. The Commissioners heard testimony from the families of *Alberta Spruill* and *Breonna Taylor,* two Black women killed by police during botched drug raids of their homes. In both cases, the police relied on faulty information to secure no-knock search warrants of the women's homes as neither woman was involved in drug dealing. In the case of Ms. Taylor, members of the Louisville Police Department drug unit broke down the door to her apartment without announcing themselves pursuant to a no-knock warrant. When Ms. Taylor's boyfriend, Kenneth Walker, fired a single shot at someone he reasonably believed to be an intruder, police opened fire, striking Ms. Taylor at least six times. In the case of Ms. Spruill, members of the New York Police Department similarly executed a no-knock warrant in search of drugs, kicking in her door and deploying tear gas and flash bang grenades. Once they gained entry to her home, police tackled the 57-year-old Ms. Spruill and placed her in handcuffs. The combined effects of the flash bang grenades, tear-gas, and use of force by officers caused Ms. Spruill to go into cardiac arrest. She was pronounced dead at a local hospital 20 minutes after the botched raid. None of the officers involved have been prosecuted for the murders of Ms. Taylor or Ms. Spruill.

Mental Health and Wellness Crises Precipitate Police Violence against Black Women and Girls

234. Black women are particularly vulnerable to police violence when police respond to calls for supportive care or aid for a mental health or other crisis. When police arrive at the homes of Black women in crisis, the Commissioners find that officers are often ill-equipped to address the needs of Black women. Instead, police respond with violence, undermining the safety of vulnerable Black women. The Commissioners heard testimony from the family of *Kayla Moore*, a Black transgender woman killed in her own home by police who were called to assist her with a mental health crisis. When police arrived, instead of offering Ms. Moore help, they threatened to arrest her on an outstanding warrant for someone else. When Ms. Moore attempted to tell them they were mistaken, she was tackled by four officers, who suffocated her as she struggled to breathe. As stated by Mr. Adante Pointer, an attorney for the Moore family, "...just because you are experiencing a mental health crisis, does not mean that that empowers officers to use force against you. Nor does it empower officers to remove you from your home."[142] None of the officers involved in the death of Ms. Moore have been prosecuted for her murder.

235. The murder of Ms. Moore in her own home during a mental health crisis is not an isolated incident. Indeed, the *Washington Post* found that 89 of the 250 women killed by police between 2015 and 2020 were

141 *Women and the Drug War*, Drug Policy Alliance, https://drugpolicy.org/issues/women-drug-war (last accessed Mar. 24, 2021).
142 *Case of Kayla Moore*, *supra*.

killed in their homes.[143] The Post also noted that "[f]or women and men, about one-third of the police encounters that led to shootings began with a report of a domestic disturbance, a 911 call or a traffic stop."[144]

Police Violence against Black Women is Compounded by Rampant Misgendering of Black Trans People

236. The Commissioners find that harms confronted by Black trans women extend beyond physical abuse and death at the hands of police. Rather, trans Black women are routinely subjected to humiliating treatment, disrespect and mis-gendering by police who have injured or even killed them. Ms. Moore's family testified that Oakland Police officers left her lying on her stomach with her dress pulled up, exposing her private parts. According to Mr. Pointer:

> Kayla died on her stomach without the dignity that anyone deserves, even an animal, because after she, after they noticed that she was no longer responsive, comments were made about her sexual orientation... as opposed to these officers going and getting the appropriate equipment in order to do CPR, they sat there and they talked about her in her sexual orientation and expressed some hesitancy of performing life saving measures.[145]

Police Engage in Sexual and Physical Violence against Black Cis- and Transgender Women

237. The Commissioners note that Black cis- and transgender women are not only victims of deadly police violence, they are also vulnerable to sexual and physical abuse at the hands of law enforcement.[146] As Ms. Ritchie observed during her testimony, "even when Black women or trans people aren't killed by the police, they experience deep physical violence and humiliation."[147] In one high profile case, dozens of poor Black women were sexually assaulted by Tulsa police officer, Daniel Holtzclaw. Reports indicate that Holtzclaw likely targeted the women because they were poor and Black and therefore unlikely to be believed if they complained.[148] Exposure to sexual and physical violence is particularly acute for transgender people. According to a report by the Anti-Violence Project, transgender people are 3.7 times more likely to experience police violence and seven times more likely to experience physical violence when interacting with police than cisgender victims and survivors.[149] Ms. Ritchie observed that Black trans women are targeted by police for prostitution arrests and then subjected to sexual harassment and assault by police. Given these dynamics, it is unsurprising that sexual abuse is the second-most complained about form of police misconduct.[150]

143 Marisa Iati, Jennifer Jenkins, & Sommer Brugal, *supra*. n. 136

144 *Id.*

145 *Case of Kayla Moore*, *supra*.

146 Katelyn Burns, *Why police often single out trans people for violence*, Vox (June 23, 2020), https://www.vox.com/identities/2020/6/23/21295432/police-black-trans-people-violence.

147 *Andrea Ritchie Expert Presentation*, *supra*.

148 Michelle S. Jacobs, The Violent State: Black Women's Invisible Struggle Against Police Violence, 24, 69-70 WM. & Mary J. Women & L. 39 (2017).

149 Anti-Violence Project, *Hate Violence Against Transgender Communities*, National Coalition of Anti-Violence Programs, https://avp.org/wp-content/uploads/2017/04/ncavp_transhvfactsheet.pdf (last accessed Mar. 24, 2021).

150 Dara E. Purvis & Melissa Blanco, Police Sexual Violence: Police Brutality, #MeToo, and Masculinities, 108 Calif. L. Rev. 5 (Oct. 2020).

8. SYSTEMIC RACIST POLICE VIOLENCE KILLS AND TRAUMATIZES BLACK CHILDREN AND YOUTH

"My son laid on the pavement naked, where he took his last breath to ask the officer, Why did you shoot me? I'm dying."

—Venethia Cook, mother of Vincent Truitt[151]

238. The Commissioners find that officers don't hesitate to kill Black children and traumatize other Black youth who witness police kill their parents.

239. Twelve-year-old *Tamir Rice* was killed while he was playing with a toy gun in a park. A person sitting in a nearby gazebo called 911 and reported that someone who looked like a minor was playing with a pistol that was likely a fake. The Commissioners heard how two police officers shot Tamir within seconds of exiting their car.

240. One officer claimed that he ordered Tamir to put his hands up three times, and that he shot Tamir because he feared for his life. But the entire incident transpired in two seconds - too quickly for him to have made such an order. The Commissioners heard that Tamir reached down in his waistband and pulled out the gun and the officer fired two shots. Tamir's sister, Tajai, who was also playing in the park at the time, ran over to Tamir but was tackled to the ground and unable to provide her brother with any aid or comfort. Officers did not offer any medical assistance to Tamir, who died the next day. Samaria Rice, Tamir's mother, told[152] the Commissioners: "...my daughter was placed in the back of the car, forced to watch her brother die."

241. Ms. Venethia Cook, the mother of *Vincent Truitt*, testified, "My precious baby was only 17 years old when his life was taken by Cobb County police officer, shot his back twice. . . . My son ran in fear after being rammed multiple times by the police car. My son was shot immediately after exiting the vehicle, handcuffed, flipped around, his clothes were not cut off, were ripped off."[153]

242. Contrast the shooting of 17-year-old Vincent Truitt with the experience of Kyle Rittenhouse, a white 17-year-old who opened fire on a street in Kenosha, Wisconsin, killing two people who were protesting the shooting of *Jacob Blake* in the summer of 2020. New York University law professor, Kim Taylor-Thompson, writing in the *Los Angeles Times*, noted that pundits and political operatives described Rittenhouse as a "little boy out there trying to protect his community." Even when he walked past police toting a semiautomatic rifle, police did not stop or question Rittenhouse. Professor Taylor-Thompson noted the dehumanizing language that places Black children outside the boundaries of childhood. She wrote:

> But Rittenhouse was not perceived as dangerous. He was seen as a child. Contrast that with Tamir Rice. Cleveland Police Officer Timothy Loehmann sized up Tamir, a 12-year-old boy playing with a toy gun, in a split second. He saw the boy as dangerous and shot and killed him within two seconds of getting out of his patrol car. The inability to see Tamir as a child cost him his life. Choosing who counts as a child is steeped in this country's racism. A Black 17-year-old armed with a semiautomatic would not have lived to tell the story.[154]

151 Video and Transcript: *Hearing on the Case of Vincent Truitt.*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Feb. 6, 2021), https://inquirycommission.org/video-and-transcript-vincent-truitt-hearing-saturday-february-6-international-commission-of-inquiry/ (hereinafter "*Case of Vincent Truitt*").

152 Video and Transcript: *Hearing on the Case of Tamir Rice.*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 66, 2021), https://inquirycommission.org/video-and-transcript-tamir-rice-hearing-tuesday-january-26-international-commission-of-inquiry/.

153 *Case of Vincent Truitt*, *supra*.

154 Kim Taylor-Thompson, *Op-Ed: Why America is still living with the damage done by the 'superpredator'* lie, Los Angeles Times (Nov. 27.

243. This example demonstrates that police employ a double standard; they see Black children as threatening and deserving of being killed, while excusing public killing by a white youth.

244. The Commissioners also heard evidence of the killing of *Tarika Wilson*, the mother of six children, ages one through eight. Ms. Wilson was holding her 14-month-old baby, named Sincere, when the police executed a no-knock warrant. With all the children in the house, the police began shooting. One bullet ripped through Sincere's index finger, severing it, before entering Ms. Wilson's chest, killing her.

245. In a similar vein, the Commissioners received testimony about the killing of *Casey Goodson*, who was executed in front of his five-year-old brother and three-year-old cousin. Tamala Payne, Mr. Goodson's mother, insisted on using the term "execution" to describe her son's killing. Mr. Goodson was shot in the back multiple times as he walked through the door to his home. He fell onto his kitchen floor where his family found him before they were all ordered out of the house at gunpoint by other police officers who poured into the home after the shooting of Mr. Goodson. He was not committing any crime when he was shot nor did he pose a threat to any officer or anyone else. He was walking into his home, filled with his family who were awaiting his return with the takeout food he had purchased for them.

246. At the time of Mr. Goodson's execution, there were nine family members inside the house, five adults and four children. It was Mr. Goodson's little brother who called his mother to report that Casey had been shot. The Officer who shot Mr. Goodson was deputized to a federal fugitive task force under the U.S. Marshals Service at the time. Although he had "an extraordinarily sordid past as a police officer," Sarah Gelsomino, attorney for the Goodson family, testified,[155] he had received no discipline and was not removed from the force or fired. "He has had no consequences for his actions when he chose to take the life of Casey Goodson," said Ms. Payne.

247. *Jacob Blake* was brutalized on the day of his son's birthday party. After pulling Mr. Blake over, the officers aggressively approached him. When Mr. Blake opened the car door and stepped out, the officers tasered him. As Mr. Blake walked around the car, Officer Rusten Sheskey grabbed him by his t-shirt and shot him seven times in the back at point blank range. The shooting of Mr. Blake was captured on cell phone video, in broad daylight, with onlookers all around.

248. Mr. Blake sustained injuries to his arm, kidney, liver, and spinal cord, and had nearly his entire colon and small intestines removed. He is paralyzed from the waist down. Not only was Mr. Blake traumatized, his children were also traumatized by witnessing the police shoot their father while they were sitting in the back of the vehicle.

9. RACIST POLICE VIOLENCE TRAUMATIZES AND DEVASTATES FAMILIES AND COMMUNITIES

"I'm asking you to let his legacy continue to build a brighter future from structural racism and police brutality . . . I'm asking and seeking justice for all Black and Brown men, women and children who have needlessly been killed by racism and police violence . . . Not only did my brother have the weight of three police officers on him, he had the weight of a nation plagued with centuries of systemic racism that stole his last breath."

—Philonise Floyd, brother of George Floyd[156]

2020).

155 Video and Transcript: *Hearing on the Case of Casey Goodson*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Feb 6., 2021), https://inquirycommission.org/video-and-transcript-casey-goodson-hearing-saturday-february-6-international-commission-of-inquiry/ (hereinafter "*Case of Casey Goodson*").

156 *Case of George Floyd*, *supra.*

249. The Commissioners find that after victims of racist police violence are killed, their families and communities remain devastated. Many witnesses reported that Black people are killed in broad daylight both to intimidate communities and because officers don't fear accountability. Wives are widowed, children grow up without fathers, and relatives suffer unimaginable pain. Some families are harassed by police even after their loved ones are killed. Generations of Black families are traumatized. Distrustful of police, Black people refrain from calling the police when they have an emergency.

Wives are widowed, children grow up without fathers, and relatives suffer unimaginable pain.

Black Families Suffer Severe Trauma as a Result of Witnessing Racist Police Violence

250. Black people often suffer post-traumatic stress disorder and other forms of inter-generational psychological and emotional trauma from witnessing racist police violence.[157] In case after case, the Commissioners heard family members of the victims testify about the trauma they suffered as a result of police killings of their loved ones and the lack of accountability the offending officers faced.

251. Ms. Dominic Archibald, the mother of *Nathaniel Pickett II*, who was gunned down by a police officer for doing nothing other than crossing the street in a crosswalk, testified,[158] "He was my legacy, my faith in the present moment, and my hope for the future . . . In the final moments of the only life he had, my only child was stopped, beaten, and terrorized like a dog." A retired Army officer and combat veteran who served in Afghanistan, Iraq, and Kuwait, Ms. Archibald noted, "We have more stringent rules of engagement and human rights requirements against the known enemy than law enforcement has in the streets of America." Regarding the monetary judgment in the civil suit, she added, "You could never pay me for my child . . . Whatever comes is just a down payment on justice." No criminal charges were brought against the officer.

252. Ms. Angelique Negroni-Kearse, *Andrew Kearse's* wife, is raising seven children—four under age 10—without her husband. "This wasn't just somebody just to throw away like his garbage and he's nothing," she testified.[159] "He was somebody." The grand jury refused to indict the officer who trapped Mr. Kearse in the back of a patrol car for 17 minutes while he pleaded for help 70 times before suffering a fatal heart attack.

253. Officers from the Fugitive Task Force in Atlanta, Georgia went to arrest *Jimmy Atchison* for a robbery that never happened. As Mr. Atchison remained on his knees with his hands up, the officer shot Mr. Atchison under his eye, killing him, and leaving his two young children fatherless.

157 Kenya Downs, *When Black death goes viral, it can trigger PTSD-like trauma*, Public Broadcasting Service (PBS) (Jul. 22, 2016), https://www.pbs.org/newshour/nation/black-pain-gone-viral-racism-graphic-videos-can-create-ptsd-like-trauma.

158 *Case of Nathaniel Pickett*, *supra*.

159 Video and Transcript: *Hearing on the Case of Andrew Kearse.*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Feb. 1, 2021), https://inquirycommission.org/video-and-transcript-andrew-kearse-hearing-monday-february-1-international-commission-of-inquiry/.

254. Ms. Constance Malcolm, the mother of *Ramarley Graham*, worries about her other son, who witnessed an officer shoot his brother to death when he was six years old. She testified,[160] "My son, I say he's damaged because I don't know. He's 15. . . I don't know what will happen if an officer tries to stop him, what [is] the outcome going to be. My scare is, I might have to go bury another young Black man, because of what he saw happened to his brother."

255. Shortly after *Juan May* was shot and killed by an undercover off-duty police officer, Mr. May's grandmother stopped eating because of her grief and died. The officer was never indicted by a grand jury. Ms. Jindia Blount, Mr. May's sister, joined "Mothers Against Police Brutality" (MAPB), a U.S. non-governmental organization dedicated to ending racist police violence. Collette Flanagan, who founded the group, testified[161] that MAPB has led to the end of chokeholds and no-knock warrants by Dallas police. Ms. Flanagan, whose son, *Clinton Allen*, was killed by an officer's multiple gun shots, said, "We are suffering. This grief is so debilitating it has almost single-handedly destroyed our family." The officer who killed Mr. Allen was never indicted.

256. Ms. Jasmine Roberson, the daughter of *Antonio Garcia*, whose father was shot in his car for doing nothing illegal, did not think involuntary manslaughter was a sufficient charge for the officer who killed her father. "Involuntary manslaughter means it was an accident," she testified[162]. "So it would be his word against a dead Black man's. Nothing about his behavior was accidental. He intended to kill my father, and he was motivated to shoot based on my father's race."

Racist Police Violence Creates Generational Trauma for People of African Descent

257. No charges have been filed against the officers who hit, punched, choked, and tasered *Manuel Elijah Ellis* to death. "We're broken, generations of us are emotionally tired. Our bodies are weathered, and it causes us physical illness. It causes us lifelong ailments and diseases. It causes us generational trauma that we are passing on," Ms. Jamika Scott, a friend of the Ellis family, testified.[163] "We are traumatized. We live in a constant state of PTSD, we are hyper vigilant, we are fearful, we are anxious, we are depressed," she added. "It tears holes in families and communities. And it's not just one family, it's what happens to one family in this community, it happens to all of us. And it happens, it has lasting echoes throughout generations."

258. *Eric Garner*'s mother, Ms. Gwen Carr, invoked other mothers who have lost sons to racist police violence. "There's tens of thousands of us out here," Ms. Carr testified[164], "Some of us are high-profile, as they call it. But each case should be high profile. One case is as bad as the next. Some of the mothers, they can't get out of bed."

259. Nicole Paultre Bell, the wife of *Sean Bell*, testified: "Imagine living in a world where you must explain to your children their father, an unarmed bridegroom on the morning of his wedding, can be justifiably killed in a hail of 50 police bullets."

160 *Case of Ramarley Graham*, *supra*.

161 *Testimony of Collette Flanagan*, *supra*.

162 Video and Transcript: *Hearing on the Case of Antonio Garcia.*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Feb. 1, 2021), https://inquirycommission.org/video-and-transcript-antonio-garcia-hearing-monday-february-1-international-commission-of-inquiry/.

163 Video and Transcript: *Hearing on the Case of Manuel Elijah Ellis.*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Feb. 3, 2021), https://inquirycommission.org/video-and-transcript-manuel-elijah-ellis-hearing-wednesday-february-3-international-commission-of-inquiry/.

164 *Case of Eric Garner*, *supra*.

260. Some victims' relatives have been harassed by police after their loved ones were killed. The mother of *Malcolm Ferguson*, shot and killed by a plainclothes officer for hanging out with some friends, has been threatened and abused.[165] More than a dozen officers raided her home, beat up and pepper sprayed her other son, and sexually assaulted her daughter as she held her child in her arms.

261. "Many Black families do not even trust the police department," *Aaron Campbell*'s mother, Ms. Marva Davis, testified.[166] The suicidal and compliant Mr. Campbell was shot and killed by officers. "I have talked to Black leaders, community leaders. And their message to the Black community is, do not call the police," she added.

10. BLACK IMMIGRANTS ARE PARTICULARLY VULNERABLE TO SYSTEMIC RACIST POLICE VIOLENCE AND POLICE KILLINGS

> *"Due to racial discrimination, over-policing of Black communities, and invisibility within the public consciousness, Black immigrants face egregious conditions in the U.S., particularly within the nation's immigration enforcement system."*
>
> —BAJI and NYU Law School Immigrant Rights Clinic, "The State of Black Immigrants"[167]

Racism in the Criminal Legal System Unjustly Targets Black Immigrants

262. The Commissioners find that Black immigrants, who face disproportionate treatment in both the criminal and immigration systems, are particularly vulnerable to the systemic racist police violence that targets the African-American community.

263. Black immigrants account for nearly 10% of the United States' Black population. Of the approximately five million Black individuals living in the U.S. who were born abroad, 3.7 million are non-citizens. "There is no evidence that Black immigrants commit crime at greater rates than other immigrants," according to a 2016 report[168] of the Black Alliance for Just Immigration (BAJI) and the NYU Law School Immigrant Rights Clinic. But while Black immigrants comprise only 7.2% of the U.S. non-citizen population, they account for 20.3% of immigrants who face deportation on criminal grounds.[169] The BAJI-NYU report concluded, "The racism present in the criminal legal system spills over and informs the immigration enforcement system, and thus it naturally and unjustly targets Black immigrants at all stages of the process."

264. Camilio Perez Bustillo, a professor of human rights, sociology, and psychology, as well as a Stanford University fellow, and former director of immigrant and refugee rights at the American Friends Service Committee, concurs. "Immigration policy in the United States has always been an expression of white supremacy and white nationalism," Mr. Bustillo testified.[170] Mr. Bustillo said that although racism and

165 Cyril Josh Barker, *Juanita Young alleges more police brutality*, New York Amsterdam News (Apr. 12, 2011), http://amsterdamnews.com/news/2011/apr/12/juanita-young-alleges-more-police-brutality/.

166 Video and Transcript: *Hearing on the Case of Aaron Campbell*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 20, 2021), https://inquirycommission.org/video-and-transcript-aaron-campbell-hearing-wednesday-january-20-international-commission-of-inquiry/ (hereinafter, "*Case of Aaron Campbell*").

167 Juliana Morgan-Trostle & Kexin Zheng, *The State of Black Immigrants*, NYU Law School Immigrant Rights Clinic and Black Alliance for Just Immigration 5 (2016), https://www.immigrationresearch.org/system/files/sobi-fullreport-jan22.pdf (last accessed March 1, 2021).

168 *Id.* at 20.

169 *Id.*

170 Video: *Camilo Perez-Bustillo*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Feb. 5, 2021), https://inquirycommission.org/?s=bustillo.

xenophobia were "made open and obvious" during the Donald Trump administration, this phenomenon is not likely to shift significantly under the current administration due to the U.S.'s inherent character "as a settle colonialist nation and its neo-colonial presence and interaction in Latin America."

265. Black immigrants, who are subject to draconian immigration laws,[171] are particularly vulnerable to the police violence that African-Americans experience. "These laws, combined with ever-present aggressive policing in the majority-Black neighborhoods where they live, create an additional layer of punishment for Black immigrants in a legal system already skewed against them," Ashoka Mukpo wrote for the ACLU.[172]

Draconian Immigration Laws Compound the Harms to Black Immigrant Victims of Racist Police Violence

266. The Commissioners heard testimony about the racist police killings of three Black immigrants.

267. *Ousmane Zongo*, a wood maker from Burkina Faso, West Africa, was working on repairing African artifacts in a warehouse's storage unit when he heard a police raid on an alleged counterfeit CD ring. Apparently thinking he was about to be robbed, Mr. Zongo, who had nothing to do with the counterfeit ring, ran through a maze of corridors of lockers until he reached a dead end. An officer chased Mr. Zongo, firing his semi-automatic pistol five times. Four bullets hit Mr. Zongo, who died in the hospital several hours later.

268. *Momodou Sisay*, a Black Gambian Muslim, was killed by a SWAT team whose officers fired three rounds (more than 200) of shots at Mr. Sisay's car, killing him. The Gambian government is urging a "transparent, credible, and objective investigation."

269. *Botham Jean*, an accountant born in St. Lucia, was eating ice cream in his apartment when an officer, through a "web of mistakes," entered the apartment, allegedly believing it to be her own located one floor below, and shot and killed Mr. Jean. "What was she defending," Ms. Allison Jean, Mr. Jean's mother, asked,[173] "as the only weapon he held was the color of his skin?"

11. LEGAL ACTORS ARE COMPLICIT IN POLICE VIOLENCE AND KILLINGS OF BLACK PEOPLE THROUGH QUALIFIED IMMUNITY AND OTHER FORMS OF SYSTEMIC IMPUNITY

11(a). PROSECUTORIAL MISCONDUCT AND GRAND JURY ABUSE

The Impunity Afforded to Offending Police Officers Leads to Continuing Police Brutalization of Black People

> *"I called for my brother to be helped, not for my brother to be tortured."*
>
> —Joseph Prude, brother of Daniel Prude[174]

171 Yesenia Chavez & Madhuri Grewal, *It Is Time for a New Way Forward*, American Civil Liberties Union (Jan. 7, 2020), https://www.aclu.org/news/immigrants-rights/it-is-time-for-a-new-way-forward/.

172 Ashoka Mukpo, *For Black Immigrants, Police and ICE Are Two Sides of the Same Coin*, American Civil Liberties Union (Sep. 3, 2020), https://www.aclu.org/news/criminal-law-reform/for-black-immigrants-police-and-ice-are-two-sides-of-the-same-coin/.

173 Video and Transcript: *Hearing on the Case of Botham Jean*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 19, 2021), https://inquirycommission.org/video-and-transcript-botham-jean-hearing-tuesday-january-19-international-commission-of-inquiry/ (hereinafter, "*Case of Botham Jean*").

174 Video and Transcript: *Hearing on the Case of Daniel Prude*, International Commission of Inquiry on Systemic Racist Police Vio-

270. The Commissioners find that the brutalization of Black people is compounded by the impunity afforded to offending police officers, most of whom are never charged with a crime. Nearly all of those who do face charges are acquitted or escape time in custody. Since prosecutors rely on officers for investigation and testimony, they have an inherent conflict of interest when reviewing police misconduct. The grand jury is complicit by carrying out the prosecutor's bidding and refusing to indict officers who then get away with murder.

271. Mapping Police Violence reported[175] in 2020: "Officers were charged with a crime in only.one percent of all killings by police." Attorney Daryl Washington, who represents the family of *Botham Jean*, cited statistics demonstrating police impunity for the killing of people of African descent. Washington testified[176] that only 110 officers have been charged with murder or manslaughter. "Of all the shootings that that we have seen," he said, "just five of those 110 officers have been convicted of murder, while 37 have been found guilty of lesser crimes. Out of the 42 victims, 25 were Black."

272. The case of *Daniel Prude*, who was terribly brutalized and suffered brain damage due to the force with which the officer pressed his head into the sidewalk, is emblematic of the impunity enjoyed by officers who murder Black people in New York. On March 2, 2021, New York Attorney General Letitia James announced that none of the officers involved in the killing of Mr. Prude would face criminal charges. A grand jury Ms. James had convened to investigate the case declined to authorize the indictment of any of the seven officers. The Associated Press reported:

> A grand jury's decision not to indict officers involved in a fatal encounter with an unarmed Black man illustrates a hard reality for a special unit created to investigate deaths at the hands of police: Few of the probes overseen by New York's attorney general have led to charges against officers...The Daniel Prude case marks the third time a grand jury has declined to bring charges in a case handled by the Special Investigations and Prosecutions Unit, created in 2015 amid an outcry over police skirting punishment in the deaths of unarmed Black people. The unit has yet to win a conviction. [177]

Prosecutors' Conflict of Interest Further Encourages Police Impunity for the Killing and Maiming of Black People

273. Prosecutors have virtually unfettered discretion over whether to file criminal charges and which charges to bring against police officers.[178] "Under American law, government prosecuting attorneys have nearly absolute and unreviewable power to choose whether or not to bring criminal charges and what charges to bring," according to the Southern Poverty Law Center.

274. Sanford Rubenstein, attorney for the family of *Mubarak Soulemane*, a mentally ill 19-year-old whom officers shot seven times, killing him as he sat behind the wheel of a car, testified[179] that, "local prosecutors need

lence Against People of African Descent in the United States (Jan. 23, 2021), https://inquirycommission.org/video-and-transcript-daniel-prude-hearing-saturday-january-23-international-commission-of-inquiry/.

175 Samuel Sinyangwe, *Mapping Police Violence*, Mapping Police Violence (last updated Mar. 14, 2021), https://mappingpoliceviolence.org.

176 *Case of Botham Jean*, *supra*.

177 Michael Hill and Michael R., Sisak, *Daniel Prude case reflects difficulty of prosecuting police*, Associated Press (Feb. 25, 2021), https://apnews.com/article/new-york-daniel-prude-shootings-2034e038bd815cc62414fad04176ce2e.

178 *Are There Limits to Prosecutorial Discretion?*, Southern Poverty Law Center (Jan. 1, 2003), https://www.splcenter.org/fighting-hate/intelligence-report/2003/are-there-limits-prosecutorial-discretion.

179 Video and Transcript: *Hearing on the Case of Mubarak Soulemane*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 27, 2021), https://inquirycommission.org/video-and-tran-

the police to make their cases [so] there is an existing conflict, or at least an appearance of conflict by the public with regard to having local district attorneys investigate police killings."

275. Moreover, prosecutors who work closely with officers are the ones who present police misconduct cases to the grand jury. "That conflict of interest and perhaps political considerations as well," attorney Tom Steenson testified[180], "lead observers like myself to believe that prosecutors don't pursue cases against the police with the same zeal that they do in similar cases against private citizens, leading to grand juries failing to indict police officers unless outside prosecutors are brought in to handle such cases."

Collusion between Legal Actors Is Used to Cover up Torture and Other Forms of Racist Police Violence

276. Attorney Flint Taylor from the People's Law Office in Chicago[181] testified about the long-standing history of police use of torture against Black people in the United States. In particular, Mr. Taylor highlighted the ways in which federal and local law enforcement officials targeted Black movement activists, including the 1969 assassination of Fred Hampton and Mark Clark by Chicago police officers. Between 1972 and 1991, members of the Chicago police department used torture as a means of extracting false confessions from Black people accused of crimes. They used electric shock, mock executions, and mock suffocation with bags, among other methods. Through litigation, the systemic racist police torture was uncovered. Prosecutors were aware of the torture but nevertheless introduced the tainted confessions in court. Based on this evidence, prosecutors obtained death sentences and long prison terms against defendants who had been tortured. Recently, the city of Chicago acknowledged this ugly history and approved reparations for survivors of police torture in the city.[182]

Grand Juries are Systematically Misused to Provide Police Officers with Further Impunity

277. There are two ways a prosecutor can bring felony charges against an individual. A preliminary hearing is a public proceeding in which a judge decides whether there is probable cause to send a person to trial. Or a prosecutor can ask a grand jury to make the probable cause determination and approve an indictment, which will then be the charging document at trial.

278. The grand jury, often called a "star chamber," meets in secret and does the prosecutor's bidding in nearly every case. "The secrecy of grand jury proceedings has led to a system of what is essentially unchecked prosecutorial discretion," Rutgers law professor, Laura Cohen, testified. "In most situations, the grand jury is a kind of a rubber stamp."[183] Cohen is very concerned about "the role that bias or discrimination plays in the decision." Prosecutors frequently refrain from taking cases to a grand jury to request an indictment. In some high-profile cases, prosecutors present a case to the grand jury but then sabotage the case.

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script-mubarak-soulemane-hearing-wednesday-january-27-international-commission-of-inquiry/ (hereinafter "*Case of Mubarak Soulemane*").

180 *Case of Aaron Campbell*, *supra*.

181 Video: *Expert Presentation by Flint Taylor on Chicago Police Torture Cases and Reparations*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States, https://inquirycommission.org/video-flint-taylor-expert-presentation/.

182 Logan Jaffe, *The Nation's First Reparations Package to Survivors of Police Torture Included a Public Memorial. Survivors are Still Waiting*, ProPublica (July 3, 2020), https://www.propublica.org/article/the-nations-first-reparations-package-to-survivors-of-police-torture-included-a-public-memorial-survivors-are-still-waiting.

183 International Association of Democratic Lawyers, *International Commission of Inquiry Orientation Video*, YouTube (Jan. 13, 2021), https://www.youtube.com/watch?v=ydYqitNtbZQ&t=5879s\.

279. No criminal charges were ever brought against the officers who killed *Tamir Rice*. The chief prosecutor who presented the case to the grand jury was "a defense attorney for the cops," according to Tamir's family and others involved in the case. The officers were allowed to prepare and make statements to the grand jury, but were not cross-examined.

280. A grand jury refused to indict the officers who killed *Daniel Prude* during his mental health crisis. The unarmed, cooperative Prude was nude in the middle of the road when police handcuffed him, forced a mesh hood over his head, and then pressed his head and chest into the pavement, causing fatal brain damage. Likewise, a grand jury did not indict the officers who killed *Andrew Kearse*, after keeping him in the back seat for 17 minutes as he repeated, "I can't breathe" several times and suffered a heart attack.

281. Attorney Benjamin Crump, who represents the family of *Michael Brown*, testified,[184] "We have the grand jury system in the United States of America, where when people are charged with a crime that could be considered a felony [with] imprisonment more than 25 years, they have to go before the grand jury. Where Black people in America often are charged with those crimes, we call it the school to prison pipeline, the prison industrial complex. Where in this situation when you had the Black victim lying dead on the ground, and there's a white police officer, they just changed all the rules. ...The Grand Jury proceedings allowed the killer of Michael Brown to go testify before the grand jury, and he was not cross examined at all."

11(b) DESTRUCTION OF EVIDENCE

There Is an Alarming Pattern of Manipulation of Evidence, Cover-ups, Obstruction of Justice, and Collusion between Various Arms of Law Enforcement

> *"Until the day I die, this is what I'm going to do. We know that the system, they kill us twice. First, the police, they murder in broad daylight, they murder us in the night when they don't think anyone's looking, then they murder us in the newspaper, they bring out any little thing that they think that can criminalize us."*
>
> **—Gwen Carr, mother of Eric Garner[185]**

> *"The first police report that came out on George Floyd was that he died of natural causes, while he was assaulting police, and resisting arrest"*
>
> **—Benjamin Crump, attorney for George Floyd[186]**

282. In case after case, the Commissioners find proof of an alarming pattern of manipulation of evidence, cover-ups, obstruction of justice, and collusion between various arms of law enforcement. Police officers and their unions, prosecutors, coroners. and "independent medical examiners" are accomplices in the service of impunity for police who kill Black people. The Commissioners also find a troubling pattern of police creating false narratives and smear campaigns directed at victims and their families.

184 *Case of Michael Brown, supra.*
185 *Case of Eric Garner, supra.*
186 *Case of George Floyd, supra*

Cover-ups, Obstruction of Justice, and Manipulation and Destruction of Evidence Provide Impunity for Police Killings against People of African Descent

283. The Commissioners find a disturbing pattern of destruction, loss and manipulation of evidence, and obstruction of justice in connection with the unjustified killings of unarmed persons of African descent among the 44 cases heard. The egregiousness of the violations bears noting and its presence in multiple cases heard by the Commission is cause for concern.

284. For example, in the case of *Henry Glover*, a man shot outside a mall loading dock, the police sought to destroy evidence and desecrate the victim's lifeless body by driving a car containing his corpse into a levee and setting it on fire. Three officers were convicted of filing a false and misleading police report with the intent to impede and obstruct the investigation of Mr. Glover's death, though their convictions were later overturned.

The Commissioners find a disturbing pattern of destruction, loss and manipulation of evidence, and obstruction of justice...

285. Eighteen-year-old *Michael Brown* was shot 12 times in broad daylight, his body left in the street for four hours to intimidate the Black community of Ferguson, Missouri. The assailant police officer was permitted to bag his own gun and wash the victim's blood off his hands, thus destroying evidence. The Commissioners heard evidence in the case of *Patrick Dorismond*, a man killed by police officers for refusing the advances of an undercover officer seeking to buy drugs. A gunpowder residue test and other tests relevant to building a case against the officer were "lost" by the police department. In the case of *Jayvis Benjamin*, the district attorney's office attempted to manipulate the video recording of Mr. Benjamin's murder, as the unaltered video showed the officer shooting an unarmed, defenseless Black man.

286. The Commissioners further heard evidence of official procedures that invited such obstruction and manipulation. Police suspects benefit from protocols whereby the crime scene is not secured. Before giving a statement, officers are permitted extra time to confer with their union and colleagues to generate agreed-upon narratives. In the case of *Jordan Baker*, David Owens, attorney for the family, testified,

> Well, Officer Castro handcuffs Jordan and leaves him to die on the ground. He gets in his police car and waits for his attorney to show up. Then homicide investigators are calling from the city of Houston. The prosecutor's office from Harris County are called, the internal affairs from the Houston Police Department. They all show up. Officer Castro has a conversation with his attorney about what he wants to say happened. And then they do a walkthrough of the entire thing, what's called a ring.[187]

287. *Malcolm Ferguson* was killed by a bullet to the temple. The officer claimed that his gun fired accidentally, but the medical examiner said the barrel of the gun was touching Ferguson's temple when it went off. The

187 *Case of Jordan Baker, supra.*

officers were allowed 48 hours after the killing to speak with other officers and get their stories straight. Furthermore, officers and their unions often have access to body camera footage long before family members. Such access invites cover-up efforts and grants police officers access to the evidence against them long before charges are filed and official narratives fixed. In the case of *Daniel Prude*, the police union received the body camera videos and other evidence within two to three days after the accident, while the Prude legal team did not have access to the footage until six months after the killing.

There Is a Pattern of Unsupportable Exculpatory Medical Findings in Cases of Unlawful Restraint

288. In addition to the misconduct of police, the Commissioners heard evidence that medical examiners and coroners worked in tandem with the police to obstruct justice. Particularly in cases of unlawful restraint, coroners and medical examiners have endorsed demonstrably false causes of death to exonerate police officers and minimize the role of excessive force in the victim's death.

289. "About a decade ago, the National Association of Medical Examiners, which is a professional association for forensic pathologists and medical examiners, surveyed their membership. And about 1 in 5 reported being pressured by a public official, which included politicians and also police, to change cause-of-death determinations or manner-of-death determinations,» Harvard health researcher Justin Feldman told *Mother Jones*.[188]

290. The prosecutor in the *Linwood Lambert* case argued that Mr. Lambert died from "excited delirium." This false diagnosis was accompanied by improper oversight of the forensic pathologist by a Virginia State police official with no medical training or knowledge. The resulting autopsy concluded that Mr. Lambert died of "acute cocaine intoxication" due to trace amounts of the substance in his system. Crucially, in reaching a conclusion that exculpated the officers, the forensic pathologist did not take into account that Mr. Lambert was tasered more than 20 times, nor did she review the video of the incident before conducting the autopsy.

291. Despite the video depicting *George Floyd*'s gruesome killing by asphyxiation for over nine minutes, the Hennepin County Medical Examiner made no physical findings that supported a diagnosis of traumatic asphyxia or strangulation. *Tashii Farmer Brown* was chased and killed by police in a Las Vegas casino by officers from whom he sought help after he feared he was being followed. Defense witnesses blamed his death on an enlarged heart rather than the prolonged chokehold that caused him to become unresponsive. *Tyrone West* was beaten by seven officers, one of whom stood on his back and neck for five minutes. The independent review board found the cause of death to be extreme heat that day, dehydration, and a medical issue aggravated by the encounter with the police. They did not include the beating and chokehold among the causes of death.

292. Accordingly, the Commissioners find evidence of a pattern of complicity in official cover-ups by state examiners and experts who are required to make independent findings.

Police Departments Concoct False Narratives Regarding Incidents of Police Violence against People of African Descent

293. In addition to evidence of obstruction, the Commissioners heard evidence from family members and their attorneys who testified that police departments had concocted false narratives directed not at their own

188 Samantha Michaels, *Why Coroners Often Blame Police Killings on a Made-Up Medical Condition*, Mother Jones (Oct. 14, 2020), https://www.motherjones.com/crime-justice/2020/10/why-coroners-often-blame-police-killings-on-a-made-up-medical-condition/.

actions but at those of the victim, many of which were subsequently discredited by surveillance and cell phone recordings of the incident, as well as other evidence.

294. The Commissioners also received evidence in the case of *Manuel Elijah Ellis*, a man killed after an unlawful stop. Police created a false narrative that he was trying to get into cars, which was contradicted by a bystander's video. In the case of *Ramarley Graham*, a young man shot in the presence of his grandmother and six-year-old brother, the New York Police Department (NYPD) released footage of a fleeing man dressed in white, whom they claimed was Mr. Graham, despite the fact that Mr. Graham was dressed in black, and surveillance tape showed him walking into his home. After the killing, the NYPD released a false narrative to the press that Mr. Graham was under surveillance for selling drugs. *Tashii Farmer Brown* was falsely criminalized as trying to carjack a truck, a narrative contradicted by video evidence. Similarly, in the case of *Marquise Jones*, a man shot in the back while walking away from a minor vehicular accident, the police claimed self-defense.

Police Departments Employ Stock Justification Narratives Such as "Reaching for Waistband"

295. The Commissioners find that police departments have employed a stock response intended to manufacture justification for use of force.

296. Specifically, the Commissioners heard testimony in multiple cases during which police claimed that the victims were "reaching for their waistband" as justification for the police officers' perception of a threat. *Aaron Campbell* was shot in the back during a mental health call. After consulting with his union representative and attorney, the officer changed his story and claimed he saw Mr. Campbell's hand reach below his waistband into his pants. Similarly, in the case of *Michael Brown*, while mobile phone footage shows that he was shot while his hands were up, the officer subsequently stated that Mr. Brown reached for his waistband—a claim the officer did not raise with his supervisor immediately after the incident.

297. The case of *Jordan Baker*, a young father killed by a Houston police officer while riding his bike in a strip mall, illustrates the use of the waistband justification by police to excuse the use of excessive force against communities of color. Attorneys for Mr. Baker's family presented evidence that the "waistband" theory of perceived threat used against Mr. Baker was utilized in 50 out of 227 killings of civilians by the Dallas police over a three-year period. But such justification was used only against Black and Hispanic civilians, never against whites. Overwhelmingly, when this excuse was used, the civilian was unarmed.[189]

298. Thus the Commissioners find, within the Dallas Police Department and elsewhere, "reaching for the waistband" formed part of a consistent and deliberately false narrative by police departments and unions to justify unlawful killings of people of color.

Police Departments Engage in Defamatory False Claims about Victims and Their Family Members

299. The Commissioners find that in addition to disseminating false narratives to manufacture probable cause or justification for their use of force, police departments, aided by municipalities, repeatedly resorted to smear media campaigns and efforts to discredit victims and their families.

300. A particularly telling example of this practice is the case of *Patrick Dorismond*, who was killed by undercover officers after an incident of racial profiling when he rebuffed an undercover officer's request to buy

189 *Case of Jordan Baker*, *supra*.

drugs. After the killing, then-mayor of New York, Rudy Giuliani, falsely claimed that Mr. Dorismond was convicted for crimes of violence, and leaked his sealed juvenile records to the press. Giuliani went on television to smear Mr. Dorismond, stating, "He's no altar boy." In fact, Mr. Dorismond had been an altar boy in his youth.

301. These false smear narratives extend to family members and others who advocate for justice and accountability on behalf of victims. In the case of *Clinton Allen*, once the city realized that Mr. Allen's mother was bringing unwanted attention to the city by talking to other families whose children had been killed by police officers, the police and the local newspaper mounted a campaign to falsely paint Mr. Allen as a crazed drug user who attacked a cop while high on PCP. After the killing of *Ramarley Graham* in an unwarranted search of his home, the NYPD released a false narrative to the press that Graham was under surveillance for selling drugs.

302. Police portrayed *Jayvis Benjamin* as a car thief while he was driving his mother's car. When Mr. Benjamin's mother refused to accept that her son was a criminal who deserved to be shot right after being involved in a car accident, she was labeled an "angry Black woman." In an especially egregious case heard by the Commissioners, retaliation against the family was not limited to smears, but took the form of physical and sexual violence and intimidation against family victim advocates. In the case of *Malcom Ferguson*, the NYPD threatened and abused Ferguson's mother, Juanita Young. More than a dozen officers raided her home in 2009, beat and pepper sprayed her other son, James Ferguson, and sexually assaulted her daughter, Saran Young, while she held a child in her arms.

11(c) SYSTEMIC IMPUNITY: LACK OF OVERSIGHT OF POLICE

Internal Police Department Practices Aid and Abet the Systemic Impunity of Law Enforcement Officers

> *"I hunt people. It's a great job. I love it . . . I learned long ago, I gotta throw the first punch."*
> —Officer Jason Meade, who killed Casey Goodson[190]

303. The Commissioners find that internal police department practices aid and abet the systemic impunity that law enforcement officers enjoy. Officers cover up for each other in a practice known as the "blue wall of silence." Police unions help their members conceal their misconduct. Police departments conduct insufficient background checks before hiring new officers. And when police internal affairs investigations do occur, they rarely result in accountability for officers who kill Black people.

Police Departments Dispatch and Hire Officers with a History of Excessive Force

304. Officers with a history of excessive force continue to be dispatched, and are subsequently hired by, police departments.[191] Before he killed *George Floyd* by pressing his knee on Mr. Floyd's neck for 8 minutes and 46 seconds, Officer Derek Chauvin had more than a dozen complaints[192] filed against him, none of which had

190 Video and Transcript: *Hearing on the Case of Casey Goodson*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Feb 6., 2021), https://inquirycommission.org/video-and-transcript-casey-goodson-hearing-saturday-february-6-international-commission-of-inquiry/ (hereinafter "*Case of Casey Goodson*").

191 Timothy Williams, *Cast-Out Police Officers Are Often Hired in Other Cities*, The New York Times (Sep. 10, 2016), https://www.nytimes.com/2016/09/11/us/whereabouts-of-cast-out-police-officers-other-cities-often-hire-them.html.

192 Janelle Griffith, *'He choked me out': Others detail allegations of abuse by officer who knelt on George Floyd*, NBC News (Mar. 3, 2021), https://www.nbcnews.com/news/us-news/he-choked-me-out-others-detail-allegations-abuse-officer-who-n1259207.

resulted in any disciplinary action. In one case, Chauvin pulled a non-resisting woman to the ground and knelt on her as she pleaded, "Don't kill me." In another case, the victim asserted that Chauvin, "Choked me out on the ground," but the complaint against the officer was dismissed.

305. Ten years before he killed *Damian Daniels*, who was experiencing a mental health crisis, Officer Jonathan Rodriguez had shot another unarmed civilian during a mental health crisis, and had also been criminally charged for a domestic dispute. Officer Clark Staller had just gotten off probationary suspension for using his squad car to run over a fleeing suspect and for falsifying a police report when he killed the non-threatening *Clinton Allen* with seven shots fired at close range. He was put on administrative duty for nearly two years, but ultimately kept his job.

306. The officer who killed *Barry Gedeus* with three shots to the rear of his body had 84 separate use of force complaints filed against him over the course of his 14-year career. Those complaints were unusual for the explicit violence he used in arresting, apprehending, and interviewing suspects.

The "Blue Wall of Silence" Prevents Accountability for Offending Officers

307. Jonathan Moore, attorney for the Estate of *Eric Garner*[193] and Derek Sells, attorney for the Estate of *Alberta Spruill*,[194] testified about the "blue wall of silence," also called the "blue code of silence" and the "thin blue line." It is standard operating procedure that officers who witness misconduct by their colleagues do not come forward but instead help them cover up their crimes, often aided and abetted by prosecutors. The all-too-common practice prevents offending officers from facing accountability for their actions.

Police Unions Facilitate Impunity of Officers

308. Police union representatives often protect officers involved in violent incidents by providing them with false narratives to cover up their culpability. Unions establish procedural protections for officers involved in police shootings. This generally includes a cooling-off period that allows officers to meet with their union representatives and legal team before officially submitting a statement. The officer who killed *Casey Goodson* by shooting him in the back with three assault rifle bullets provided a statement two weeks after he had consulted his lawyers and members of the police union. He has not been charged with murder or dismissed from his job.

309. Officer Amber Guyger killed *Botham Jean* while he was eating ice cream in his apartment. She claimed to have mistakenly entered Mr. Jean's apartment thinking it was hers and then shot him. After the shooting, Guyger was allowed to talk to police union representatives. Daryl Washington, attorney for the Jean family, testified[195] about "how powerful these police unions are. And they basically told Amber Guyger what to do and what to say," Mr. Washington added. "She was given that protection, that's how police officers are treated when there's an officer involved shooting."

310. The police union got the body camera footage two or three days after *Daniel Prude*'s murder. It took the Prude legal team six months -- and the filing of several lawsuits under the Freedom of Information Act -- to obtain the footage.

311. Attorney Derek Sells represents the family of *Tarika Wilson*, who was shot and killed by an officer with

193 *Case of Eric Garner*, *supra*.
194 *Case of Alberta Spruill*, *supra*.
195 *Case of Botham Jean*, *supra*.

a semi-automatic rifle as she held her 14-month-old baby. Mr. Sells testified[196] that the union leadership thinks "there's a war, that the police are at war with the general public, that they're under attack . . . And so they want to try and stick together. . . And so therefore, we have a culture of poisoned police officers. And it's maintained by the union, the union forces, essentially, these police officers to stick together."

312. One police officer had participated in three officer-involved shootings of unarmed individuals, two of whom were of African descent. After his third shooting, the officer was named as a police union representative who advised individuals after officer-involved deaths. He was recorded helping another officer present a false narrative for his killing of *Tashii Farmer Brown* through infliction of tasering, beating, and an unauthorized chokehold.

Police union representatives often protect officers involved in violent incidents by providing them with false narratives to cover up their culpability.

313. The officer who killed the unarmed, suicidal *Aaron Campbell* changed his story after consulting with his police union representative. He then claimed he saw Mr. Campbell's hand reach below his waistband and into his pants before shooting him with an AR-15 semi-automatic assault rifle. Although the police's internal investigation determined the officer had violated policies and training and directed his firing, the arbitrator reversed that decision and ordered him reinstated with back benefits.

314. Police union contracts erect obstacles to officer accountability for misconduct.[197] They include provisions that disallow misconduct complaints that are submitted too long after the incident or if the investigation is taking too long to complete. They prevent officers from being interrogated immediately after an incident. Officers are granted access to information that civilians and their attorneys are not allowed before interrogation. Police unions prevent information about an officer's record of misconduct from being recorded or kept in the officer's personnel file. Unions also limit the disciplinary consequences officers face or limit the authority of civilian oversight boards to hold officers accountable.

The Police Cannot Be Trusted to Police Themselves through Internal Affairs Investigations

315. Police departments have Internal Affairs (IA) bureaus to deal with complaints about individual officers. IA investigators are supposed to conduct investigations of police misconduct allegations. In many cases, however, they refrain from finding wrongdoing by officers. These bureaus often lack transparency so the public is not aware of whether they did mount an investigation, and if they did, what determination they made.

316. In Columbus, Ohio, the internal police investigation is conducted by a Critical Incident Review Team,

196 Video and Transcript: *Hearing on the Case of Tarika Wilson*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Feb. 4, 2021), https://inquirycommission.org/video-and-transcript-tarika-wilson-hearing-thursday-february-4-international-commission-of-inquiry/.

197 Check The Police Project, *How Police Union Contracts Block Accountability*, https://www.checkthepolice.org/#project (last accessed Mar. 26, 2021).

which attorney Sarah Gelsomino testified[198], "just immediately consider the shooting to be justified." Their policy is that "the officer who shoots is not to be treated as a suspect and should never feel that they are a suspect." She added, "All of those investigations end up with a justified finding. It is a kangaroo court kind of investigation. And it is not a true investigation. However, for three days, the Columbus division of police held that scene and was in charge of the investigation" in Mr. Goodson's case.

317. Attorney Steve Vaccaro, who represents the family of *Shereese Francis*, raised concerns about investigations conducted by the NYPD's Internal Affairs Bureau (IAB) of police-involved shootings. Although the IAB is supposed to conduct independent investigations, their outcomes are designed to serve the interest of police officers and police unions. The IAB is a biased system that often manipulates witness accounts to present a narrative that exonerates the officer(s) in question. For example, the IAB report on Ms. Francis's death portrayed her as an aggressive individual whose behavior prevented four officers from using de-escalation techniques to safely take her to a hospital. The report stated that she did not display signs of trauma, although evidence indicated that she appeared to be in a delusional state while being beaten and suffocated into submission.

318. "The Internal Affairs Bureau, from what I've seen," Mr. Vaccaro testified,[199] "is much more geared towards protecting the institutional interests and posture and reputation and liability of the police department than it is in trying to get at the facts of the truth and having some sort of an independent neutral investigation of misconduct by the police."

319. Attorney Nana Gyamfi, president of the National Conference of Black Lawyers, testified that[200] families are not told about the results of internal complaints against police officers, which are treated as personnel matters throughout the country. "They're considered employment matters, and not the public safety matters that they actually are; that needs to change," she said.

The Commissioners find that the police cannot be trusted to police themselves.

320. The Baltimore Police Department conducted an internal investigation into the killing of *Tyrone West*, who stopped breathing after officers tasered him, pepper sprayed him in his face and neck, beat him, and stood on his back and neck for five minutes. Eight officers were placed in administrative positions as a result, but city prosecutors concluded there was insufficient evidence to charge any of them.

321. From 2015 to 2019, the Baltimore Police Department received more than 13,000 complaints of police misconduct, including 18 complaints filed against the officer who killed Mr. West. Black people accounted for 73% of all complaints, but only seven percent of those complaints were sustained, Christopher Lawrence testified.[201]

198 *Case of Casey Goodson*, *supra*.

199 Video and Transcript: *Hearing on the Case of Shereese Francis*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 23, 2021), https://inquirycommission.org/video-and-transcript-shereese-francis-hearing-saturday-january-23-international-commission-of-inquiry/.

200 *Case of Tyrone West*, *supra*.

201 *Id.*

322. The Commissioners find that the police cannot be trusted to police themselves. Departments hire and retain officers with histories of using excessive force. Internal affairs investigations whitewash police violence and police unions help offending officers create false narratives to cover up their misconduct.

11(d) QUALIFIED IMMUNITY

Victims' Families Face Extraordinary Obstacles to Holding Officers Accountable for the Killing of Their Family Members

> "*[A]s it stands right now, police officers are able to do whatever they want to do. And the city can hide behind, oh, qualified immunity, which in fact, is a made up all by the court system. And they're not held accountable*".
>
> **—Anthony Eiland, attorney for Juan May**

> "*[T]he judge dismissed the lawsuit [on] December of 2017, basically ruling that the doctrine of qualified immunity prevented either the city or the police officer from being sued. ... So this is where we currently stand today, on January 21, 2021, eight years after this woman lost her son. A mother has lost her child. The community has lost a bright young man with a valuable future. The Benjamin family has lost a brother, people have lost a friend. And we sit here wondering how does this happen*?"
>
> **—Patrick Megaro, attorney for Jayvis Benjamin**[202]

323. In case after case, the Commissioners heard evidence that victims' families faced extraordinary obstacles to holding officers accountable for the killing of their family members, and to seeking monetary damages for family members, spouses, and dependents of their killed loved ones. As discussed by expert witness Penny Venetis, Dickinson R. Debevoise Scholar at Rutgers Law School where she is a Clinical Professor of Law and the Director of the International Human Rights Clinic, the primary obstacle to securing civil remedies is qualified immunity, a judicially created doctrine that shields government officials from personal liability for constitutional violations in actions for money damages.[203] Victims and their families can bring actions for constitutional violations by state officials under 42 U.S.C. § 1983, a federal law originally enacted in 1872 to provide redress to Black victims of Ku Klux Klan violence.[204] They can also sue federal officials under the *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics.*[205] But in an overwhelming number of cases heard by the Commissioners, families faced this affirmative defense, barring recovery even where courts find that the state or federal officials committed unlawful acts.

324. Qualified immunity was announced by the Supreme Court in *Harlow v. Fitzgerald*,[206] which held that state and federal officials are immune from money judgment if "the law at that time was not clearly established" as the official could not "fairly be said to 'know' that the law forbade conduct not previously identified as unlawful."

202 *Video and Transcript: Hearing on the Case of Jayvis Benjamin*, International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (Jan. 21, 2021), https://inquirycommission.org/video-and-transcript-jayvis-benjamin-hearing-thursday-january-21-international-commission-of-inquiry/ (hereinafter "*Case of Jayvis Benjamin*").

203 International Association of Democratic Lawyers, *Expert Testimony of P.* Venetis, *in International Commission of Inquiry Orientation Video*, YouTube (Jan. 13, 2021), https://www.youtube.com/watch?v=ydYqitNtbZQ&t=13503s, (hereinafter "*Expert Testimony of P. Venetis*").

204 *Id.*

205 *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).

206 *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

325. As a recent U.S. District Court decision explained, "judges have invented a legal doctrine to protect law enforcement officers from having to face any consequences for wrongdoing. The doctrine is called 'qualified immunity.' In real life it operates like absolute immunity."[207]

326. The district court continued, "The doctrine now protects all officers, no matter how egregious their conduct, if the law they broke was not 'clearly established.' This 'clearly established' requirement is not in the Constitution or a federal statute. The Supreme Court came up with it in 1982. In 1986, the Court then 'evolved' the qualified immunity defense to spread its blessings 'to all but the plainly incompetent or those who knowingly violate the law.' It further ratcheted up the standard in 2011, when it added the words '*beyond debate.*'"[208]

327. As expert witness Professor Venetis explained, qualified immunity has rendered redress under 42 USC 1983 nearly unattainable, and its application is contrary to the legislative intent and the text of the statute. "Whereas the statute was enacted to protect victims, with the reading of qualified immunity into the statute it really protects the people who violate the law—it gives them a free pass[...] That is not what Congress intended when they passed Section 1983. It was a victim-centered statute but the way that the courts interpret the statute today allows for brazen violation of the constitution and police brutality,"[209] she testified.

328. The case of *Tashii Farmer Brown* is illustrative. Mr. Brown was savagely attacked, repeatedly tasered, and choked by one officer as three officers stood by, taking no action to save Mr. Brown's life even as they voiced their opposition to the attack. Due to qualified immunity, the family of Mr. Brown cannot pursue damages against these officers on their constitutional claims as it was not clearly established that allowing the killing was unreasonable. Similarly, in the case of *Juan May*, an off-duty police officer who, along with Mr. May, was a guest at a birthday party, got into an altercation with the unarmed Mr. May. The officer went to his car, retrieved his gun, and shot and killed Mr. May. In barring the family's claim under qualified immunity, the court found the officer's act of killing Mr. May was not unreasonable.

329. Indeed, not only did witnesses testify that qualified immunity is a barrier to damages, but they also crucially stated that the doctrine's effect was to create a culture of impunity, and invite unfettered abuses in the absence of appellate court rulings specifically outlawing a particular practice. As attorney Kyle Brazile explained to the Commissioners, qualified immunity works against "the type of accountability that pushes conduct to become reasonable" by applying a "clearly established" standard that is slow to evolve in appellate court rulings.[210] Patrick Megaro, attorney for the family of *Jayvis Benjamin*, testified, "the sooner that we get rid of qualified immunity, the sooner that we hold people accountable for their actions, those bad motives, those bad intentions, those people will not be able to do what they want to do. And even those people who may not have that in their hearts, but develop it over a set of time as they become desensitized to violence, desensitized to brutality, those situations will decrease as well."[211]

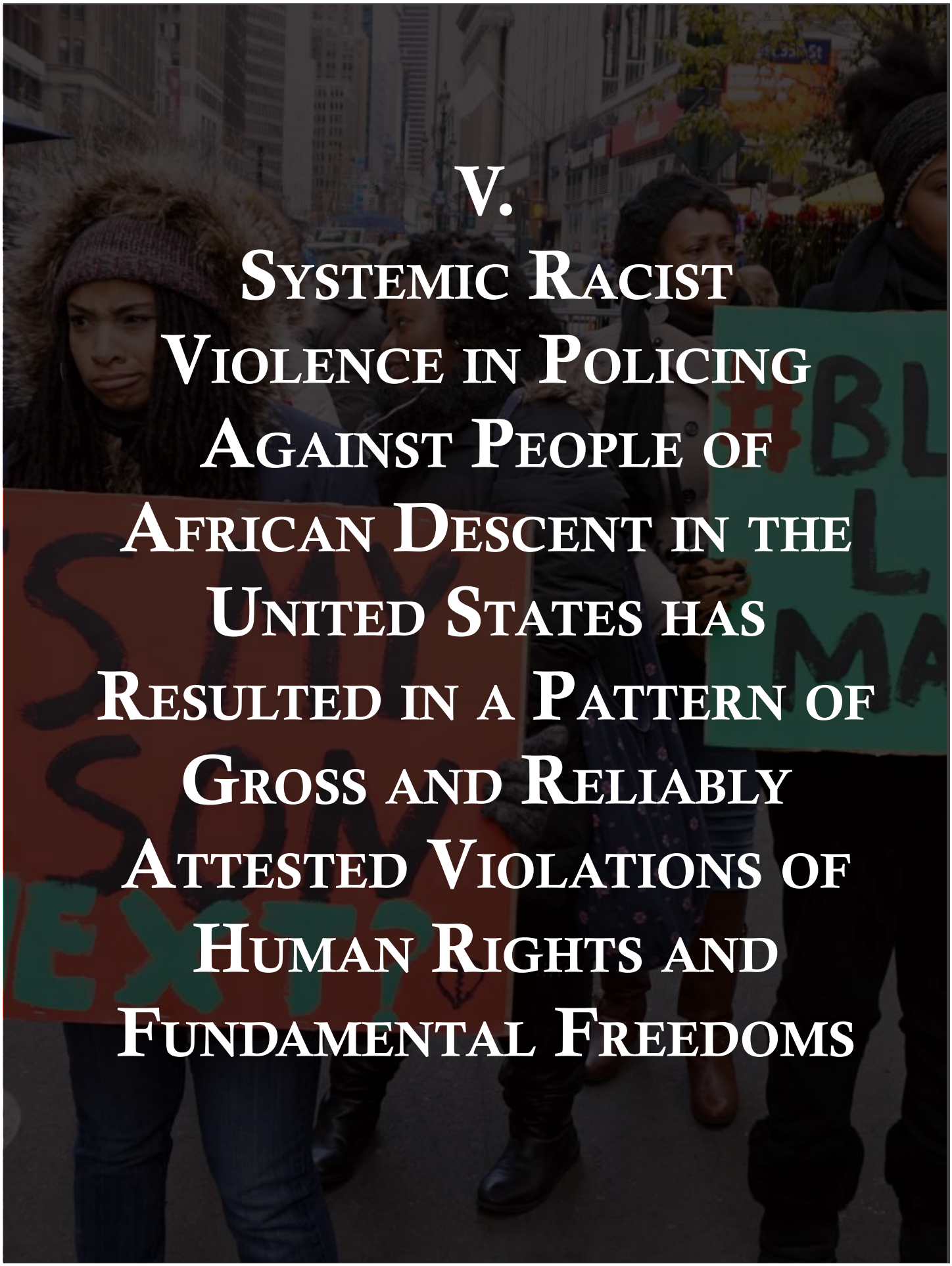
330. As qualified immunity was roundly condemned by victims and their families, the Commissioners heard testimony from attorney Michael Avery that some states had moved to eliminate such immunity, citing a bill passed in Colorado and one pending in New Mexico.[212] Mark Arons, attorney for the family of *Mubarak Soulemane*, informed the Commissioners that while federal legislation was previously pending in the House of Representatives, it has yet to be reintroduced.[213]

207 *Jamison v. McClendon*, 3:16-cv-00595-CWR-LRA, at *5 (S.D. Mo. 2020).
208 *Id.* at *32.
209 *Expert Testimony of P. Venetis*, *supra*.
210 *Case of Richie Harbison*, *supra*.
211 *Case of Jayvis Benjamin*, *supra*.
212 *Case of Richie Harbison*, *supra*.
213 *Case of Mubarak Soulemane*, *supra*.

331. Qualified immunity was not the only barrier to accountability raised in the testimony of Professor Venetis. She further noted that individual officer liability under 42 USC 1983 was particularly important due to a doctrine that bars suits against municipalities for acts of police officers unless the bad acts were done pursuant to a government custom or policy under *Monell v. Dep't of Social Servs. of New York..*[214] Given the difficulty of meeting the *Monell* standard to hold the municipality accountable, individual officer liability takes on special importance. Further, even where qualified immunity does not apply and the officer is required to pay monetary damages to the victim's family, cities indemnify officers, shielding them from the financial consequences of their actions.

332. Thus, the Commissioners find that qualified immunity amounts to condonation of brutal police violence against persons of African descent, and creates a culture of impunity whereby offenders are not held accountable, and families are left without redress. They further find the *Monell* doctrine of municipal liability and indemnification of officers pose additional obstacles to accountability.

214 *Monell v. Dep;t. of Soc. Servs.*, 436 U.S. 658, 692 (1978).



V.
Systemic Racist Violence in Policing Against People of African Descent in the United States has Resulted in a Pattern of Gross and Reliably Attested Violations of Human Rights and Fundamental Freedoms

I. INTERNATIONAL HUMAN RIGHTS LAW GUARANTEES HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS TO PEOPLE OF AFRICAN DESCENT IN THE UNITED STATES

333. The United States of America (United States) is required by International Human Rights Law to guarantee to all people within its jurisdiction, including people of African descent, human rights and fundamental freedoms. These include the right to life; the right not to be subject to extrajudicial killing (arbitrary deprivation of life); the right to security; the right to freedom from arbitrary detention; the right to a fair trial and presumption of innocence; the right to be free from torture; the right to equality and freedom from discrimination based on race, gender, disability or status as a child; and the right to mental health. Countries have duties to effectively prevent, punish, and redress violations of these rights, and to thoroughly and independently investigate and provide effective remedies.

334. In 1949, four years after the founding of the United Nations system, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR).[215] The document is a milestone that enshrines a universal set of standards of achievements for all people and all nations. It sets forth, for the first time, fundamental human rights to be universally protected. The U.S. played a critical role in the drafting and adoption of the UDHR. Indeed, First Lady Eleanor Roosevelt helped create the document. It sets forth two kinds of human rights: (1) civil and political rights and (2) economic, social, and cultural rights. These rights were later codified in two binding treaties: the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

335. The United States has ratified three of the most important human rights treaties that protect the human rights and fundamental freedoms of Black people in the United States in the context of policing. They are the *International Covenant on Civil and Political Rights* (ICCPR);[216] the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT);[217] and, the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD).[218] The provisions of treaties the U.S. has ratified are part of U.S. law under the Supremacy Clause of the U.S. Constitution.[219]

336. A number of other critical human rights treaties and instruments that have been universally accepted or ratified by the overwhelming number of countries also guarantee human rights and fundamental freedoms to people of African descent in the United States. For a detailed examination of International Human Rights Law relating to the rights and freedoms of people of African descent in the United States in the context of policing, see Appendix II to this Report.

337. The protection of the above-mentioned rights as applied to law enforcement officers are primarily codified in the *Code of Conduct for Law Enforcement Officials* [220](Code of Conduct) and the United Nations *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990* (UN Basic Principles).[221]

215 G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 9 (Dec. 10, 1948).

216 International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (Dec. 16, 1966) (ratified by the U.S. June 8, 1992).

217 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14, Dec. 10, 1984, 1465 U.N.T.S. 85 (hereinafter "CAT").

218 G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, art. 6, U.N. Doc. A/RES/2106 (Dec. 21, 1965) (hereinafter "ICERD").

219 U.S. Const. art. VI, § 2.

220 G.A. Res. 34/169, Code of Conduct for Law Enforcement Officials (Dec 17, 1979).

221 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Aug. 27-Sept. 7, 1990, https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx. In 2020, the Office of the High Commissioner for Human Rights issued the Guidance on Less-Lethal Weapons in Law Enforcement See OHCHR, Guidance on Less-Lethal Weapons in Law Enforcement, U.N. Doc. HR/PUB/20/1 (2020), available at https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf (accessed 25 Mar 2021) It covers such weapons as Tasers. This Guidance is built on the same principles as the Code of Conduct and the UN Basic

338. The Code of Conduct was created by the UN General Assembly and it states specifically that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons (Art. 2). Its provisions are designed to ensure that where force may have to be used to protect life, protection of human rights must guide the actions of law enforcement officials. The Code of Conduct includes, among other duties, the obligation of law enforcement officials to secure medical attention for people in their custody, and the duty of law enforcement officials to report violations of the Code of Conduct to their superiors.

339. Both the Code of Conduct and the UN Basic Principles are built around the protection of human rights and providing effective remedies when violated. The UN Basic Principles will be examined in Section 6.

II. SPECIFIC VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Violation of the Right to Life

"The right to life is a fundamental human right without which all other rights would have no meaning."[222]

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

—Article 6(1) of the ICCPR

340. The right to life must be protected without discrimination of any kind. The U.S. must effectively investigate and punish violations of the right to life, and ensure that the investigation of a potential unlawful death is independent, impartial, prompt, thorough, effective, credible, and transparent.[223]

341. All of the cases heard by the Commissioners in which Black people were killed exhibited the arbitrary deprivation of the right to life in violation of the *International Covenant on Civil and Political Rights* (ICCPR); the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT); and, the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD). Every case in one form or another showcased arbitrary deprivation of life in the failure of the police to conform their practices to the UN Basic Principles for the use of force by law enforcement.

342. The Commissioners found a pattern of police killings wherein regardless of the context of the encounter, the overriding driver of these killings stemmed from and was reflective of systemic racism. Whether in the context of stop-and-frisks, traffic stops, alleged drug raids, or other types of encounters of questionable legal basis, the common denominator in all of these cases is the unwarranted use of deadly force that evinced a disregard for Black life and the consequences of taking Black life. This is the very essence of the arbitrary deprivation of life, and has implications for the principle of non-discrimination.

343. The Commissioners found that Black people who had no reason to be approached by law enforcement—

Principles.

222 *Myrna Mack-Chang v. Guatemala*, Order of the Court, Inter-Am. Ct. H.R. (ser. C) No. 101, at 121 ¶ 152 (Nov. 25, 2003); Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary 121 (2005 ed., 1993).

223 UNHRC, *General Comment No. 36: Article 6 (Right to Life)*, 124th Sess., adopted 8 October – 2 November 2018, U.N. Doc. CCPR/C/GC/36, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf (accessed 25 Mar 2021).

going about their day, in their homes, walking in their communities, or driving in their cars—were approached by law enforcement and their lives senselessly taken in violation of their rights under international law. These arbitrary killings were unjust, unpredictable, done without due process of law, and in violation of the requirements of legality, necessity, and proportionality. The Commissioners' findings thus accord with the findings of the Brookings Institution that "Black people are 3.5 times more likely than white people to be killed by police when Blacks are not attacking or do not have a weapon."[224]

344. Moreover, as discussed under the Use of Force standards on accountability in Section 6 of this Report, the Commissioners found a gross violation of the right to proper investigations and accountability. The Commissioners note that national statistics show that only one percent of police killings in 2020 resulted in officer convictions.[225]

Violation of the Right to Liberty and Security

345. The *International Covenant on Civil and Political Rights*[226] and the *International Convention on the Elimination of All Forms of Racial Discrimination*[227] guarantee the rights to liberty and security of person, meaning that no one shall be subjected to arbitrary arrest or detention, and that all have a right to protection by the State against violence or bodily harm inflicted by government officials or by any individual group or institution. Children cannot be deprived of their liberty unlawfully or arbitrarily.[228]

346. The Commission found a pattern of gross violations of the right to security of Black victims of police violence, as well as their families and communities. Specifically, the Commissioners found a pattern of police killings of Black people after violations of their Fourth Amendment rights, which violated their right under international law to be free from arbitrary arrest or detention, as well as their right to be free of bodily harm. Further, the Commission found a pattern of racial targeting of people of African descent for arbitrary arrest or detention through discriminatory patterns of policing predicated on racially biased and disproportionate traffic and investigatory stops as well as other forms of "order maintenance." Beyond the pattern of police killings of people of African descent, such widespread surveillance and criminalization of Black communities—consistent with the findings of a recent Inter-American Commission on Human Rights (IACHR) report[229]—violates Black communities' rights to be free of arbitrary arrest or detention. Further, police targeting deprives Black communities of access to the social goods of secure and safe communities. The Commissioners heard testimony that reasonable and widespread distrust of the police is such that community members do not call the police when they require assistance, for fear of targeting.

Violation of the Right to a Fair Trial and Presumption of Innocence

347. *The International Covenant on Civil and Political Rights*[230] guarantees the right to a fair trial by an impartial tribunal and the presumption of innocence. When a suspect is deprived of life in the absence of lawful self-defense or judicial process, such deprivation constitutes an unlawful extrajudicial killing.

348. As previously noted in connection with the Right to Life, and the international law principles governing Use of Force and Non-Discrimination, the Commissioners found a pattern of state-sanctioned extrajudicial killing of people of African descent by police. Moreover, as previously noted, the Commissioners

224 *Ray*, *supra* n. 4.
225 Mapping Police Violence, *supra* n. 175.
226 ICCPR, *supra* art. 9.
227 ICERD, *supra* art. 5.
228 Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. (hereinafter "CRC").
229 *Police Violence Against Afro-descendants in the United States*, *supra* n. 22 at 19.
230 ICCPR, *supra* art. 14.

found a clear pattern of state-sanctioned criminalization of Black people through targeted policing of Black communities permitted by U.S. law. Specifically, the Commissioners found a pattern of "pretextual traffic stops" and noted that such stops "are a common precursor to police killings and uses of excessive force against people of African descent." Such extrajudicial killings and racial targeting in violation of the Right to Life, and principles of Use of Force, and Non-Discrimination also amount to violations of the Right to a Fair Trial and Presumption of Innocence. Indeed, extrajudicial killings *per se* violate the Right to a Fair Trial and Presumption of Innocence. Similarly, the racial targeting and criminalization of Black communities violate the Right to the Presumption of Innocence as people of African descent are presumed guilty in the absence of crime.

Violation of the Non-Discrimination Requirement

349. The requirement of non-discrimination is a fundamental principle of International Human Rights Law from which no exemption is allowed. The non-discrimination requirement includes the prohibition on discrimination based on race, gender, disability, and status as child, among other grounds. The right to non-discrimination is enshrined in the ICCPR and the ICERD, as well as all other human rights treaties, including the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Convention on the Rights of Persons with Disabilities*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Rights of the Child*. (See Appendix 2).

350. In the context of policing, the non-discrimination requirement means that, "[s]tates must...adopt a both reactive and proactive stance encompassing all available means, to combat racially motivated and other similar violence within law enforcement operations."[231]

351. The Commissioners found a pattern of race-based discrimination in the use of deadly force in violation of the right to freedom from discrimination. Specifically, the Commissioners noted, "Half of the people shot and killed by law enforcement are white, but Black people are shot at a disproportionate rate.[232] They further noted, "Although Black people account for less than 13% of the U.S. population, they are killed by police at over twice the rate of whites." Moreover, the Commissioners found that "the disproportionate use of excessive force by police against Black people pervaded the 44 cases examined by Commissioners." This finding is consistent with the 2018 report of the Inter-American Commission on Human Rights (IACHR), "Police Violence Against Afro-Descendants in the U.S.," which described a "pattern of use of excessive force against persons of color"[233] and concluded that "racial bias forms the backbone of many problems of police abuse, overrepresentation of African-Americans in arrests and in the prison system, and unequal access to justice, as well as wider issues of racialized poverty and unequal access to economic, social, cultural, and environmental rights in the U.S."[234]

352. Discrimination against people of African descent in the U.S. is not only demonstrated by the disproportionate number of killings of Black people, but also in the racial profiling, pretextual traffic stops, order maintenance policing, and police violence against people of African descent in the U.S. CERD defines racial profiling as "the practice of police and other law enforcement relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity." It can also be based on "intersecting

231 Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, 1 Apr. 2014, U.N. Doc. A/HR/6/36, ¶ 58, available at https://www.icnl.org/wp-content/uploads/cfr_2-A-HRC-26-36_en-(2).pdf (accessed 9 March 2021) (hereinafter "Report on Extrajudicial, Summary or Arbitrary Executions").

232 985 people have been shot and killed by police in the past year, The Washington Post, https://www.washingtonpost.com/graphics/investigations/police-shootings-database/ (last updated Mar. 21, 2021).

233 Police Violence Against Afro-Descendants in the U.S., n. 22 *supra* at 24.

234 *Id.* at 11.

grounds such as religion, sex or gender, sexual orientation and gender identity, disability and age." Racial profiling "is not motivated by objective criteria or reasonable justification." It can manifest itself "through a behaviour or acts such as arbitrary stops, searches, identity checks, investigations, and arrests."[235]

353. Specifically, the Commissioners' finding that "that use of force against unarmed people of African descent during traffic and investigatory stops is driven by racial stereotypes and racial biases" and "U.S. law enforcement agencies routinely target people of African descent based on racist associations between Blackness and criminality," constitute separate and independent violations of the right to nondiscrimination. The findings of the Commissioners are consistent with national data for 2020: "Black people were more likely to be killed by police, more likely to be unarmed and less likely to be threatening someone when killed,"[236] based on national statistics that Black people form 13% of the national population while accounting for 27% of victims of police killing, 35% of the unarmed people killed by police, and 36% of people alleged to be unarmed and unthreatening.[237]

354. The Commissioners found violations of the right to non-discrimination for the killings of Black people with mental illness, in violation of Article 12 of the *International Covenant on Economic, Social and Cultural Rights*[238] and Article 5 of the *Convention on the Rights of Persons with Disabilities*.[239]

355. The Commissioners found violations of the right to non-discrimination against cis- and transgender Black women, girls, and femmes in violation of the *Convention on the Elimination of All Forms of Discrimination Against Women*.[240] Patterns of such unlawful discrimination in the use of force substantiated by the findings of the Commissioners were consistent with the data showing, "[T]he risk of being killed during a police incident is 16 times greater for individuals with untreated mental illness than for other civilians approached or stopped by officers"[241] and "cis- and transgender Black women, girls, and femmes are disproportionately killed[242] by police in the United States.[243]

Violations of the Prohibition against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

356. The *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (UNCAT) and the *International Covenant on Civil and Political Rights* prohibit torture and cruel, inhuman, or degrading treatment or punishment.[244] The *Convention on the Rights of the Child* also prohibits torture or other cruel, inhuman, or degrading treatment or punishment in Article 37. Law enforcement officials may not invoke superior orders as a defense to a charge of torture, as stated in Article 5 of the Code of Conduct.

357. UNCAT, Article 1 defines torture as "any act by which severe pain or suffering, whether physical or men-

235 CERD, Concluding Observations on the Combined Seventh to Ninth Periodic Reports to the United States of America, U.N. Doc. CERD/C/USA/CO/7-9 (2014).
236 *2020 Police Violence Report*, Mapping Police Violence, https://policeviolencereport.org (hereinafter "*2020 Police Violence Report*").
237 *Id.*
238 International Covenant on Economic, Social and Cultural Rights, art. 12, Dec. 16, 1966, 933 U.N.T.S. 393 (hereinafter "ICESCR"). (The U.S. has signed but not ratified ICESCR).
239 Convention on the Rights of Persons with Disabilities, art. 5, Dec. 13, 2006, A/RES/61/6106. (hereinafter "CRPD"). (The U.S. has signed but not ratified CRPD).
240 Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (hereinafter "CEDAW"). (The U.S. has signed but not ratified CEDAW).
241 *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters*, Treatment Advocacy Center (Dec. 2015), https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf.
242 Edwards, Lee, & Esposito, *supra* n. 6.
243 Crenshaw & Richie, *supra* n. 135.
244 ICCPR, *supra* art. 7.

tal, is intentionally inflicted on a person…based on discrimination of any kind…by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Article 2.2 of UNCAT allows for no circumstances or emergencies where torture is permitted. UNCAT, in Article 16, also prohibits other acts of cruel, inhuman, or degrading treatment or punishment. The distinction between torture and other cruel, inhuman, or degrading treatment "primarily results from the intensity of the suffering inflicted."[245]

358. UNCAT mandates that States Parties adopt effective measures to prevent and remedy torture in any territory under the State's jurisdiction.[246] In 2014, the Committee Against Torture (CAT), which interprets UNCAT and monitors implementation by States Parties, addressed racism and violent acts of torture in policing against Black people in the U.S. CAT was "concerned about numerous reports of police brutality and excessive use of force by law enforcement officials," particularly against individuals "belonging to certain racial and ethnic groups," immigrants, and LGBTQ individuals.[247]

359. The Commissioners' findings are consistent with violations of the international prohibition against torture by the use of Tasers, compression asphyxia, lateral vascular neck restraint (chokehold), rough rides, and vehicular techniques that caused victims to be chased down in fear for their lives before ultimately being killed. Specifically, the Commissioners' findings that police use of restraints–resulting in killings where Black victims were choked, suffocated, or crushed over a period of several minutes, often while begging for their lives—amount to "severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" by government actors "based on discrimination." The national data and the Commissioners' findings regarding a discriminatory pattern of targeting persons of African descent support this conclusion.

360. Similarly, the Commissioners' finding of a pattern of unlawful and excessive force against people of African descent through infliction of chokeholds and compression asphyxiation, by either kneeling or standing on victims, and by cuffing victims, supports a finding of torture as to the restraint-related cases heard by the Commissioners.

361. The local practices of the Baltimore Police Department's widespread use of rough rides, and the use of vehicles to kill and maim people of African descent in Washington, DC by the Metropolitan Police Department, constitute discriminatory practices by government officials causing "severe pain or suffering" amount to torture prohibited by UNCAT.

Taser Use May Be Torture, or Cruel, Inhuman, or Degrading Treatment or Punishment

362. In 2020, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued the "The Guidance on Less-Lethal Weapons in Law Enforcement."[248] in which it warned that Taser use may amount to torture or cruel, inhuman, or degrading treatment or punishment in certain circumstances. The Guidance states in para. 7.4.11 that Tasers should not be used to overcome purely passive resistance to the instructions of an official by inflicting pain. Repeated use of tasering "should be avoided whenever

245 Rep. 92/05, Case 12.418 (Inter-Am. Ct. H.R. Oct. 4, 2005).

246 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, June 26, 1987, 1465 U.N.T.S. 85 (torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions)

247 CAT/C/USA/3-5 (concluding observations on the combined third to fifth periodic reports of the United States of America).

248 OHCHR, Guidance on Less-Lethal Weapons in Law Enforcement, U.N. Doc. HR/PUB/20/1 (2020), available at https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf (accessed 25 Mar 2021) (report adopting Code of Conduct and Basic Principles).

possible."

363. In its 2014 observations on U.S. reports, CAT stated that it was "appalled" by the number of deaths reported as a result of using *electrical discharge weapons* (*Tasers*).[249] CAT recommended that the U.S. "ensure that electrical discharge weapons are used exclusively in extreme and limited situations – where there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only." In addition, CAT recommended that the U.S. "revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women." Significantly, CAT said it was "of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality."[250]

364. The Commissioners' findings regarding particular cases of Taser use, and its nationwide, disproportionate application to people of African descent supports a finding of torture by the use of Tasers in the cases heard by the Commissioners.

Violations of the Right to Mental Health

365. The *International Covenant on Economic, Social and Cultural Rights*,[251] in Article 12, guarantees "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The *Convention on the Rights of People with Disabilities*[252] provides in Article 5: "States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds."

366. The Commissioners found the police violated the right to mental health of Black people experiencing mental health crises. National data establishes that,"the risk of being killed during a police incident is 16 times greater for individuals with untreated mental illness than for other civilians approached or stopped by officers."[253] Moreover, the overwhelming weight of the testimonies before the Commissioners was consistent with nationwide data that establish the police should not be the first responders for Black people experiencing mental health crises, as "police are more likely to approach African-American mentally ill persons as criminal subjects rather than as people having health problems,"[254] according to Expert Witness Michael Avery. Such findings of the Commissioners and relevant data thus substantiate the conclusion that the rights of people of African descent to mental health is violated by police violence.

367. Further, a finding of violations of the Right to Mental Health is supported by national data on Killings of Persons with Mental Health Issues in the Mapping Police Violence database showing that approximately eight percent of police killings involve a person experiencing a mental health crisis, 46.1% of which are persons of African descent.[255]

249 CAT/C/USA/3-5 at C.27.

250 *Id.*

251 International Covenant on Economic, Social and Cultural Rights, *opened for signature* 16 December 1966, 933 U.N.T.S. 393, https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (last visited Feb. 21, 2021) (the U.S. has signed but not ratified the ICESCR).

252 Convention on the Rights of Persons with Disabilities, *opened for signature* 30 Mar 2007, 2515 U.N.T.S. 3, https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html (last visited Mar. 25, 2021) (the U.S. has signed but not ratified the CRPD).

253 *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters*, Treatment Advocacy Center (Dec. 2015), https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf.

254 Expert Testimony and Submission to the Commission of Attorney Michael Avery, citing *Mental Health Facts for African Americans*, American Psychiatric Association. Available at https://www.psychiatry.org/psychiatrists/cultural-competency/education/mental-health-facts

255 2020 Police Violence Report, *supra.* n. 236

III. SPECIFIC VIOLATIONS OF THE DUTIES TO INVESTIGATE AND ENSURE EFFECTIVE REMEDIES

Violations of the Duty to Investigate

368. States Parties to the *International Covenant on Civil and Political Right* (ICCPR) must ensure that investigations in all cases of potentially unlawful deaths are independent, impartial, prompt, thorough, transparent, and effective.[256] UNCAT imposes upon States Parties the obligation to ensure the prompt, impartial investigation of allegations of torture, protection of complainants and victims, compensation and rehabilitation for victims and, in the case of death, compensation for dependents.[257]

369. The *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (UN Investigation Principles)[258] reflect a global consensus on the standards required for the investigation of potentially unlawful deaths. They require a thorough, prompt, and impartial investigation of all suspected cases of extra-legal, arbitrary, and summary executions (Article 9); independence and impartiality of those conducting autopsies (Article 14); and government action to bring justice to persons identified by the investigation as having taken part in extra-legal, arbitrary, and summary executions (Article 18).

370. In case after case, the Commissioners found evidence of an alarming pattern of manipulation of evidence, cover-ups, and obstruction of justice. The Commissioners found collusion between various arms of law enforcement, including police officers and their unions, prosecutors, coroners and "independent medical examiners." Relatedly, the Commissioners found a troubling pattern of the creation of false narratives and smear campaigns directed at victims and their families. Specifically, the Commissioners note prosecutors who work closely with officers are the ones who present police misconduct cases to the grand jury, raising a systemic conflict of interest in violation of the principle of impartial investigation. Further, the Commissioners found evidence of a pattern of complicity in official cover-ups by state examiners and experts who are required to make independent findings. Additionally, the Commissioners heard evidence of official procedures that invited such obstruction and manipulation by subjecting police suspects to protocols whereby the crime scene is not secured and officers are permitted additional time before giving a statement to confer with their police union and colleagues to generate agreed-upon narratives. When investigations were conducted, the Commissioners found that police forces engaged in a pattern of destruction, loss, and manipulation of evidence, and obstruction of justice in connection with the unjustified killings of unarmed persons of African descent, including a process by which officers cover up for each other in a practice known as the "blue wall of silence."

371. Taken together, such findings support the Commissioners' broader finding of systemic violations of the rights of people of African descent to impartial and independent investigations and non-discriminatory access to effective remedies for violations..

372. Further, the Commissioners find systemic violation of the right to effective investigations regarding Black victims of police killings. Specifically, the Commissioners found, "After police officers brutally murder and torture Black people, the tragedy is compounded by the systemic impunity the officers enjoy." Such a finding was consistent with national data that only one percent of police killings in 2020 resulted in officer convictions.[259] While such findings and data suggest a pattern of impunity in violation of the

256 HR Committee General Comment No. 36 (2018) on art. 6 of the International Covenant on Civil and Political Rights at ¶ 27.
257 UNCAT, arts. 12-14.
258 *See* Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; Recommended by Economic and Social Council Res. 1989/65 (May 24, 1989); Welcomed by G.A. Res. A/RES/44/159 (Dec. 15, 1989), http://www.ohchr.org/EN/ProfessionalInterest/Pages/ArbitraryAndSummaryExecutions.aspx.
259 2020 Police Violence Report, *supra.* n. 236

principle of Accountability as to the Use of Excessive Force, as previously discussed, they also constitute a systemic violation of the duty to conduct effective investigations.

Violations of the Duty to Ensure Effective Remedies for Violations

373. The *International Covenant on Civil and Political Right* (ICCPR); the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT); and, the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) all require States Parties to ensure effective remedies for violations of the fundamental freedoms and human rights guaranteed in those treaties, which may require changes in relevant U.S. laws and practices.[260]

374. The right to remedies must be determined by competent legal authorities and must be enforced. (ICCPR Article 2). States Parties must assure effective protection and remedies, through State institutions, against any act of discrimination that violates human rights and fundamental freedoms, and must ensure the right to seek reparation for any damage suffered as a result of discrimination. (ICERD Article 6) State Parties must ensure that victims of torture and their dependents have a right to redress and compensation. (UNCAT Article 14). State Parties must keep rules and practices to prevent cases of torture under systemic review. (UNCAT Article 11).

375. The Commissioners heard testimony that establishes a gross violation of the duty to ensure effective remedies for violations of the right to life and other fundamental freedoms and human rights of people of African descent in the U.S. The Commissioners concluded, "The brutalization of Black people is compounded by the impunity afforded to offending police officers, most of whom are never charged with a crime. Those who do face charges are invariably acquitted or escape time in custody." Such lack of accountability was evidenced by the very few cases Commissioners heard in which prosecution was initiated. As the Commissioners noted, the reasons for such lack of accountability range from prosecutors' conflicts of interest in prosecuting police officers who are effectively their colleagues, the influence of police unions, the departure from standard grand jury procedure to benefit officers, and bias against Black victims in favor of police killers by not only prosecutors and police unions. but also by coroners, investigators. and the internal review board charged with disciplining officers.

376. The Commissioners also noted the lack of independent and impartial review of police killings, including the absence of judicial review of the virtually unlimited discretion of prosecutors. The Commissioners further noted that the failure to remedy gross police misconduct amounts to condoning repeated instances of brutality that ultimately culminates in use of deadly force. The Commissioners further found "qualified immunity amounted to condonation of brutal police violence against persons of African descent, and created a culture of impunity whereby offenders were not held accountable, and families were left without redress."

260 UNHRC, *General Comment No. 31: Article 2* of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, (Apr. 21 2004), http://www.refworld.org/docid/478b26ae2.html.

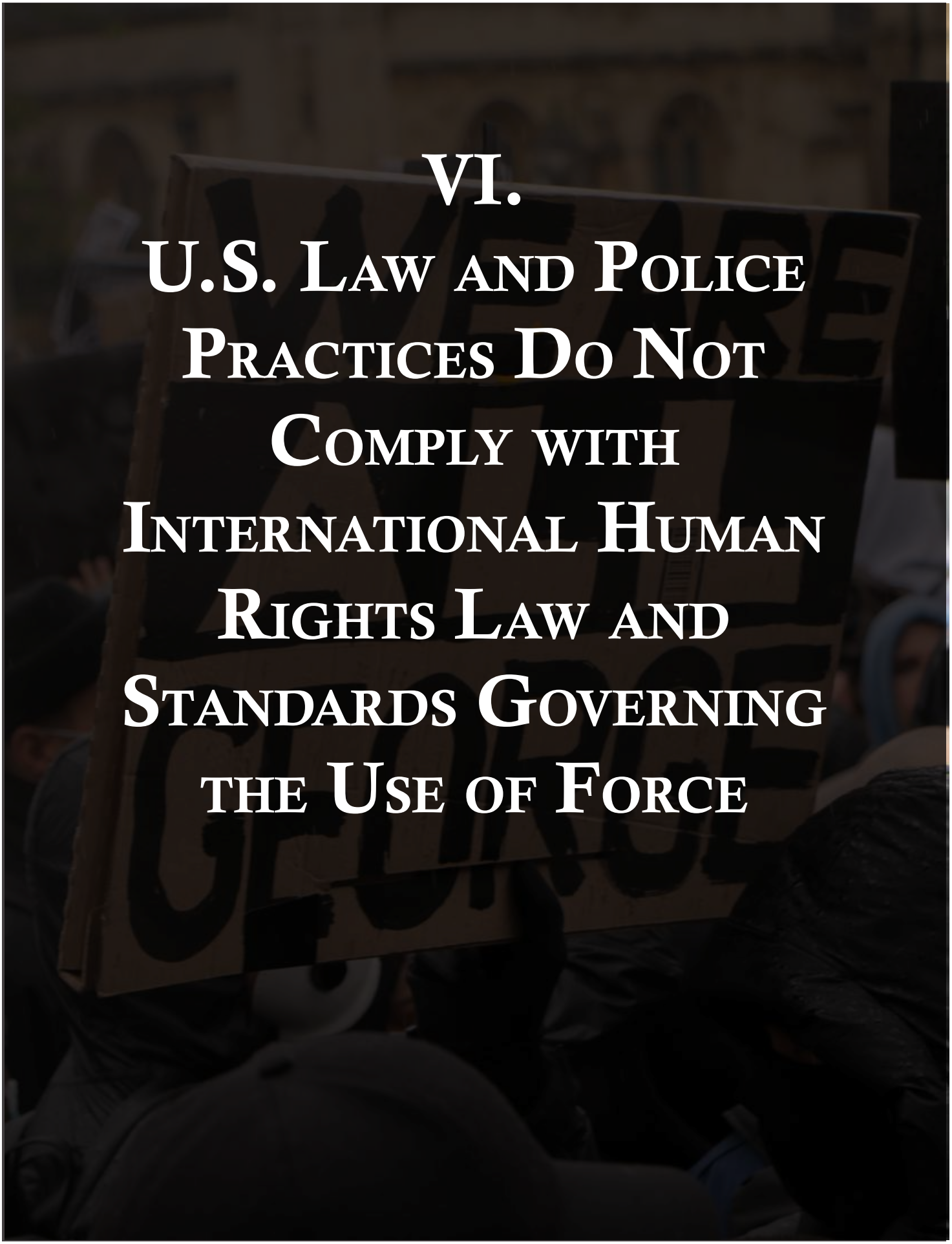
IV. SPECIFIC VIOLATIONS OF DUTIES OF LAW ENFORCEMENT OFFICIALS UNDER THE CODE OF CONDUCT

Violations of the Duty to Seek Medical Attention

377. The Code of Conduct[261] sets forth the duty of law enforcement officials to secure medical attention for people in their custody. Article 6 states, "Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required." Law enforcement officials have a duty "to the best of their capability, prevent and rigorously oppose any violations" of the Code, under Article 8.

378. As the Commissioners found, however, in 13 of the 44 cases they heard, police denial of or failure to obtain timely medical attention contributed to the deaths. In many cases, police actively prevented medical treatment from being administered. Further, in all of the mental health cases the Commissioners heard where victims and their families made mental health calls, the police responded rather than trained medical professionals. This amounts to a *per se* violation of the duty to secure medical attention for Black people.

261 G.A. Res. 34/169.



VI. U.S. Law and Police Practices Do Not Comply with International Human Rights Law and Standards Governing the Use of Force

379. The Commission finds that neither domestic law nor police practices comply with the obligations of the U.S. under International Human Rights Law and standards governing the use of force. U.S. law is woefully inadequate in protecting people of African descent from police violence. The U.S. does not have a national legal framework governing the use of force. Moreover, the U.S. Supreme Court has set few limits on the use of force by law enforcement officials[262] and the limits that have been set do not meet international standards. The U.S. Congress has not filled the gap.

380. As discussed in the introduction to Section 5, the U.S. has ratified three critical human rights treaties that set forth International Human Rights Law standards relevant to policing and the use of force. They are the *International Covenant on Civil and Political Rights* (ICCPR); the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT); and the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD). The provisions of these treaties that the U.S. has ratified are part of U.S. law under the Supremacy Clause of the U.S. Constitution.[263]

381. United Nations bodies have taken the rights and freedoms enshrined in the above treaties and developed instruments codifying these rights in the context of law enforcement. These instruments are the Code of Conduct and the UN Basic Principles.[264] The core principles in the provisions of these instruments are legality, necessity, proportionality, and accountability.

382. The UN Basic Principles were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, in September 1990. These principles recognize that law enforcement officials have a vital role in the protection of the right to life, liberty, and security of the person, as guaranteed in the *Universal Declaration of Human Rights*[265]and reaffirmed in the *International Covenant on Civil and Political Rights*. The UN Basic Principles affirm that law enforcement officers may use force only when strictly necessary and to the extent required for the lawful performance of their duty, and may not use firearms except in self-defense or defense of third parties against imminent threat of death or serious bodily harm. The UN Basic Principles builds on the Code of Conduct and sets out the requirements for the lawful use of force by law enforcement officials. These include requirements mandating that the force used must be lawful, strictly necessary, proportionate to both the threat and the legitimate objective, and directed towards respecting and preserving human life (Articles 4 and 5). Firearms may only be used when necessary as the only means to prevent imminent death or serious injury, and then only after a clear warning of the intent to use a firearm with time for the warming to be observed. As discussed below, U.S. laws and practices do not comply with any of the UN Basic Principles.

383. U.S. Law and Police Practices also violate International Human Rights Laws and standards on the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment enshrined in the *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* and the *International Covenant on Civil and Political Rights*.

262 See Section 3.

263 U.S. Const. art. VI, § 2.

264 In 2020 the Office of the High Commissioner of Human Rights published a Guidance on Less Lethal Weapons in Law Enforcement. The Guidance covers such weapons as Tasers. This Guidance is built on the same principles as the Code of Conduct and the Basic Principles.

265 G.A. Res. 217 (III) A

NON-COMPLIANCE OF U.S. LAW WITH BASIC PRINCIPLES ON THE USE OF FORCE

Legal Basis

384. The UN Basic Principles require that U.S. law, policy, and police practices comply with international human rights law and standards.[266] The Commissioners found that the U.S. laws and police practices regarding police use of force in the cases they heard were not rooted in and did not comply with international law and standards.

385. "All [U.S.] state laws fail to meet international law and standards," a 2015 report[267] by Amnesty International concluded. A 2020 University of Chicago Law School report[268] on police use of lethal force in the U.S. evaluated police policies in the 20 largest U.S. cities during 2017 and 2018. It found not a single city in compliance with international law and standards. U.S. law and practices regarding police use of force do not fulfill the international requirement of legality.

Legitimate Objective

386. Under international law and standards in relation to police use of force, lethal force can only be used when necessary as the only means to prevent imminent death or serious injury, and then only after a clear warning of the intent to use a firearm with time for the warming to be observed. As observed by the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions Christof Heyns, "Rights may be limited – and force may likewise by used – only in the pursuit of a legitimate objective....the only objective that can be legitimate when lethal force is used is to save the life of a person or protect a person from serious injury."[269]

387. U.S. law and police use of force standards allow the use of lethal force for reasons other than necessity to prevent imminent death or serious injury. None of the cases heard by the Commissioners presented a scenario in which lethal force was deployed to prevent a reasonably perceived threat of imminent death or serious injury. Indeed, none of the cases presented involved a threat to the life of an officer or another by the victim. In the cases heard by the Commissioners, all victims were unarmed or non-threatening. In no case was there a legitimate objective under international law for the lethal use of force or firearms.

388. In 1985, the U.S. Supreme Court held in *Tennessee v Garner*[270] that the use of deadly force to prevent the escape of all individuals suspected of committing a felony, regardless of the circumstances, violates the Fourth Amendment[271] to the U.S. Constitution. The Court, however, ruled that deadly force can be used to prevent the escape of an apparently unarmed, non-dangerous fleeing suspect if the officer has probable cause to believe the suspect poses a significant threat of death or serious physical injury to the officer or others. If the suspect threatens the officer with a weapon <u>or</u> there is probable cause to believe that the suspect <u>has committed</u> a crime involving the infliction or threatened infliction of serious physical harm, the officer may use deadly force if necessary to prevent escape, and if, where feasible, warning has been given. Thus, U.S. law allows the use of deadly force to prevent escape if there is probable cause to believe

266 *Id.*; U.N. Office of the High Commissioner, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 (Basic Principles), Principle 4.

267 Amnesty International, *Deadly Force: Police Use of Lethal Force in the United States* (June 2015), https://www.amnestyusa.org/wp-content/uploads/2015/06/aiusa_deadlyforcereportjune2015-1.pdf (accessed Mar. 10, 2021).

268 Deadly Discretion, *supra* n. 18.

269 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 Apr. 2014, A/HR/6/36, para. 74, available at https://www.icnl.org/wp-content/uploads/cfr_2-A-HRC-26-36_en-(2).pdf.

270 *See Garner*, 71 U.S. 1.

271 U.S. Const., amend. IV.

that a crime involving serious injury has already occurred. U.S. law and practice standards are remarkably different from international law and standards and do not comply with the requirement of legitimate objective.

Necessity

389. Law enforcement officers must employ non-violent means before using force and firearms. They may only utilize force if other means are ineffective and the use of force is unavoidable (i.e., a last resort). Force can only be employed in response to an imminent or immediate threat (occurring in seconds, not hours). One can only use the amount of force that is necessary, and no more than necessary, to achieve the objective[272] Officers must identify themselves and give clear warning of the intention to use lethal force with time for individuals to hear and respond to the warning, unless such warning would place the officer or others at risk of death or serious harm, or would clearly be pointless or inappropriate.[273]

390. In none of the cases heard by the Commissioners was there a plausible need for the officer to defend against imminent death or serious injury to the present officer(s) or others at the scene. Similarly, there was no case heard by the Commissioners in which it appeared that lethal force was used only as a last resort and only in the face of an imminent threat. The evidence provided to the Commissioners establishes that lethal force was used indiscriminately as a first means of response without assessment, warning, or attempts to use non-lethal means. Indeed, in examining the use of force against Black people, the Commissioners found "police disproportionately used excessive force against Black people, all of whom were unarmed or non-threatening. Individuals were shot in the back, killed with their hands up, killed while restrained with chokeholds and Tasers, and killed with military-type weapons. In many cases, Black people were killed using multiple techniques and a number of them were killed by several officers." Such factual findings demonstrate the absence of necessity.

391. Though law enforcement practices and protocols in the U.S. are decentralized through various state and local laws, none of the state laws provide that lethal force may only be used as a last resort when necessary to prevent imminent death or serious injury with less harmful and non-violent means to be tried first. No state limits the use of lethal force to prevent an imminent threat to life or serious injury to officers or others.[274] The vast majority of the laws do not require officers to give a warning of their intent to use firearms.[275] Here, again, U.S. law and standards regarding police use of force do not meet international standards of law or practice.

Precautions

392. All possible measures should be taken in advance to avoid a situation in which the decision to pull the trigger arises.[276] Failure to take proper preventative precautions constitutes a violation of the right to life.[277] States must "take reasonable precautions to prevent loss of life, wherever necessary in legislation or subordinate law," Heyns wrote. [278] "This includes putting in place appropriate command and control structures; providing for the proper training of law enforcement officials in the use of force, including less lethal techniques, where possible, requiring issue of a clear warning before using force, and ensuring medical assistance is available."

272 *Extrajudicial, Summary or Arbitrary Executions*, *supra* n. 269
273 *Id.*
274 *Deadly Force: Police Use of Lethal Force in the United States*, *supra* at 267.
275 *Id.*
276 Report on Extrajudicial, Summary or Arbitrary Executions, *supra* n.269 at ¶ 63.
277 *Id.*, at ¶ 64.
278 *Id.*, at ¶ 51.

393. The Commissioners' concluded from the evidence of witnesses and attorneys that instead of requiring law enforcement officials to take precautions that protect life, U.S. law and police practices allow law enforcement officials to arbitrarily endanger the lives of Black people. The Commissioners found a clear pattern of state-sanctioned criminalization of Black people through the targeted policing of Black communities permitted by U.S. law. The Commissioners also found that the pattern of criminalization of people of African descent included the use of "pretextual" traffic stops. These pretextual stops resulted in increased interactions with law enforcement in which police failed to take precautions to protect the lives of Black people. The Commissioners noted such stops "are a common precursor to police killings and uses of excessive force against people of African descent." Similarly, in 2018, the Inter-American Commission on Human Rights (IACHR) found "an alarming historical scenario in the United States of discriminatory policing practices and racial disparities in the criminal justice system. African-Americans are consistently targeted on the basis of race for searches and arrests (racial profiling), and are often the victims of excessive force by police, resulting in death in many cases."[279]

394. U.S, law and practices do not require the precautions to protect life required by international law and standards. The U.S. Supreme Court has interpreted the Fourth Amendment of the U.S. Constitution to authorize uses of force by police only under circumstances in which the use of force is "objectively reasonable." To determine whether an officer's use of force is objectively reasonable, courts may consider several factors "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."[280] The standard is highly deferential to police officers as the "particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."[281]

395. The standard announced by the Supreme Court in *Graham v. Connor*[282] has influenced state statutes regarding police officers' use of force and claims of self-defense. For example, the grand jury considering charges against officer Darrin Wilson for the murder of Michael Brown was asked to consider potential charges based on a statute that tracked the Fourth Amendment use of force standard.[283] The "objective reasonableness" standard in U.S. law is a significant obstacle in holding police officers accountable for excessive use of force against people of African descent. Indeed, since 2005, approximately 15,000 people have been killed by police in the U.S.[284] During that same period, only 104 police officers have been charged with murder or manslaughter for killing a civilian while on duty and of those, only 35 were convicted of any crime.[285] Attorney General of Minnesota, Keith Ellison, stated in reference to the prosecution of police officer, Derek Chauvin, for the killing of George Floyd, "Trying this case will not be an easy thing. Winning a conviction will be hard. History does show that there are clear challenges here." [286] Prosecutors are

279 Police Violence Against Afro-Descendants in the U.S., *supra* n. 22 at 19.

280 *See Garner, 471 U.S. at* 8-9 ("[d]eadly force may not be used unless it is "necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others").

281 *Graham*, 490 U.S. at 396.

282 *See generally Graham*, 490 U.S.

283 St. Louis Public Radio, *Grand Jury Wrangled With Confusing Instructions* (Nov. 26, 2014), https://news.stlpublicradio.org/government-politics-issues/2014-11-26/grand-jury-wrangled-with-confusing-instructions; Chase Madar, *Why It's Impossible to Indict a* Cop (Nov. 25, 2014), https://www.thenation.com/article/archive/why-its-impossible-indict-cop/.

284 Philip M. Stinson & Chloe Wentzlof, Research Brief One-Sheet – No. 9: On-Duty Shootings: Police Officers Charged with Murder or Manslaughter, 2005-2019 (2019) https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1100&context=crim_just_pub.

285 *Id.*

286 *See* CLICKON Detroit, 'These cases are not easy': Minnesota AG determined to convict former Minneapolis police officers in George Floyd case (June 7, 2020), https://www.clickondetroit.com/news/local/2020/06/07/these-cases-are-not-easy-minnesota-ag-determined-to-convict-former-minneapolis-police-officers-in-george-floyd-case/;
See also Quint Forgey, Minnesota AG Ellison warns: 'It's hard to convict the police', Politico, (June 7, 2020), https://www.politico.com/news/2020/06/01/minnesota-attorney-general-hard-to-convict-police-293920.

aware of these challenges in convicting police officers and are therefore reluctant to bring charges against them.

396. In fact, Supreme Court jurisprudence enables police to use U.S. law and standards of practice as at least a *de facto* basis for racial profiling and violent overreaction by law enforcement officers against Black people. The Court has set relaxed standards for securing a search warrant, stopping and frisking an individual, and effectuating a traffic stop. These relaxed standards allow police officers wide discretion to target Black individuals whom they stereotype as criminals.

397. In *Terry v. Ohio*,[287] the Court legalized the stop-and-frisk doctrine—a virtual invitation for racial profiling. An officer only needs reasonable suspicion (a lower standard than probable cause) that someone has committed or is about to commit a crime to lawfully stop the individual. Reasonable suspicion that a person is armed and presently dangerous permits an officer to conduct a limited frisk of the outer clothing for weapons.

In *Terry v. Ohio*, the Court legalized the stop-and-frisk doctrine—a virtual invitation for racial profiling.

398. Before the Court decided *Illinois v. Gates*,[288]an officer could not secure a search warrant if the confidential informant who supplied the information was unreliable. In *Gates*, the Court weakened the probable cause standard for a search warrant so that the reliability of the informant is no longer determinative. This leads to the execution of warrants for the wrong individuals. In addition, while officers executing warrants are required to knock and announce their presence, the Court held in *Hudson v. Michigan*[289] that failure to comply with this requirement will not compel suppression or exclusion of the evidence collected by officers. Thus, officers have no incentive to knock and announce. Moreover, in many drug cases, judges issue no-knock warrants, which invariably lead to police violence against Black people.

399. In *Whren v. United States*,[290] the Court legalized pretextual stops. The Court's ruling enables officers to stop cars and temporarily detain the driver on the pretext of enforcing traffic laws. As long as the officer is objectively reasonable in making the stop (e.g., probable cause for a traffic infraction), the officer's decision to make the pretextual stop will be upheld. This dangerous expansion of police discretion to stop, search, and arrest encourages racial profiling and police violence against Black people.

400. Further, the Commissioners heard several cases in which even the deficient domestic standards flowing from Fourth Amendment jurisprudence were not followed—leading to particularly egregious violations of the precaution requirement. Indeed, the Commissioners found a "pattern of police killings of Black people after violations of the Fourth Amendment right to be secure in their persons and houses from unreasonable searches and seizures." These Fourth Amendment violations led invariably to the use of excessive force, and ultimately, to police killings of Black people.

Proportionality

287 *Terry*, 392 U.S. 1.
288 *Gates*, 492 U.S. 13.
289 *Hudson v. Michigan*, 547 U.S. 586 (2006).
290 *Whren*, 517 U.S. 806.

401. The proportionality requirement assumes the presence of a threat counterbalanced by proportional force. The amount of force an officer uses must be proportionate to the seriousness of the harm it is meant to prevent. Lethal force may only be used to prevent an imminently lethal threat.[291] The UN Basic Principles provide, "Whenever the lawful use of force and firearms is unavoidable, law enforcement officers shall... exercise restraint and act in proportion to the seriousness of the offence and legitimate objective to be achieved."[292] Heyns wrote that "when (potentially) lethal force is used, . . . the requirement of proportionality can be met only if such force is applied in order to save life or limb. What is required in respect of lethal force is thus not ordinary proportionality but strict proportionality."[293]

402. Article 3 of the Code of Conduct states that law enforcement officers may "use force only when strictly necessary and to the extent required for the performance of their duty." The Commentary explains: "[e]very effort shall be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender." [294]

403. UN Special Rapporteur Christof Heyns has stated, "Principle 9 is a strong affirmation of the principle of proportionality: All uses of firearms against people should be treated as lethal or potentially lethal."[295] Principle 9 provides that, "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against an imminent threat of death or serious injury... and only when less extreme measures are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

404. The Commissioners found "disproportionate use of excessive force by police against Black people pervaded the 44 cases examined by Commissioners." This unlawful, disproportionate use of force extended beyond shooting to other methods, including use of restraints and Tasers. In addition, the Commissioners found a pattern of disproportionate use of deadly force by Tasers against people of African descent nationwide. The Commissioners similarly found a pattern of unlawful and excessive force against people of African descent via chokeholds and compression asphyxiation, by officers either kneeling or standing on victims, and by officers cuffing victims face down and applying pressure to the victims' heads and necks. The lack of proportionality was evident in every case heard by the Commissioners. In no case was there a threat, no less an imminent threat of death or serious injury, to the officers or others at the scene. Police officers in the U.S. frequently use these deadly methods, particularly against Black people.

405. Heyns points out that while international law is primarily concerned with "the preservation of life and limb," there are domestic legal systems with the first priority being "the protection of law and order."[296] The body of U.S. laws governing the use of force is one such domestic legal system that elevates the maintenance of order over the preservation of life.

406. As noted in Section 3, *Tennessee v. Garner* allows the use of deadly force to apprehend a suspect if a past crime they committed involved the infliction or threatened infliction of serious physical harm. "This violates the principle of proportionality," the Amnesty International report concludes, "as the use of lethal force used in these situations is based on the commission or attempted commission of a past crime, rather than the ongoing commission of a crime or other threat of death or serious injury to the officer or oth-

291 Report on Extrajudicial, Summary or Arbitrary Executions, *supra*. n. 269 at ¶ 67.
292 *Id.* at Principle 5.
293 *Id.* at ¶ 64.
294 G.A. Res. 34/169, *supra* n. 220 (commentary to Article 3).
295 Report on Extrajudicial, Summary or Arbitrary Executions, *supra* n. 269 *at* ¶ 70.
296 Id., ¶ 73.

ers."[297] Police techniques, tactics, and technologies that carry the risk of death or serious bodily harm and "are not necessary or proportional to the threats posed to officers and others," according to the University of Chicago report,[298] include chokeholds, carotid artery holds, and neck restraints. U.S. law and practices do not comply with international law and standards regarding the proportionality of law enforcement's use of force.

Protection of Life

407. "The 'protect life' principle demands that lethal force may not be used intentionally merely to protect law and order or to serve other similar interests," such as "to arrest a suspected criminal, or to safeguard other interests such as property," Heyns wrote in his April 1, 2014 report to the United Nations Human Rights Council.[299] "The primary aim must be to save life. In practice, this means that only the protection of life can meet the proportionality requirement where lethal force is used intentionally, and the protection of life can be the only legitimate objective for the use of such force."

408. All laws must state that firearms can only be used "[w]henever the lawful use of force and firearms is unavoidable," as provided by the UN Basic Principles.[300] "The 'protect life' principle demands that lethal force may not be used intentionally merely to protect law and order or to serve other similar interests," such as "to arrest a suspected criminal, or to safeguard other interests such as property," Heyns noted in his report[301]. "The primary aim must be to save life . . . A fleeing thief who poses no immediate danger may not be killed, even if it means that the thief will escape."

409. The cases heard by the Commissioners strongly suggest a violation of the principle of protection of life, in light of the nonexistence of, or *de minimis* nature of, the crimes alleged against the victims. In all of the cases heard by the Commissioners, the victim was unarmed or non-threatening. The facts before the Commissioners did not present circumstances supporting a finding of imminent danger to anyone. The findings of the Commissioners further demonstrated that the violation of the duty to protect the right to life was flagrant. Police officers used force, not in the service of the protection of life, but rather for the racist and unwarranted taking of Black life.

410. As explained in Section 3, *Tennessee v. Garner* allows the use of deadly force to prevent escape if there is probable cause of a past crime. Nationwide statistics indicate that 58% of police killings in 2020 were "situations where the person was not reportedly threatening anyone with a gun,"[302] such as mental health calls and routine traffic stops. That is, the majority of police killings involved, at worst, petty crimes or did not involve threats with firearms. The findings of the Commissioners were consistent with this national data. U.S. law and practices do not comply with international law or standards.

Non-discrimination

411. The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) prohibits practices that have a discriminatory purpose or effect. U.S. jurisprudence only prohibits practices that have a discriminatory purpose or intent.[303]The Committee on the Elimination of Racial Discrimination[304] (CERD)

297 *Deadly Force: Police Use of Lethal Force in the United States*, *supra* n. 267 at 23.
298 Deadly Discretion, *supra* n. 18.
299 Report on Extrajudicial, Summary or Arbitrary Executions, *supra* ¶ 72.
300 U.N. Cong. on the Prev. of Crime, *supra* n. 231, Principle 5(b).
301 Report on Extrajudicial, Summary or Arbitrary Executions, *supra* ¶ 72.
302 Mapping Police Violence, *supra* n. 175
303 *McClesky*, 481 U.S. 279.
304 CERD, Concluding Observations on the Combined Seventh to Ninth Periodic Reports to the United States of America, U.N. Doc. CERD/C/USA/CO/7-9 (2014).

has called on the U.S. to review the legal definition of racial discrimination and prohibit it in all forms–effect as well as purpose. CERD again notes that "the definition of racial discrimination used in federal and state legislation, as well as in court practice, is not in line with article 1, paragraph 1, of [ICERD], which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect (para. 10)."[305] CERD called on the U.S. in compliance with ICERD obligations, to prohibit racial discrimination in all its forms, amend all laws and policies leading to racial disparities in the criminal justice system, and implement effective national strategies or plans of action aimed at eliminating structural discrimination.

412. CERD "reiterates its previous concern at the brutality and excessive use of force by law enforcement officials against unarmed racial people" including people of African descent, with impunity for abuses.[306]

413. "At times, the police exercise higher levels of violence against certain groups of people based on institutional racism or ethnic discrimination. Discrimination on these, and other, grounds also impacts on patterns of accountability," Heyns wrote in his report. "States must instead adopt a reactive and proactive stance encompassing all available means, to combat racially motivated and other similar violence within law enforcement operations.[307]

414. As described in Section 5 above, the Commissioners found a pattern of discrimination in the use of deadly force in violation of the nondiscrimination principle—some of which was carried out even in violation of the lower standards set forth in U.S law.

Accountability

415. The *International Covenant on Civil and Political Rights*;[308] the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;[309] and the *International Convention on the Elimination of All Forms of Racial Discrimination*[310] all require effective remedies for violations of the right to life, the prohibition against torture, and the right to freedom from discrimination. The U.S. has ratified all three treaties, making them part of domestic law under the U.S. Constitution's Supremacy Clause.[311]

416. Special measures are necessary to ensure that officers are held accountable for the violations of applicable law and standards of conduct.[312]These measures must include criminal, administrative, and disciplinary sanctions to ensure officials are held responsible.[313] According to the UN Basic Principles, "Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials"[314] and they shall ensure that "arbitrary or abusive use of force or firearms by law enforcement officials is punished as a criminal offence under law."[315] The failure of a State to properly investigate deaths after the use of force by police is itself a violation of the right to life.[316] Investigation after death or injury from police use of force must be prompt, thorough, impartial, and independent with a view to prosecution. It must include investigation of command responsi-

305 *Id.*
306 *Id.* at ¶ 17.
307 Report on Extrajudicial, Summary or Arbitrary Executions, *supra* ¶ 74.
308 ICCPR, 999 U.N.T.S. 171.
309 ICAT, at art. 14.
310 ICERD, at art. 6.
311 U.S. Const. art. VI, ¶ 2.
312 U.N. Cong. on the Prev. of Crime, *supra* n. 231, Principles 6, 7, 11(f), 22.
313 Report on Extrajudicial, Summary or Arbitrary Executions, *supra* ¶ 82.
314 U.N. Cong. on the Prev. of Crime, *supra* n. 231, Principles 1, 11.
315 *Id.*, at Principle 7.
316 Kaya v. Turkey, 28 Eur. Ct. H.R. 1 (1999); *See also* McCann v. United Kingdom, 21 Eur. Ct. H.R. 97 (1995).

bility and be subject to public scrutiny.

417. U.S. federal prosecutors have the ability to charge police officers with federal civil rights violations, although such charges are rarely sought. In 2019, for example, researchers found that of the 184,000 cases prosecuted by the Department of Justice,[317] federal prosecutors brought only 49 civil rights charges. During that same period, prosecutors brought 119 charges for illegal hunting of fish and wildlife.[318] Based on these outcomes, legal scholars have observed that federal statutory and constitutional law are roadblocks to, instead of vehicles for, justice and accountability. Civil remedies for victims fare no better. To vindicate victims' civil rights under the constitutional standards governing police use of force, the U.S. Congress enacted a civil rights statute designed to prevent abuse of civilians by individuals acting "under the color of law." The statute, 18 U.S.C. 242,[319] was passed following the Civil War in an attempt to punish and prevent racial violence against Black people, particularly in the southern part of the U S. More recently, the statute has been used to prosecute government officials for broader civil rights abuses, including excessive use of force by police officers.

418. Individuals who have suffered a constitutional violation may also seek a civil remedy under federal law. Under the law, commonly referred to as Section 1983, a government official "shall be liable" for the violation or deprivation of an individual's constitutional rights.[320] The barriers to relief, however, are significant as individuals not only have to surmount often onerous legal standards to demonstrate a constitutional violation, but litigants must also overcome qualified immunity.[321]

419. As previously discussed, under the doctrine of *qualified immunity*, a governmental official, such as a police officer, may not be found liable for a constitutional violation unless they violate a "clearly established law" such that a "'reasonable official would understand that what he is doing' is unlawful."[322] In its initial articulation, the Supreme Court noted that qualified immunity "do[es] not require a case directly on point." It does require that "existing precedent must have placed the statutory or constitutional question beyond debate." Over the last two decades, however, courts have expanded the defense of qualified immunity by functionally requiring a previous case finding a constitutional violation under nearly identical circumstances. This is a high bar to meet and often precludes parties injured by police violence from obtaining damages for their injuries. As currently understood, qualified immunity "protects all government officials except the plainly incompetent or those who knowingly violate the law."[323] As one commentator observed, "[t]he substance of constitutional rights is meaningless if state actors can violate those rights with impunity."[324]

420. Accordingly, the available laws for domestic redress of civil rights and constitutional violations do not comply with the U.S.'s obligation to provide for effective remedies.

421. The Commissioners' finding of a pattern of impunity of police violence against Black people in the U.S. is consistent with nationwide data from 2020, showing that "Officers were charged with a crime in only ...

317 *Police Officers Rarely Charged for Excessive Use of Force in Federal Court*, Trac Reports (17 Jun 2020), available at: https://trac.syr.edu/tracreports/crim/615/ (accessed 26 Mar 2021).

318 *Id.*

319 18 U.S.C. 242 ("Whoever, under color of any law, ...willfully subjects any person...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States [shall be guilty of a crime]").

320 42 U.S.C. § 1983.

321 Marjorie Cohn, *Federal Judge Sets Out to Bring Down Law Shielding Police From Legal Liability*, Truthout (11 Aug 2020), available at: https://truthout.org/articles/judge-and-elected-officials-challenge-key-law-shielding-police-from-liability/ (accessed 26 Mar 2021).

322 *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

323 *Messerschmidt v. Millender*, 132 S. Ct. 1235, 1244-45 (2012) (quoting *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2085 (2011)).

324 Jay R. Schweikert, *Qualified Immunity: A Legal, Practical and Moral Failure*, CATO Institute (14 Sept 2020), available at: https://www.cato.org/sites/cato.org/files/2020-09/pa-901-update.pdf (accessed 26 Mar 2021).

one percent of all killings by police."[325] Indeed, the national statistics for 2020 demonstrate the continuation of a pattern of violation that was previously raised by the IACHR in its reports from 2014 to 2018, which found "a disturbing pattern of excessive force on the part of police officers towards African-Americans and other persons of color."[326] The IACHR further found that U.S. law and practices regarding police killings "giv[e] rise to high levels of impunity, which in turn result in the chronic repetition of such acts" and "the deficiencies in the investigation, along with the lack of institutional responsibility, may become a pattern."[327] The IACHR urged the U.S. to conduct "exhaustive, impartial, independent, effective and prompt investigations"[328]

422. This lack of accountability has deeply wounded the families who suffered the trauma of needlessly losing a loved one because of the color of their skin. They then had to cope with the unbearable anguish and mortification from the failures of the official institutions and authorities to provide remedies and hold police to account. As stated by Samaria Rice, mother of *Tamir Rice*, "We need to make examples out of police departments, law enforcement, governments, that think it's okay to kill our kids, and go in the house and eat a ham sandwich. It's not okay, because my life is forever altered, my children's life was forever altered, my family is destroyed, because of the murder of my son."[329]

423. The state of U.S. law, with respect to use of force principles, is especially egregious given that the U.S. has repeatedly been urged to bring its law and practices in relation to excessive force by police into conformity with international standards. Indeed, in 1995, three years after a jury verdict acquitting police officers in the beating of Rodney King, the Human Rights Committee urged the U.S. to:

> ...take all necessary measures to prevent any excessive use of force by the police; that rules and regulations governing the use of weapons by the police and security forces be in full conformity with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; that any violations of these rules be systematically investigated in order to bring those found to have committed such acts before the courts; and that those found guilty be punished and the victims be compensated.[330]

424. Twenty-five years later, the U.S. has yet to take such measures and its unlawful nonconformity with international laws and practices continues.

325 Mapping Police Violence, *supra*. n. 175

326 *Police Violence Against Afro-Descendants in the U.S.*, n. 22 *supra* at 24.

327 *IACHR Expresses Concern with the Deficiencies in the Investigation of Cases Relating to Killing of Afro- descendants by the Police in the United States*, Press Release No. 120/16 (Aug. 23, 2016), available at http://www.oas.org/en/iachr/media_center/PReleases/2016/120.asp

328 *Id.; See also IACHR Condemns the Killing of an African- American Man in the United States*, Press Release No. 040/15 (Apr. 17, 2015), available at http://www.oas.org/en/iachr/media_center/PReleases/2015/040.asp; *IACHR Expresses Concern Over Police Killings of African-American Persons in the United States*, Press Release No. 90/14 (Aug. 22, 2014), available at http://www.oas.org/en/iachr/media_center/PReleases/2014/090.asp.

329 *Case of Tamir Rice, supra.*

330 HRC, Report of the Human Rights Committee, vol. 1, ¶ 282, U.N. Doc. A/50/40 (1996), available at: https://www.refworld.org/pdfid/3f4746ae4.pdf (accessed 26 Mar 2021).

NON-COMPLIANCE OF U.S. LAW WITH THE PROHIBITION AGAINST TORTURE

425. The *United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (UNCAT) prohibits torture and cruel, inhuman, or degrading treatment or punishment, and mandates that States Parties take action to prevent and/or end acts of torture and remedy violation in their jurisdictions.[331]

426. In 1988, President Ronald Reagan signed UNCAT and transmitted the convention to the U.S. Senate for consent to ratification with conditions. In transmitting the Convention for consideration by the U.S. Senate, the Reagan administration argued that UNCAT should be read in a "relatively limited fashion, corresponding to the common understanding of torture as an extreme practice which is universally condemned."[332] When the Senate gave its consent to ratification of UNCAT, it attached a declaration that UNCAT was not self-executing and required implementing legislation to be enforced by U.S. courts.[333]

427. As part of its limited interpretation of UNCAT, the U.S. enacted chapter 113C of the U.S. Code, prohibiting torture occurring outside the United States. More recently, UNCAT has been cited in additional federal legislation including the National Defense Authorization Act for FY2006.[334] It contains a provision prohibiting the cruel, inhuman, or degrading treatment of persons under the custody or control of the U.S. According to the U.S. State Department, in order to be covered by UNCAT, torture must be "severe" and other forms of cruel or violent conduct, such as police violence, "while deplorable, does not amount to 'torture'" for purposes of the Convention.[335] As such, the U.S. has not enacted legislation that specifically prohibits various forms of police violence pursuant to its obligations under UNCAT. Instead, U.S. officials have argued that existing federal, state, constitutional, and statutory laws are sufficient to address violence against civilians by state actors.

428. In so arguing, and in unduly limiting the application of UNCAT, the U.S. has pressed an unlawfully narrow construction inconsistent with the text of UNCAT, which as previously stated, defines torture as:

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[336]

429. As the IACHR notes, UNCAT is clear that "the intentional infliction of severe pain or suffering on a person by or with the acquiescence of State agents 'for any reason based on discrimination of any kind' would constitute torture."[337]

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331 CAT, *supra* n. 217 (Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions).

332 President's Message to Congress Transmitting the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Summary and Analysis of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, May 23, 1988, S. TREATY DOC. NO. 100-20, reprinted in 13857 U.S. Cong. Serial Set at 3 (1990) [hereinafter "State Dept. Summary"]

333 *See* OHCHR, Status of Ratification Interactive Dashboard, available at https://indicators.ohchr.org/.

334 Pub. L. No. 109-163.

335 *Id.* at 1.

336 CAT, *supra*, at art. 16

337 IACHR, *supra* at ¶ 230.

430. Further, UNCAT provides a standard and remedies not only for torture, but also for cruel, inhuman, or degrading treatment where committed by a "public official or other person acting in an official capacity" even if the conduct is not severe enough to constitute torture.[338]

431. By limiting its prohibition on torture only to torture conducted abroad, the U.S. law fails to comply with international law standards. With respect to cruel, inhuman, or degrading treatment or punishment, in signing on to UNCAT, the U.S. made numerous reservations, such as limiting cruel, inhuman, or degrading treatment to standards consistent with the U.S. Constitution which requires a level of severity not required by international law.[339] U.S. domestic law thus fails to comply with the requisite international law and standards.

432. In 2014, the Committee Against Torture (CAT), which interprets UNCAT, addressed racism and violent acts of torture in policing against Black people throughout the U.S. CAT was "concerned about numerous reports of police brutality and excessive use of force by law enforcement officials," particularly against individuals "belonging to certain racial and ethnic groups," immigrants, and LGBTQ people.[340]

433. CAT has concluded that "information, education and training provided to [U.S.] law enforcement or military personnel are not adequate and do not focus on all provisions of the Convention, in particular on the non-derogable nature of the prohibition of torture and the prevention of [CIDT]."[341] CAT is particularly concerned with "the frequent and recurrent shootings or fatal pursuits by the police of unarmed Black individuals."[342]

434. In its 2011 General Recommendations No. 34, CERD recommends that measures be taken to "prevent the use of illegal force, torture, inhuman or degrading treatment or discrimination by the police or other law enforcement agencies and officials against people of African descent, especially in connection with arrest and detention, and ensure that people of African descent are not victims of practices of racial or ethnic profiling."[343]

435. Despite the recommendations of CERD, the U.S. has failed to recognize and cease these practices of racial discrimination by police. Indeed, the violation of international law by U.S. law, and the national practices in violation of international law noted by CERD, accord with the findings of the Commissioners that "order maintenance" policing drives racially disparate rates of arrests and U.S. law enforcement's targeting of people of African descent based on racist associations between Blackness and criminality amount to inhuman and degrading treatment. Thus, the Commissioners find racial profiling violates the international prohibition against inhuman or degrading treatment.

338 CAT, *supra*, at art. 16

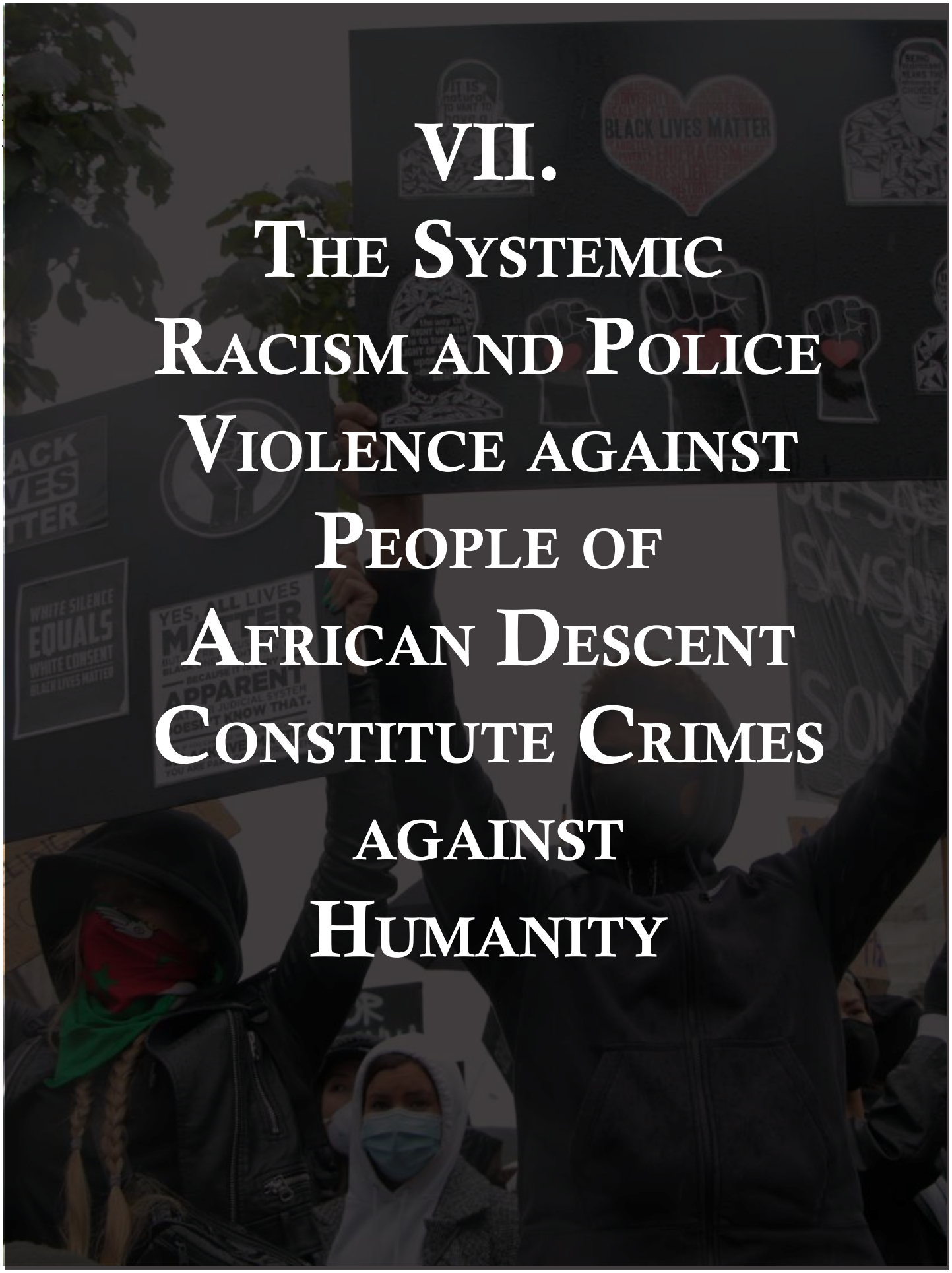
339 Michael J. Garcia, *U.N. Convention Against Torture: Overview and Application to Interrogation Techniques* 11 (26 Jan 2009), available at https://fas.org/sgp/crs/intel/RL32438.pdf.

340 Comm. Against Torture, Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, U.N. Doc: CAT/C/USA/3-5 [hereinafter: Concluding Observations] (19 Dec 2014).

341 Comm. Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America, U.N. Doc. CAT/C/USA/CO/2 at ¶ 23 [hereinafter: Conclusions and Recommendations of the Committee Against Torture] (25 Jul 2006), available at https://undocs.org/CAT/C/USA/CO/2.

342 Concluding Observations, *supra* n. 340, at ¶ 26.

343 CERD/C/GC/34 at ¶ 39. (Oct. 11, 2011).



VII. The Systemic Racism and Police Violence against People of African Descent Constitute Crimes against Humanity

Crimes against Humanity under the Rome Statute of the International Criminal Court

436. The Commissioners considered whether the actions by the police and other state agents in the U.S. to unlawfully detain and/or extrajudicially kill people of African descent, constitute Crimes against Humanity (CAH). CAH are part of customary international law and considered peremptory norms from which no derogation is allowed. CAH were defined by the Nuremburg Principles following World War II and later through international courts such as the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. The Rome State of the International Criminal Court (Rome Statute), is a treaty that defines specific acts that constitute CAH and established the International Criminal Court (ICC) to ensure accountability for CAH and other crimes when national legal systems fail to do so.

437. U.S. courts have held "the prohibition of CAH to be a norm that is customary, obligatory, and well defined by international jurisprudence" and as such they are "universally condemned behavior that is subject to prosecution."[344]

438. From the evidence adduced at the hearings regarding the widespread and systematic killing and maiming of unarmed Black people who posed no threat of death or serious bodily harm to police or others, based on systemic racism, the Commissioners find a *prima facie* case that Crimes against Humanity have been committed. On this basis, the Commissioners recommend that CAH be investigated and prosecuted as allowed by law.

439. The CAH for which the Commissioners find *a prima facie case*, are discussed below followed by the findings in support of their conclusions.

440. The Rome State of the International Criminal Court (Rome Statute), in paragraph 7, sets forth the most widely accepted[345] formulation of the pertinent CAH.

> "For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[346]

344 *Doe v. Rafael Saravia*, 348 F.Supp.2d 1112 (E.D. Cal 2004).

345 *See* Sean D. Murphy, *First report on crimes against humanity*, International Law Commission, 67th Sess., U.N. Doc A/CN.4/680 (2015) at ¶ 26-64, 121, available at: http://legal.un.org/docs/?symbol=A/CN.4/680.

346 The Rome Statute provides definitions of the terms in Paragraph 1 of Section 7 as well as the elements of the above listed crimes. The specific provisions considered by the Commissioners are provided in the International Law Addendum appended to this report.

Common Elements

Widespread or Systematic

441. A Crime against Humanity must be committed as part of a widespread or systematic attack directed against civilians. "Attack" is defined in the Rome Statute as "a course of conduct involving the multiple commission of acts."[347]

Policy

442. The attack must be carried out pursuant to or in furtherance of State or organizational policy to commit such an attack. The ICC has interpreted "policy" to mean "that a State or organisation intends to carry out an attack against a civilian population, whether through action or deliberate failure to take action."[348] A "formal design" is not required.[349] Rather,

> ...the existence of such a State or organisational policy can ... be inferred by discernment of, among other things, repeated actions occurring according to a same sequence, or the existence of preparations or collective mobilisation orchestrated and coordinated by that State or organisation."[350]

443. In *Prosecutor v Jean-Pierre Bemba Gombo*,[351] the ICC Trial Chamber ruled:

> the "policy" need not be formalized and may be inferred from a variety of factors which, taken together, establish that a policy existed, including: (i) the attack was planned, directed or organized; (ii) *a recurrent pattern of violence; (iii) the use of public or private resources to further the policy;* (iv) *the involvement of the State forces in the commission of crimes*; (v) *statements, instructions or documentation attributable to the State condoning or encouraging the commission of crimes;* (vi) an underlying motivation. (emphasis added) (para. 160)

444. With respect to inferring a policy, after reviewing a number of factors, the Trial Chamber ruled that "*any suggestion that the crimes were the result of an uncoordinated and spontaneous decision of the perpetrators, as, acting in isolation, is not a reasonable conclusion.*" (emphasis added) (para. 685)

445. The Trial Chamber ruled that a policy will (and in some cases must) be inferred when it is the only reasonable conclusion to be drawn from factors of: evidence of *modus operandi* (para. 676, 680); repeated commission of acts over a period of time (para. 676); repeated commission of acts over broad geographic area (para. 677); consistent evidence of perpetrators' motives (para. 678); the scale on which the impugned acts were carried out indicated knowledge by the State authorities (para. 679); authorities gave orders "*to exercise vigilance against civilians in the CAR, including the use of force towards them.* (para. 682); inadequate training and Codes of Conduct (para. 683); or senior authorities aware of crimes and "*failed to take all necessary and reasonable measures to prevent or repress the crimes.*" (emphasis added) (para. 683)

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347 Rome Statute of the International Criminal Court, *opened for signature* 17 July 1998, 2187 UNTS 90 art. 7(1), available at: https://www.refworld.org/docid/3ae6b3a84.html [accessed 26 March 2021]. The specific provisions considered by the Commissioners are provided in Appendix 2 to this report.

348 *Prosecutor v Katanga*, ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute (7 March 2014) at para 1108 (ICC, Trial Chamber II).

349 Id.

350 Id. at para 1109.

351 *Prosecutor v Jean-Pierre Bemba Gombo*, ICC-01/05-01/08 (Mar. 21, 2016), available at https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF.; The Appeal Chamber Decision (June 8, 2018) (ruled on other grounds), available at: https://www.icc-cpi.int/itemsDocuments/180608-bemba-judgment-summary.pdf.

Knowledge that the Actions Are Part of a Widespread or Systematic Attack

446. Article 30 of the *Rome Statute* provides guidance on the requisite mental (knowledge) element:

> 1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with *intent and knowledge*.
> 2. For the purposes of this article, a person has intent where:
> (a) In relation to conduct, that person means to engage in the conduct;
> (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
> 3. For the purposes of this article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly.

447. The *Elements of Crime*[352] cautions against requiring that the perpetrator have knowledge of a State plan or policy but seeks to impose a requirement that the State actively promote or encourage the attack.

448. ICC jurisprudence confirms that the perpetrator must know that the conduct was part of or intended the conduct to be part of a widespread or systematic attack.[353] There must be "proof that the perpetrator of the act knowingly participated in the attack directed against a civilian population..."[354] However, "proof that the perpetrator had knowledge of all of the characteristics of the attack or the precise details of the plan or policy of the State or organisation" need not be proven.[355]

449. Again, in *Prosecutor V. Jean-Pierre Bemba Gombo*,[356] the ICC Trial Chamber ruled:

> Paragraph 2 of the Introduction to Article 7 of the Elements of Crimes does not require proof that the perpetrator had knowledge of the precise details of the plan or policy only that the perpetrator knew or intended conduct to be part of an attack on a civilian population.

450. The knowledge requirement "may also be satisfied by a perpetrator engaging in conduct envisaged by the policy, and with knowledge thereof."[357]

There Is a Prima Facie Case that Systemic Racist Police Violence in the U.S. Amounts to Crimes against Humanity

451. The findings of the Commissioners demonstrate a *prima facie* case of Crimes against Humanity warranting an investigation by the ICC. The crimes include murder, severe deprivation of physical liberty, torture, persecution of people of African descent, and other inhumane acts, which occurred in the context of a widespread or systematic attack directed against the civilian population of people of African descent in the U.S.

452. While the U.S. is not a State party to the Rome Statute, for the purposes of this analysis, and as stated

352 *See* Rome Statute, *Elements of Crimes*, available at https://www.refworld.org/docid/4ff5dd7d2.html (accessed 4 March 2021).
353 *Katanga*, at ¶ 782.
354 *Id.* at ¶ 1125.
355 *Id.*
356 *Prosecutor v Jean-Pierre Bemba Gombo* No.: ICC-01/05-01/08, at ¶ 167. (Mar. 21, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF.
357 *Id.* at ¶ 161.

in the Recommendations herein, the Commissioners recommend that the U.S. Executive Branch accept the jurisdiction of the ICC in recognition of the U.S.'s avowed commitment to promote human rights and oppose impunity for violations around the globe. The Commissioners also recommend that the U.S. president sign the Rome Statute and transmit it to the U.S. Senate for consent to ratification.

The Killing and Maiming of People of African Descent in the U.S. by Police Amounts to a Widespread or Systematic Attack Directed against the Black Civilian Population, with Knowledge of the Attack

453. The following findings of the Commissioners establish the existence of a widespread or systematic attack directed against people of African descent:
- The Commissioners found that use of force against unarmed people of African descent during traffic and investigatory stops is driven by racial stereotypes and racial biases;
- The Commissioners found that U.S. law enforcement agencies routinely target people of African descent based on racist associations between Blackness and criminality;[358]
- The Commissioners found that pretextual traffic stops are a common precursor to police killings and uses of excessive force against people of African descent;
- The Commissioners found that race-based street stops, otherwise known as "stop-and-frisk," are another form of "order maintenance" policing that drives not only racially disparate rates of arrests, but often triggers deadly use of force by police;[359]
- The Commissioners found that order maintenance policing relies on racialized assumptions about what constitutes disorder and which communities are disorderly;
- The Commissioners found a pattern of police killings of Black people after violations of their Fourth Amendment right to be secure in their persons and houses from unreasonable searches and seizures;
- In nearly every case that Commissioners examined, they found police used excessive force against Black people, all of whom were unarmed or non-threatening.

454. Further, national data show:
- Most killings began with police responding to suspected non-violent offenses or cases where no crime was reported,"[360] and
- "Black people are 3.5 times more likely than white people to be killed by police when Blacks are not attacking or do not have a weapon."[361]

455. All of the above findings and data support the requisite element of "widespread and systematic attack" as one carried out pursuant to or in furtherance of a State or organizational policy. As stated by the ICC Trial Chamber,[362] a policy will be inferred when it is the only reasonable conclusion to be drawn from factors including: repeated commission of acts over a period of time (para. 676); repeated commission of acts over broad geographic area (para. 677); the scale on which the impugned acts were carried out indicated knowledge by the State authorities (para. 679); inadequate training and Codes of Conduct (para. 683); [or] senior authorities were aware of the crimes and "failed to take all necessary and reasonable measures to prevent or repress the crimes." (para. 683).

456. Such a policy may be inferred as to the U.S. and police killings of people of African descent. Specifically, since U.S. law does not comply with international law and standards on the use of force, and as the U.S.

358 Khalil Gibran Muhammad, The Condemnation of Blackness Race, Crime, and the Making of Modern Urban America (Harvard University Press, 2019).
359 Pathway to Police Violence, *supra* n. 100.
360 Sawyer, *supra*. n. 96
361 Ray, *supra*. n. 4
362 Gombo, *supra*.n. 356

has repeatedly failed to bring its domestic law into compliance with international law and standards, a finding of the requisite policy is warranted.

457. Moreover, the Commissioners' findings with respect to systemic impunity, complicity of legal actors, and qualified immunity further support the finding of a policy pursuant to which a "widespread and systematic attack" was carried out.

458. Accordingly, the systematic racial targeting of people of African descent by law enforcement in the U.S, supports a finding of a widespread or systematic attack directed against a civilian population. Thus, this contextual element of CAH is met.

U.S. Police Officers Act with Knowledge of the Systematic Attack on People of African Descent

459. As stated in Article 7, the knowledge element is satisfied "if the perpetrator intended to further" a widespread or systematic attack. The element "may also be satisfied by a perpetrator engaging in conduct envisaged by the policy, and with knowledge thereof."[363] Article 30 defines knowledge as "awareness that a circumstance exists or a consequence will occur in the ordinary course of events." As the police officers knowingly engaged in conduct envisaged by the policy, the knowledge requirement is satisfied as to all crimes.

The Commissioners Find a Prima Facie Case Has Been Established of the Commission of the Following Crimes against Humanity:

Police Killings of People of African Descent in the U.S. Amount to the Crime against Humanity of Murder

460. In addition to the existence of a widespread or systematic attack and the presence of the requisite knowledge, the perpetrator of the CAH of murder must have killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population, and the conduct must have constituted, or taken place as part of, a mass killing of members of a civilian population. (Rome Statute, Article 7(1)(a))

461. Forty-three of the 44 cases heard by the Commissioners resulted in the victims' deaths. A finding of murder requires that the killing occurred as part of "a mass killing of members of a civilian population." As previously stated, "Black people are 3.5 times more likely than white people to be killed by police when Blacks are not attacking or do not have a weapon."[364] Today one out of 1,000 Black men can expect to be killed by police violence over the course of his life, which is roughly 2.5 times the likelihood of white men being killed by police.[365] Black women are significantly more likely to be killed by police than their white counterparts, as they are 1.4 times more likely to be killed by police than white women.[366] In 2020, 1,127 people were killed by police, of which 28% were Black.[367] Thus, both in absolute numbers and rate of incidence within the population of people of African descent, a finding of mass killing is warranted. Further, there are no facts to support a finding that U.S. law enforcement does not knowingly participate

363 Prosecutor v *Jean-Pierre Bemba*, No.: ICC-01/05-01/08, at ¶ 161.
364 Ray, *supra* n. 4.
365 Edwards, Lee, & Esposito, *supra* n. 6.
366 *Id.*
367 *Mapping Police Violence*, *supra* n. 175.

in an attack directed against a civilian population of people of African descent.

462. As determined by the ICC in *Gombo*, a policy will or must be inferred when the existence of a state policy is the only reasonable conclusion to be drawn from the evidence. From the cases reviewed by the Commissioners, the existence of a policy to allow the killing of people of African descent by police with impunity must be inferred, in light of the evidence of: repeated commission of acts over time and locations, consistent evidence of methods used to kill victims, the lack of legal justification, knowledge by the State authorities of disproportionate unlawful killing and injury by police of people of African descent, and the absence of effective prophylactic or remedial measures taken by the State.

Police Killings of People of African Descent in the U.S. Amount to the Crime against Humanity of Severe Deprivation of Liberty

463. Under article 7(1)(e), the severe deprivation of liberty of people of African descent constitutes a CAH if the following criteria are proven:

1. A person of African descent was detained or otherwise severely deprived of his or her physical liberty;

2. The detention was arbitrary, that is, without legal basis or due process of law. The legal basis justifying detention cannot be contrary to international human rights law, including the *International Covenant on Civil and Political Rights;*

3. The perpetrator intended to deprive a person of African descent of his or her physical liberty and/or intended to cause that consequence, or was aware that it would occur in the ordinary course of events;

4. There was a course of conduct involving the commission of multiple arbitrary detentions of people of African descent. People of African descent were targeted as the primary population, that is, as an identifiable group/collective and not a limited and randomly selected number of individuals or an incidental group.

464. The ICC Pre-Trial Chamber interpreting Article 7(1) (e) of the *Rome Statute* established the requirement that the deprivation of liberty is "in violation of fundamental rules of international law" and that brevity of the deprivation is not a defense.[368]

465. The lack of due process and legal basis for deprivation of physical liberty is the essence of arbitrary detention. Freedom from arbitrary detention is enshrined in Article 9 of the *Universal Declaration of Human Rights* (UDHR)[369] and guaranteed by Article 9 of the ICCPR.[370] The International Court of Justice (ICJ) emphasized that wrongful deprivation of liberty "is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights."[371] The United Nations Working Group on Arbitrary Detention (WGAD) characterizes the prohibition of arbitrary detention as a peremptory or *jus cogens* norm of international law, a fundamental rule of international law prohibited by customary international law.[372]

368 ICC, Pre-Trial Chamber, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, ICC-01/17-X-9-US-Exp, at ¶ 68 (Oct. 26, 2017), available at: https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF.

369 G.A. Res. 217 (III) A, at art 9.

370 International Covenant on Civil and Political Rights, June 8, 1992, 999 U.N.T.S. 171.

371 *See* United States Diplomatic and Consular Staff in Tehran (U.S. v Iran), Judgment, 1980 I.C.J. 3, ¶ 91.

372 UN H.R.C., *Report of the Working Group on Arbitrary Detention*, ¶ 75, U.N. Doc. A/HRC/22/44 24 (Dec. 2012), available at: https://www.refworld.org/docid/511cca5e2.html (accessed Feb. 19 2021).

466. In General Comment No. 36,[373] the UN Human Rights Committee (HR Committee) defines the arbitrary deprivation of liberty as:

- Lacking a legal basis or inconsistent with life-protecting laws and procedures (Article 11); or,
- Inconsistent with international or domestic law (Article 12).

467. The WGAD describes as arbitrary any detention where, *inter alia*, "it is clearly impossible to invoke any legal basis justifying the deprivation of liberty" or "deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin..."[374]

468. Article 27 of the *Vienna Convention on the Law of Treaties*[375] also prohibits State Parties to the ICCPR and other treaties from invoking domestic law as a justification for violation of treaty obligations.

> Article 27 - Internal law and observance of treaties
>
> Aa party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

469. The overall findings of the Commission justify the conclusion that people of African descent are subjected to severe deprivation of liberty in the U.S. by the practice of unlawful arbitrary detention in connection with their killing and maiming by police. Specifically, in every case heard by the Commissioners, victims were stopped, detained, or restrained such that they were severely deprived of their liberty.

470. All such detentions violated international law. Article 9 of the ICCPR provides: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention." The Commissioners found a widespread pattern of police arbitrarily detaining people of African descent.

471. The Commissioners found a pattern of police killings of Black people after violations of their Fourth Amendment right to be secure in their persons and homes from unreasonable searches and seizures in violation of domestic law, and necessarily in violation of the higher standard set by international law. While not all victims were stopped in violation of the Fourth Amendment, given that the Fourth Amendment and the international law obligations are not coextensive, the presence of racial profiling in all cases heard by the Commissioners nonetheless establishes that victims were detained in violation of the international law regarding nondiscrimination. The CAT and HR Committee have concluded that racial profiling is a prohibited form of discrimination. The CERD recently identified people of African descent as particularly vulnerable to racial profiling.[376] The HR Committee General Recommendation No. 35 states, "[a]n arrest or detention may be authorized by domestic law and nevertheless be arbitrary."[377] As the detention of victims in the cases heard by the Commissioners was arbitrary—as discussed with regard to use of force—such detention violates international law.

472. The circumstances under which the victims were detained support a finding that law enforcement officers intended to detain the victims. The Commission's findings supporting "widespread or systematic

373 UNHRC, *General Comment No. 36: Article 6 (Right to Life)*.

374 A/HRC/22/44 24 at ¶ 38.

375 Vienna Convention on the Law of Treaties, May 23 1969, 1155 U.N.T.S 331(signed by the U.S. on 24 April 1970), available at: https://www.refworld.org/docid/3ae6b3a10.html (accessed Feb. 18, 2021) (hereinafter ("VCLT").

376 CERD, General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials, ¶ 6, U.N. Doc CERD/C/GC/36 (Dec. 11 2020).

377 CCPR General Comment No. 35, Article 9 (Liberty and security of person), ¶ 12, U.N. Doc CCPR/C/GC/35 (Dec. 16, 2014).

attack" and mass killings of people of African descent in connection with the crime of murder, equally support a finding that people of African descent were targeted as the primary population for detention. Indeed, in every case but one, the same targeting that culminated in murder began with detention.

473. Accordingly, because the requisite elements under the Rome Statute are met, the Commission finds that in cases before it, people of African descent were victims of the CAH of severe deprivation of liberty.

Police Killings and Maiming of People of African Descent in the U.S. Amount to the Crime against Humanity of Torture

474. With respect to torture, the Commissioners have previously set forth their findings that support a violation of the UNCAT by the use of Tasers, restraints, rough rides, and vehicular attacks, and intentionally inflicting severe pain or suffering in the cases heard by the Commissioners. In addition, police choking, suffocating, shooting, and denial of medical care after shootings and maiming of Black people amounts to torture. As previously stated, the elements of a "widespread or systemic attack" are met and the intention and knowledge of the consequences of the commission of the act established.

Police Killings of People of African Descent in the U.S. Amount to the Crime against Humanity of Persecution

475. The elements required to establish the Crime against Humanity of Persecution, including intention and knowledge, are as follows:

1. In violation of International Law, the perpetrator deprived one or more persons of their fundamental rights;

2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such;

3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law; and,

4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.

476. The overall findings of the Commissioners amount to a *prima facie* showing that people of African descent are subjected to persecution within the meaning of the Rome Statute. The failure of U.S. law to comply with international law deprives people of African descent of fundamental human rights. Specifically, the statistics regarding people of African descent being subjected to widespread criminalization, denigration, surveillance, arbitrary arrest, warrantless search, arbitrary detention, targeting with lethal force, killing, and disparate policing establishes that Black people are targeted "by reason of the identity." This targeting is recognized as impermissible under international law, as evidenced by the remarks of the CERD's comments on torturous, cruel, and degrading treatment against Black people in the U.S. in its General Recommendations No. 36. CERD found that racial profiling of Black individuals can lead to numerous forms of inhumane and degrading treatment. These consequences include "the overcriminalization of certain categories of persons protected under the Convention; the reinforcement of misleading stereotypical associations between crime and ethnicity and the cultivation of abusive operational practices; disproportionate incarceration rates for groups protected under the Convention; the underreporting of acts of

racial discrimination and hate crimes; and the handing down by courts of harsher sentences against members of targeted communities."[378] These acts of persecution occur in the context of the Crimes against Humanity of murder and torture as discussed above.

Police Killings of People of African Descent in the U.S. Amount to the Crime against Humanity of Inhumane Treatment

477. Under the Rome Statute, a finding of inhumane treatment requires that "the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act," "of a character similar to any other act referred to in article 7" as part of "widespread or systematic attack," of which the perpetrator was aware.

478. The testimony of the victims' family members establishes community trauma resulting from criminalization, racial profiling, order maintenance, and the police killings and torture of family members, loved ones, and others persons of African descent. These widespread practices have resulted in collective mental suffering of and negative health effects on Black people throughout the U.S. This collective mental suffering is of a character similar to persecution and occurs pursuant to the same policy that amounts to a "widespread or systematic attack" on people of African descent. Given the long-documented history of the effects of structural racism and police violence against Black people, supported by statistical evidence and further evidenced by the largest protest movement in the history of the U.S. during the summer of 2020 in response to the killing of *George Floyd*, the knowledge requirement is also met. Accordingly, the Commissioners find that the police killings of people of African descent in the U.S. amount to inhumane treatment of the U.S. Black population.

479. In sum, the Commissioners find a *prima facie* case of the CAH of murder, severe deprivation of liberty, torture, persecution, and inhumane treatment, as set forth above.

Effective Remedies for Crimes against Humanity

480. All International Human Rights treaties provide that victims of human rights violations by state actors and actions are entitled to an effective remedy. Without effective remedies, rights on paper provide no protection to victims of such violations.[379]

481. The HR Committee stated that impunity may be "an important contributing element in the recurrence of ... violations," and that the article 2(3) State duty to provide an effective remedy may in appropriate cases require guarantees of non-repetition and changes in relevant laws and practices.[380]

482. Although the U.S. participated in negotiations leading up to the creation of the Rome Statute, the U.S. voted against it in 1998 (joining China, Iraq, Israel, Libya, Qatar and Yemen); signed it in 2000; and, formally withdrew its signature in May 2002.

483. The Commissioners recommend the U.S. accede to the jurisdiction of the ICC under Article 12. The Commissioners further recommend that the U.S. president sign the Rome Statute and transmit it to the U.S. Senate for consent to ratification.

378 CERD/C/GC/36 at ¶ 30.

379 Based on the UDHR, the ICCPR, ICERD and UNCAT all require effective remedies for violations of the rights guaranteed in those treaties.

380 H.R. Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 18, UN Doc. CCPR/C/74/CRP.4/Rev.6, (April 24, 2004), available at: http://www.refworld.org/docid/478b26ae2.html.

484. Absent such action, or the U.S. failure to prosecute the above crimes as CAH in U.S. courts, such crimes may be prosecuted under the concept of Universal jurisdiction.

Prosecuting Crimes against Humanity under Universal Jurisdiction

485. *Universal jurisdiction* is a well-established doctrine that allows a State to prosecute foreign nationals for CAH even if the crimes did not take place in the territory of the prosecuting State and were not alleged to have been committed by or against a national of the state.. Some crimes, including war crimes, Crimes against Humanity, and genocide, are deemed so atrocious they should not go unpunished. "The perpetrators are considered *hostes humani generis* – 'enemies of all mankind," Rick Gladstone wrote in *The New York Times.* The *Geneva Conventions* and CAT obligate (and customary international law allows) States to bring foreign nationals to justice for Crimes against Humanity, which are considered grave breaches of the Geneva Conventions. Article 146 of the 1949 Geneva Convention IV provides:

> Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed [grave breaches of the 1949 Geneva Conventions], and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

486. Universal jurisdiction was used by Israel in the early 1960's to try, convict, and execute Adolph Eichmann for his crimes during the Holocaust even they had no direct connection to Israel. The U.S. prosecuted, tried, and sentenced Chuckie Taylor of Liberia to U.S. federal prison for torture committed in Liberia, which was unconnected to the U.S.

487. If the systemic racist police violence committed in the U.S. against people of African descent is found to qualify as Crimes against Humanity, other States, in the absence of the US taking the actions required by international human rights law, may seek to take lawful actions to prevent and remedy violations including, where possible, seeking to prosecute their perpetrators, accomplices, and supervisors. Indeed, the global outrage following the public execution of George Floyd, and continuing killings of African-Americans in the U.S., may lead other States to prosecute under universal jurisdiction.

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VIII. Recommendations of the Commission of Inquiry

Recommendations Addressed to the Human Rights Council and the Office of the High Commissioner:

488. The International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States draws attention of the UN High Commissioner for Human Rights to the findings and recommendations in its report and urges the High Commissioner to support the following in her report mandated by the Human Rights Council in its Resolution 43/1:

    a. Constitution by the UNHRC of an independent Commission of Inquiry mandated to conduct full investigation into incidents of police violence against people of African descent in the United States and to determine, in particular, whether the level of violence constitutes gross violation of human rights and whether crimes under international criminal law have been and continue to be committed;

    b. In order to establish a continuous process to monitor systemic racist police violence in the United States, the appointment by the UNHRC of an Independent Expert on Systemic Racist Police Violence in the United States;

    c. Call for the demilitarization of law enforcement throughout the United States; and

    d. Call for end to impunity and for accountability of police officials resorting to racist violence and unjustified force before independent civilian review boards and in criminal and civil proceedings of the justice system in the United States.

Recommendations Addressed to the Office of the Prosecutor of the International Criminal Court:

489. The Prosecutor of the International Criminal Court should, upon receipt of the report of the Commission of Inquiry, initiate an investigation into Crimes against Humanity (Article 7), pursuant to her/his powers under Rome Statute, Article 15.[381]

Recommendations Addressed to States Parties to the Rome Statute of the International Criminal Court:

490. The States Parties to the Rome Statute should initiate investigations of and, where appropriate, prosecutions of U.S. officials for Crimes against Humanity under *universal jurisdiction*, as described in Section 7.

Recommendations Addressed to the Executive Branch of the United States Government:

381 Rome Statute Article 7 crimes would include, without limitation: (a) Murder; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (h) Persecution; and (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health, when committed in the United States by law enforcement officers acting under color of law.

A. Institutional Measures

491. Support the BREATHE Act, specifically those provisions aimed at divesting federal resources from incarceration and policing, and ending the criminal legal system harms that have disproportionately criminalized Black and Brown communities, LGBTQIA people, Indigenous peoples, mentally ill individuals, and disabled people, and instead invest in new non-punitive and non-carceral approaches to community safety utilizing funding incentives.

492. Respect and accept the jurisdiction of the International Criminal Court (ICC) in relation to the United States under Article 12 with respect to any and all Crimes against Humanity as defined in the Rome Statute.[382] Sign the Rome Statute of the ICC and transmit it to the U.S. Senate for consent to ratification.

493. Enforce the implementation of provisions of the Constitution of the United States of Amendments IV, V, VIII, IX, and XIV by all police agencies, prosecutors, and all authorities and personnel in Jail, Detention and Probation facilities, and all other institutions and bodies concerned with law enforcement, investigation, and prosecution of cases;

494. Enforce provisions of the Violent Crime Control and Law Enforcement Act 1994 not implemented by successive administrations, mandating that the Attorney General acquire data on the use of excessive force from 18,000 state and local law enforcement policing agencies across the nation and publish an annual summary of the data acquired. Police agencies not in compliance shall be de-funded by the Federal government and legal proceedings filed against those in non-compliance;

495. Review discriminatory laws, law enforcement strategy, and sentencing relating to the 'War on Drugs' disproportionately targeting and racially profiling people of African descent;

496. Reinforce the 'BREATHE Act' by enacting, "The People of African-Americans Descent and Indigenous American (Protection Against Racist Police Violence and Torture Act)," to provide comprehensive protection, and impose civil and criminal liability on individual police officials and in states, cities, and counties violating the Act;

497. Create an effective and robust system of combating institutionalized racism within all law enforcement agencies to be monitored by an independently elected body, in consultation with civil society organizations committed to principles of civil liberties and non-discrimination;

498. Create an independent National Federal Law Enforcement Oversight Commission, with power to monitor and regulate the performance of all 18,000 police departments in the U.S., implementing a "zero tolerance" policy for instances of police brutality and use of excessive and deadly force;

499. Issue an annual report to be produced by the U.S. Department of Justice to be presented to the House Judiciary Committee, and to the United Nations Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment on the implementation of the strategies adopted above;

500. Remove the qualified immunity that protects individual police officers from civil suits filed by members of the public, and to impose a clear duty on police officers to de-escalate all encounters before force is used;

382 *Id.*

B. Legal and Policy Measures

501. Develop policies and support for legislation in line with the George Floyd Justice in Policing Bill, in relation to hiring or retaining law enforcement officers that would:

a. Create a National Registry of Incidents of Use of Force, including all incidents of lethal and less than lethal means, and including racial statistics of victims and perpetrators;

b. Make the histories of law enforcement officers' use of force transparent to the public for use in hiring or other personnel decisions by law enforcement departments and in civil actions against law enforcement officers;

c. Adopt the civil standard of proof to vet and discipline law enforcement officers, who can be suspended from active duty or removed from the police force;

d. Disqualify any applicants for law enforcement positions who have histories of any involvement in white nationalist, white supremacist, militias, or other similar organizations, and require vetting of such applicants in order to screen out any with such backgrounds; and

e. Develop an early warning system to monitor those law enforcement officers who are developing a record of use of force, including but not limited to racially disparate records of use of force, to discipline or remove them from the police force.

C. Addressing Use of Force Practices

502. Develop policies and support for legislation to demilitarize policing throughout the United States and accomplish a complete overhaul of current policies and training practices including, but not limited to, the following:

a. Outlaw chokeholds or other tactics for subduing that cut off breathing or blood circulation;

b. Outlaw the use of Tasers/stun guns at the stage of de-escalation, in cases where the person is not armed, and in cases of mental health episodes. The use of Tasers is to be strictly regulated and notified in consultation with medical experts, and only as a weapon of last resort used in a manner which does not endanger the life, limb, or safety of the individual. The use of Tasers during peaceful demonstrations must be strictly prohibited.

c. Prohibit no-knock warrants;

d. Outlaw use of force except in conformity with UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, strictly in accordance with the mandated principles of legality, necessity, proportionality, and accountability, including for example:

i. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

ii. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

1. Exercise restraint in such use and act in proportion to the seriousness of

the offence and the legitimate objective to be achieved;

2. Minimize damage and injury, and respect and preserve human life;
3. Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
4. Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment; and

e. Outlaw use of force except in conformity with UN Guidance on Less Lethal Weapons in Law Enforcement in arrest, custodial and assembly based on:

i. Precaution
ii. Necessity
iii. Proportionality

f. Outlaw cavity searches.

Further Recommendations to the Executive Branch of the United States Government:

503. Develop policies and support legislation to hold law enforcement officers accountable for their actions. The following recommendations are aimed at addressing impunity and promoting accountability:

a. Independent investigations and prosecutions must be required, including independent medical examiners being involved in determining causes of death/injury;
b. Develop legislation to enable private prosecutions of officers to be brought by victims/ and families of victims;
c. Eliminate qualified immunity;
d. Create mandatory civilian review boards with subpoena power and power to impose discipline at State and Federal levels;
e. Institute mechanisms to protect and incentivize police officers to report abuse by other officers.
f. Require mandatory use of body cameras and order that videos and all other evidence relating to an incident be made public immediately after incidents involving the use of force and killings by law enforcement to ensure transparency, accountability and public oversight;
g. Failure to use body cameras and/or attempts to conceal identification badges of officers shall constitute rebuttable presumptions against the truthfulness of their evidence;
h. Decertify and disband any police union overtly or covertly interfering with investigations of police killings or use of force by the police department, prosecutor, or any other board or investigation appointed for this purpose;
i. Re-open investigations of cases which did not have independent investigations, prosecutors, or medical examiners available; and
j. Reinstate pattern and practice investigations by the Department of Justice to develop consent decrees where necessary with ability to reopen cases where evidence suggests failures to properly investigate or prosecute offending police officers.

504. Develop policies and support legislation consistent with the goals of the BREATHE Act to create civilian forces with expertise to address community needs which are not appropriate for police intervention such as:

    a. incidents involving people in mental health crises; and
    b. Incidents involving people who are homeless.

Recommendations to the U.S. Congress

The Commission of Inquiry recommends that the U.S. Congress:

505. Pass the BREATHE Act, including those provisions which end such programs as the Department of Defense 1033 program, and other programs aimed at divesting federal resources from incarceration and policing and ending the criminal legal system harms, and instead investing in new approaches to Community safety utilizing funding incentives;

506. Pass the *George Floyd Justice in Policing Act* passed by House of Representatives but stalled in the Senate;

507. Pass legislation in addition to the George Floyd Policing Act in relation to hiring or retaining law enforcement officers that would:

    a. Create a National Registry of Incidents of Use of Force, including all incidents of lethal and less than lethal means, and including racial statistics of victims and perpetrators;

    b. Make the histories of law enforcement officers' use of force transparent to the public for use in hiring or other personnel decisions by law enforcement departments and in civil actions against law enforcement officers;

    c. Disqualify any applicant for law enforcement positions who have histories of any involvement in white nationalist, white supremacist, militias, or other similar organizations, and require vetting of such applicants in order to screen out any with such backgrounds; and

    d. Develop an early warning system to monitor those law enforcement officers who are developing a record of use of force, including, but not limited to racially disparate records of use of force, to remove them from the police force.

508. Develop policies and support for legislation to demilitarize policing throughout the United States and to accomplish a complete overhaul of current policies and training practices, including but not limited to doing the following:

    a. Outlaw chokeholds or other tactics for subduing that cut off breathing or blood circulation;
    b. Outlaw excessive use of Tasers/stun guns;
    c. Prohibit no-knock warrants; and
    d. Outlaw use of force except in conformity with UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials: e.g.

        i. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

ii. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

1. Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
2. Minimize damage and injury, and respect and preserve human life;
3. Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
4. Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment; and

e. Outlaw use of force except in conformity with UN Guidance on Less Lethal Weapons in Law Enforcement in arrest, custodial and assembly based on:

i. Precaution
ii. Necessity
iii. Proportionality

509. Pass legislation to hold law enforcement officers accountable for their actions:

a. The Commissioners identified some of the main barriers to tackling impunity for killings by law enforcement as:
   i. the lack of independence of the initial investigations, which in the majority of cases are conducted by the same law enforcement department as that of which that the alleged perpetrator is a member;
   ii. the wide discretion of prosecutors to determine when and how to present charges;
   iii. the fact that some federal, state and county practices are not in line with international standards regarding the use of force as noted above;
   iv. The existence of qualified immunity to shield officers from liability for their actions; and
   v. police organizations, such as police unions, which pressure officers to withhold cooperation with investigations. Officers should know they will be punished by their peers if they show integrity by breaking what is known as the "blue wall of silence."

b. The following recommendations are aimed at legislation which would overcome impunity and promote accountability:
   i. Independent investigations and prosecutions must be required, including independent medical examiners being involved in determining causes of death/injury.
   ii. Develop legislation to enable private prosecutions of officers to be brought by victims/ and families of victims
   iii. Eliminate qualified immunity
   iv. Mandatory creation of civilian review boards with subpoena power and power to impose discipline;
   v. Mechanisms to protect and incentivize law enforcement officers to report abuse by other officers.
   vi. Require use of body cameras and order that videos to be made public immediately after incidents of law enforcement killings to ensure public oversight;
   vii. Failure to use body cameras and/or attempts to conceal identification badges of officers shall constitute rebuttable presumptions against the truthfulness of their evidence;
   viii. Decertification of police unions which punish officers for cooperating with investigations of police killings;

ix. Re-open investigations of cases which did not have independent investigations, prosecutors, or medical examiners available;
x. Reinstate pattern and practice investigations by the Department of Justice to develop consent decrees, where necessary, with ability to reopen cases where evidence suggests failures to properly investigate or prosecute offending police officers;
xi. Pass legislation to implement the recommendations of the President's Task Force on 21st Century policing.

510. Pass legislation consistent with the goals of the BREATHE Act to create civilian forces with expertise to address community needs which are not appropriate for police intervention such as:

a. People in mental health crises;
b. People who are homeless;

Recommendations to State and Local Governments of the United States

511. To the extent the Federal government does not have jurisdiction, or there are constitutional constraints to regulating the 18,000 local law enforcement forces in the United States,[383] each state or local government should implement the Commissioners' recommendations regarding vetting, monitoring, training, collecting data, and holding law enforcement accountable for killing civilians, specifically those of African descent and Indigenous peoples. In particular, the Commissioners recommend that States, municipalities, and local government should further operate to bring all 18,000 law enforcement forces within the purview of constitutional policing and compliance, should develop civilian review boards and oversight, and should develop response teams comprised of qualified, unarmed civilian staff separate from law enforcement departments to respond to emergencies involving mental health, homelessness, and other non-criminal emergencies.

Recommendations for Reparations

512. The U.S. government's Executive and Legislative branches should acknowledge that the transatlantic trade in Africans, enslavement, colonization and colonialism, and neocolonialism constituted a Crime against Humanity and are among the major sources and manifestations of racism, racial discrimination, Afrophobia, xenophobia and related intolerance. Past injustices and crimes against people of African descent must be addressed with reparatory justice.

513. The U.S. Congress should pass H.R. 40 — the Commission to Study Reparation Proposals for African-Americans Act to establish a commission to examine enslavement and racial discrimination in the colonies and the United States from 1619 to the present and to recommend appropriate remedies. The Commissioners urge the U.S. to consider seriously applying analogous elements contained in the Caribbean Community's Ten-Point Action Plan on Reparations, which includes a formal apology, health initiatives, educational opportunities, an African knowledge program, psychological rehabilitation, technology transfer and financial support, and debt cancellation.

514. Enact *"The People of African-Americans Descent and Indigenous Americans (Atonement, Reparation and Justice) Act*, with the objective of correcting structural racism in U.S. society which cannot be overcome without this

383 U.S. Department of Justice, Bureau of Justice Statistics, Law enforcement in the United States is made up of about 18,000 federal, state, county, and local agencies. Each agency has varying legal and geographic jurisdictions, ranging from single-officer police departments to those with more than 30,000 officers (2016), https://www.bjs.gov/content/pub/pdf/nsleed.pdf.

legislation; to facilitate mandatory representation in legislatures and public employment of these communities in proportion to the percentage of their population; to ensure their access to housing, nutrition, education, health care, social services, and other services; to atone for genocide and the seizure of their resources, and the Crimes against Humanity committed by those who operated and benefitted from the slave trade and subsequent human enslavement which contributed to enormous capital accumulation and to subhuman status and acute disparities, which continues to adversely impact millions in the U.S., fragmenting society along racial lines.

515. Appoint a Commission of racially diverse historians and eminent persons, with representation of academics of African descent, Indigenous peoples, and Immigrants from the Caribbean, Central, and South America among others, to review and recommend an objective presentation of the history of the United States, of events and peoples' movements, of the injustices and holocaust against people of African descent over several centuries; of the genocide of Indigenous peoples, and the contribution of all races to the building of a society and nation.

516. Establish museums and libraries that include accurate films and videos recording the early history of the U.S., the narrative of the slave trade and enslavement, the holocaust of people of African descent in the U.S. for four centuries, the history of the struggle for emancipation, the Underground Railroad, the Civil Rights struggle led by Dr. Martin Luther King Jr. and others, and the contribution of the people of African descent, among other migrants of color, to the U.S.; including museums and libraries recording the history, life and culture of Indigenous peoples and the genocide and injustices perpetrated against them. It is by knowledge and understanding that racial profiling and violence will cease.

Recommendations for the United States to Ratify and Implement International Human Rights Norms

517. The U.S. government should immediately ratify the core international human rights treaties and regional human rights treaties to which the United States is still not a party, with a view to removing any gaps in the protection and full enjoyment of rights therein. Furthermore, the U.S. should remove reservations related to the treaties that it has signed or ratified, including those stating that these treaties are non-self-executing.

518. Specifically, Congress should remove the non-self-executing language in the ratification of the International Covenant on Civil and Political Rights and/or pass full implementing legislation of this treaty, including the provisions of Article 20 thereof, which prohibits propaganda for war and speech that promotes hatred of racial or religious groups or incites discrimination or violence against people of racial or religious groups.

519. The U.S. should fully implement, monitor, and enforce its obligations emanating from the International Convention on the Elimination of all Forms of Racial Discrimination, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the U.S. has ratified.

520. The U.S. should also ratify all other international human rights treaties, as well as regional treaties. To this end, an inter-agency body should be created, composed of high-level officials from the executive, legislature, and judicial branches at both the federal and the state levels, to take steps to effectuate the decisions, resolutions, views, observations, and recommendations of United Nations human rights bodies such as the Human Rights Council, the treaty bodies and special procedures, and regional human rights bodies.

Recommendations to the Inter-American Commission on Human Rights

521. The Commission of Inquiry takes note of the important work already undertaken by the IACHR, notably in its November 26, 2018 report *Police Violence Against Afro-Descendants in the United States*[384] and in its August 2020 call on the United States "to implement structural reforms in the institutional systems of security and justice to counter historical racial discrimination and institutional racism."[385]

522. The Commission of Inquiry respectfully requests the IACHR to incorporate the Commission's findings and recommendations into the IACHR's ongoing monitoring and fact-finding and to continue to press for and articulate the urgent need for such structural reforms.

523. The Commission of Inquiry respectfully urges the IACHR to continue to actively support the cry for justice of the people of African descent in the United Sates, who have a similar early history of enslavement and discrimination as the people of African descent of the Caribbean, Central and South America.

Recommendations to the Member States of the African Union

524. The Commission of Inquiry takes note of the powerful concerns expressed by the Chairperson of the African Union, the Hon. Moussa Faki Mahamat,[386] the Hon. Kwesi Quartey, Deputy Chairperson of the African Union Commission, the African Group of Members of the UN Human Rights Council, and participants in the HRC's urgent debate following the murder of George Floyd.[387] Several speakers in that debate endorsed the idea of creating an independent commission of inquiry, and urged the HRC to take action and not become a passive observer. Several people urged the United States to take action to resolve the structural issues and economic inequality that led to the recent events.[388]

525. We heard the call for an independent commission of inquiry and we have acted upon it. We respectfully urge the African Union, the UN Working Group of Experts on People of African Descent, the UN Special Rapporteur on racism, racial discrimination, xenophobia and related forms of intolerance, and all relevant Special Procedures mandate holders to pay the closest attention to the voices of people of African descent in the United States, including victims, survivors, jurists, and academics whose evidence of gross and well-attested patterns of human rights violations we have documented and put before you.

526. We urge you to continue to raise your voices, and if necessary your votes, in the Human Rights Council to defeat any attempt to sidetrack world attention or to minimize or excuse concern for the people of African descent in the United States.

384 *Police Violence Against Afro-*descendants *in the United States*, *supra* n. 22.

385 Press Release, Int-Am. Comm'n H.R., IACHR calls on the United States to implement structural reforms in the institutional systems of security and justice to counter historical racial discrimination and institutional racism, Press Release No. 196/20 (Aug. 8, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/196.asp.

386 *See* Anita Powell, *Africa Rises in Rage over George Floyd Death in U.S.*, Voice of America News, (June 2, 2020), https://www.voanews.com/africa/africa-rises-rage-over-george-floyd-death-us; *See also* Robbie Gramer, African Leaders, joined by U.S. Embassies, condemn Police Killings in Minneapolis, Foreign Policy (May 29, 2020), https://foreignpolicy.com/2020/05/29/africa-countries-condemn-george-floyd-minneapolis-killing-diplomatic-fallout-racial-injustice-police-violence/.

387 *See* Press Release, U.N. H.R. Office of the High Commissioner, *Human Rights Council holds an urgent debate on current racially inspired human rights violations, systemic racism, police brutality and violence against peaceful protests* (June 17, 2020), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25971&LangID=E.

388 *Id.*

APPENDIX

APPENDIX 1

SUMMARY OF CASES PRESENTED AT THE HEARINGS

JIMMY ATCHISON
Killed January 22, 2019
Atlanta, Georgia

Jimmy Atchison was visiting his child's mother at her apartment complex in Atlanta, Georgia. While he was there, the Fugitive Task Force was commissioned to arrest him for an alleged armed robbery that never occurred. When the task force arrived, Mr. Atchison jumped out of the third story window, ran around the back of the apartment, and went into an adjoining apartment and hid in a closet. Officers found Mr. Atchison in the closet, unarmed. Mr. Atchison was given conflicting orders from officers; one told him to get out of the closet, and the other told him to stay still. Confused, Mr. Atchison remained on his knees, with his hands up. Officer Kim then shot Atchison under his eye, killing him, and leaving his two young children fatherless.

So far, no investigation or charges have been brought against Kim, or anyone else involved. Fulton County's new district attorney, Paul Howard, said his office were prepared to present the case to a grand jury for indictment, but that has been delayed due to the pandemic. Mr. Atchison's family filed a wrongful death suit against the City of Atlanta and five officers, including Kim.

JORDAN BAKER
Killed January 16, 2014
Houston, TX

Jordan Baker, the father of a young son, was riding his bike several blocks from his home in Houston, Texas. He was unarmed and dressed in a hooded sweatshirt, pajama pants, and flip flops. After he entered the parking lot of the local strip mall, his path was blocked as a private car operated by an officer lurched toward him, and Officer Juventino Castro stepped out of the car and initiated contact. Castro was working for a private security company through an extra employment program of the Houston Police Department (HPD) and was wearing his department-issued uniform and HPD badge or insignia. He was also armed with his service weapon, and acting in full capacity as an HPD officer. There was no basis to stop Baker. After a verbal exchange during which Mr. Baker backed away from Castro, the officer drew his weapon. Mr. Baker then fled around the back of the strip mall. Castro gave chase and shot Mr. Baker in the chest from a distance of 10 feet. Castro then handcuffed and hogtied Mr. Baker. While Castro called the paramedics, he made no attempt to administer medical attention and Mr. Baker, who had been shot through his lungs, succumbed to his injuries.

After the shooting, Castro identified Mr. Baker's race and the fact that he was wearing a hoodie as the reason for his "suspicion" justifying the initial stop, alleging that robberies had been committed by other young men wearing hoodies. Castro also told authorities and investigators that he shot Mr. Baker because he thought the shirtless and unarmed Mr. Baker "put his hands close to his waist," and charged at him. The forensic evidence was inconsistent with Castro's account. Further, Mr. Baker's attorneys presented evidence that the "waistband" theory of perceived threat was used in 50 instances of 227 killings of civilians by the police over a three-year period, but such justification was used only against Black and Hispanic civilians, never against whites. When this justification was used, the civilian was unarmed 71% of the time. Moreover, Mr. Baker's attorneys presented statistical evidence showing that more than half of all persons killed by the HPD in a three-year period were Black, and thus were killed at a disproportionate rate, as compared with the percentage of the population of Houston

that is Black.

Castro faced no discipline for killing Mr. Baker. He was placed on a short administrative leave and then returned to extra employment and regular duty. No criminal charges were brought against him. In the civil suit filed by the family, the equal protection claim, based on Baker's race, was dismissed but the excessive force claim survived summary judgment, at which point the HPD settled the case.

Mr. Baker's mother, Janet Baker, said of her son, "Jordan, obviously was running for his life. And to chase him into a trash strewn alleyway, and then you murder him. And you lay him down in trash and proceed to hog tie him and watch him bleed out. I'm so sorry. So it's seven years, but it feels like it feels like seven minutes ago I just got the information. Constantly reliving. And just wanting to understand, how could this have happened? That's the most, that's the biggest question that I have. Trying to explain to his son and trying to make the right decision and trying to be a voice for Jordan. Again, my biggest thing is to make -- not allow them to dehumanize him even further. He was chased down like prey. And then the spin happens. I was in fear for my life, reaching for a waistband[....] 'I was in fear for my life' was enough for him to get away with murder."

SEAN BELL
Killed November 26, 2006
New York, New York

Sean Bell died the day before his wedding as a result of a police encounter outside a nightclub where he had been celebrating his bachelor party with his friends, Joe Guzman and Trent Benefield. As the three Black men were approaching their vehicle, officers began firing. Based on witness accounts, the undercover detectives did not identify themselves to Mr. Bell as they approached the car with their weapons drawn, nor did they warn him before opening fire. Five detectives (Gescard Isnora, Michael Oliver, Marc Cooper, Michael Carey, and Paul Headley) fired at least a combined 50 shots toward Mr. Bell's vehicle. One bullet claimed the life of Mr. Bell. He was transported to the hospital, where he laid in handcuffs. His friends survived but suffered fatal injuries; Joe Guzman was shot 17 times, while Trent Benefield was shot three times. The rest of the bullets damaged nearby cars and buildings and put other innocent citizens in danger. One of the police's stray bullets shattered a window at a train station in the neighborhood, injuring two police officers. Commissioner Mireille Fanon-Mendes France and attorney, Sanford Rubenstein, agreed that the killing of Mr. Bell should be scrutinized as a form of "modern day lynching."

Mr. Rubenstein and Nicole Paultre Bell, Mr. Bell's widow, attribute such reckless and deadly force to lack of accountability, transparency, and justice. They urge that police be held criminally liable for killing Black men, noting that monetary compensation in police-involved shootings does not bring justice to the families, who are paid to compensate for the lack of criminal accountability. The detectives did not face federal criminal charges. Three of the five detectives involved in the shooting went to trial in New York's state Supreme Court on charges filed by a Queens grand jury: first and second-degree manslaughter, first and second-degree assault, and second-degree reckless endangerment. A judge sitting without a jury acquitted the officers of all charges. Six years after the shooting, four detectives were expelled from the New York City Police Department (NYPD) as a result. The City settled the case for $7.15 million. The street where Mr. Bell was victimized was named Sean Bell Way. Mr. Bell's family has not received a private or public apology for the public execution of their loved one by the NYPD. Such misapplication of justice sets precedents for other officers to commit heinous crimes against people of color. As Ms. Bell said, the only form of justice that can aid in the healing process is to indict and imprison the officers who murdered her husband.

Commissioner Mireille Fanon-Mendes France stressed that remedies given to the family should be presented in the form of reparative justice. Cases involving police brutality clearly demonstrate that such killings are motivated by racial profiling, obstruction of justice, and the U.S.'s racist history. Such violence is part of a system

that diminishes the value of Black people in the U.S., reducing them to statistics. Until the origins of racism are confronted in the U.S., Black people will continue to die at the hands of police officers. The fight for justice in the U.S. should focus on eliminating factors enabling structural racism while working to hold officers accountable. As Commissioner Fanon-Mendes France emphasized, "We have to do both. Not one and one, but both linked."

JAYVIS BENJAMIN
Killed January 18, 2013
DeKalb County, Georgia

Jayvis Benjamin was shot by Sergeant Lynn Thomas of the Georgia Avondale Estates Police Department, who claimed that Mr. Benjamin was driving above the speed limit. Thomas attempted to pursue the car but lost sight of it. As he traveled throughout the city, Thomas approached Mr. Benjamin's vehicle that had crashed into a nearby telephone pole. As Mr. Benjamin attempted to exit the vehicle through the driver's window, Thomas gave him inconsistent instructions. Upon his arrival at the scene, Thomas commanded that Mr. Benjamin remain in the car. However, as he approached Mr. Benjamin's vehicle, Thomas drew his firearm, feeling comfortable enough to aggressively command Mr. Benjamin, who was unarmed, to get out of the vehicle. When Mr. Benjamin got out of the vehicle, Thomas shot and killed him. Thomas was not criminally charged for the unlawful killing of Jayvis Benjamin. The judge dismissed the civil lawsuit against the city, indicating that Thomas acted in self-defense. The United States Court of Appeals for the 11th Circuit and the U.S. Supreme Court declined to consider the case.

Mr. Benjamin's mother, Montye Benjamin, did not accept the dismissal of her son's case. She, along with her son, was criminalized by the police department. As Ms. Benjamin testified, she was labeled an "angry Black woman" because she refused to accept that her son was a criminal who deserved to be shot right after being involved in a car accident. The purpose of the "angry Black woman" narrative, as Commissioner Rashida Manjoo noted, was designed to insult and discourage Mr. Benjamin's mother from confronting the U.S.'s racist system. Her son was portrayed as a thief driving a stolen car, although the car belonged to his grandfather. The district attorney's office attempted to manipulate the video recording of Mr. Benjamin's murder to support Thomas's narrative because the unaltered video supported the fact that Thomas shot an unarmed, defenseless Black man. Such tactics were meant to criminalize the victim, Mr. Benjamin, while victimizing the criminal, Officer Thomas.

The U.S. criminal legal system failed the Benjamin family. As Attorney Patrick Megaro explained, such failure came as a result of qualified immunity, which protects officers from civil lawsuits for actions committed on the job and in good faith. However, such protection is primarily invoked when police officers are victimizing Black people. Qualified immunity denies the victim and the victim's family the ability to live a dignified life. It has become a tool of covert racism in U.S. used by police officers to justify their inhumane treatment of individuals who do not look like them. Instead of being criminally indicted for the wrongful death of an innocent Black man, Thomas received a promotion and became chief of his department. The killing of Black men has become a way for law enforcement officers to advance their political careers. As Mr. Megaro noted, there has not been any profound effort to advocate against qualified immunity. The public and politicians have been silent on that issue, refusing to abolish a judge-made law that protects criminals in police uniforms. Mr. Megaro noted, "Qualified immunity is no different from any of these other legal principles that always start out with the best intentions, but unfortunately, get molded, reshaped, abused, until they no longer have any meaning."

Mr. Benjamin's mother is currently working with Rep. Henry "Hank" Johnson on a bill to end the militarization of police institutions.

JACOB BLAKE
Paralyzed, August 23, 2020
Kenosha Wisconsin

Jacob Blake was in the car with his children on the date of his son's eighth birthday party, when he was stopped by officers from the Kenosha Police Department. The mother of his children, Laquisha Booker, had called 911 to report a non-violent domestic dispute. Mr. Blake was not armed with a gun of any type and had a small, two-inch knife.

After pulling over Mr. Blake, the officers aggressively approached him. When Mr. Blake opened the car door and exited the car, the officers tasered him. At no time did the officers give him verbal commands. As Mr. Blake was walking around the car, Officer Rusten Sheskey grabbed him by his t-shirt and shot him seven times in the chest at point blank range. The shooting of Mr. Blake was captured on cell phone video, in broad daylight, with onlookers all around.

Mr. Blake sustained injuries to his arm, kidney, liver, and spinal cord, and had nearly his entire colon and small intestines removed. He is paralyzed from the waist down. Not only was Mr. Blake traumatized, his children were also traumatized by witnessing the police shoot their father while they were sitting in the back of the vehicle, and by being in the midst of a shooting themselves.

After the shooting of Mr. Blake, protests erupted in Kenosha and around the country. During the "Kenosha Unrest" protests, Kyle Rittenhouse, a white teenager, opened fire on the protesters, killing two of them and wounding another. He then walked down the street holding his semi-automatic rifle as officers looked on, apparently not feeling threatened by him.

On January 5, 2021, Kenosha County District Attorney Michael Graveley announced that Sheskey would not be criminally charged. The Wisconsin Department of Justice Division of Criminal Investigation is investigating, and is being assisted by the Wisconsin State Patrol and Kenosha County Sheriff's Office. The U.S. Department of Justice is also conducting an investigation.

Regarding his fear for his children, Mr. Blake stated in an interview with *Good Morning America* that his attorneys provided to the Commissioners, "I didn't want him to shoot me in my face or in my head and he just kept shooting. What's going through your mind? My babies are right here. My babies. So after he stopped shooting me, I said, 'Daddy loves you no matter what.' I thought it was gonna be the last, I thought it was gonna be the last thing I say to them. Thank God it wasn't."

TASHII FARMER BROWN
Killed May 14, 2017
Las Vegas, Nevada

Tashii Farmer entered a Las Vegas casino. Two officers in battle dress uniforms were drinking iced coffee; it was such a hot day that the female officer was sweating. The officers encountered the unarmed Mr. Farmer near the food court and talked for about 45 seconds. There was no reasonable basis to detain Mr. Farmer or probable cause to arrest him as he had done nothing wrong and did not appear suspicious. The female officer did not think there was anything unusual about the way Mr. Farmer was talking; he did not appear to be paranoid, mentally ill, having a mental health crisis, or a danger to himself or others.

Mr. Farmer told the officers he felt he was being followed. The male officer, who said he became suspicious be-

cause Mr. Farmer was sweating, began chasing him down a hallway and he fell in some water. The officer reached out to grab Mr. Farmer, who stepped back and jogged away from him. The officer chased Mr. Farmer, caught up to him, and without warning, tasered him seven times. The officer screamed confusing commands and conflicting instructions at Mr. Farmer, such as "Don't move; get on your stomach." The detectives who later investigated the case said it was impossible for Mr. Farmer to follow the officer's commands.

As a result of the tasering, Mr. Farmer went into neuromuscular incapacitation multiple times. The officer punched him in the head 10 to 12 times while screaming at Mr. Farmer, who was face down on the ground. Then the officer put Mr. Farmer in an unauthorized martial arts style chokehold, which blocks the blood flow from the carotid artery to the brain. The officer claimed he used an authorized lateral vascular neck restraint (LVNR), which can be deadly if continued after the subject becomes unconscious. After four to seven seconds, Mr. Farmer became unconscious but the officer continued the chokehold for another one minute and 10 to 12 seconds. The officer choked Mr. Farmer to death in the presence of three other officers who failed to physically intervene to stop it. The county coroner listed the cause of death as homicide by asphyxiation.

The officer later said he believed Mr. Farmer was trying to carjack a nearby truck but neither the driver nor other officers who viewed the video thought Mr. Farmer was trying to open the tailgate. The police department fired the officer and recommended he be charged with a crime. The District Attorney (DA) charged the officer with involuntary manslaughter but dismissed the charge after a grand jury refused to indict him. Inexperienced DA experts told the grand jury that they couldn't determine the cause of death since Mr. Farmer had an enlarged heart and some methamphetamine in his system. None of the three non-intervening officers was charged with a crime.

Mr. Farmer's children and his estate filed a civil lawsuit, which settled for $2.2 million. Mr. Farmer's mother filed a separate civil suit, but the non-intervening officers were granted qualified immunity. The case against the police department is continuing.

MICHAEL BROWN, JR.
Killed August 9, 2014
Ferguson, Missouri

Eighteen-year-old Michael Brown, Jr., was crossing the street with a Black friend. As Mr. Brown and his friend reached the center of the street, Ferguson Police Department Officer Darren Wilson approached them in a marked patrol vehicle and ordered them "to get the F off the street." It was broad daylight and Mr. Brown was merely walking down the street. Wilson had no lawful basis to stop Mr. Brown. Nonetheless, Wilson opened the car door, striking Mr. Brown, reached through the car window, grabbed Mr. Brown, drew his weapon, and fired two shots that struck Mr. Brown in the right hand. With a gunshot wound to his right hand, Mr. Brown turned and fled down the street. Hearing additional shots fired as he was fleeing, Mr. Brown turned around, put his hands up and stated, "Don't shoot. I don't have a gun, I'm unarmed."

Wilson then gunned down Mr. Brown while his hands were up, shooting him in the head and chest. In total, 12 gunshots were fired. Mr. Brown's body was left on the ground for four hours before assembled onlookers. The incident was captured on cellphone recordings showing that Mr. Brown posed no threat whatsoever. Nonetheless, Wilson later stated that Mr. Brown reached for his waistband, and that Wilson believed that he had just stolen cigarillos from a store. These defenses were not raised when Wilson met with his supervisor immediately after the incident. In statements regarding the killing, Wilson betrayed his racial motivation, referring to Mr. Brown in subhuman terms as a "demon" and admitting that he and members of the Kenosha Police Department used the n-word to refer to Black people.

After the killing, Wilson destroyed evidence, washing blood off of his hands and bagging the gun he used to kill

Mr. Brown. He did this in the presence of his former supervising and training officer, who was also his fiancé. In addition to the destruction of evidence, in violation of applicable law, Officer Wilson was permitted to present an alibi before the grand jury. The grand jury declined to indict Wilson.

This killing of a young, unarmed Black man with his hands up galvanized the Black Lives Matter movement and calls for reform, yet this case exemplifies the impunity of police officers who kill unarmed Black people. In 2015, the U.S. Department of Justice (DOJ) decided that Wilson would not face federal charges. In 2020, the St. Louis County prosecutor announced that his office had conducted a five-month re-investigation into the shooting and decided not to charge Wilson with manslaughter or murder.

Nonetheless, the DOJ's investigation found that the city of Ferguson had a pattern and practice of violating Black citizens' constitutional rights by conducting unreasonable stops and detentions in violation of the Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment. Thereafter, the city of Ferguson entered a consent decree with the federal government to reform its unconstitutional policing patterns. Since Mr. Brown's death, in 2015 and 2016, 34 states and the District of Columbia adopted 79 police reforms laws ranging from measures to address racial profiling and the use of force to de-escalation training and implementation of body cameras. Nonetheless, since 2017, police in the U.S. have shot and killed at least 893 Black people with at least 226 of those shootings occurring in 2020.

Mr. Brown's mother, Ms. Lezley McSpadden, testified: "I'm also here to stand in the gap for mothers who have gone through the unimaginable pain of burying a child. Dr. King's great march on Washington was August 28 1963, to advocate for civil and economic rights of African-Americans. Fifty-eight years later, we are still fighting as we find ourselves in the midst of a global pandemic, and terrible racial unrest in America. My message today echoes Miss Fannie Lou Hamer. I'm sick and tired of being sick and tired. We must stop talking about police brutality and systemic injustice and move swiftly with a new purpose and a real solid plan of action. We must change the laws. We need the Mike Brown law, a universal federal law that includes everything from body cameras to reform to sensitivity training and community engagement. Because there's no more time to waste and this must come from the top."

AARON CAMPBELL
Killed January 29, 2010
Portland, Oregon

Aaron Campbell was very close to his younger brother, who was ill. After his brother died, Mr. Campbell's girlfriend told his aunt that Mr. Campbell was suicidal and had attempted suicide with a gun. The aunt called 911 to request a welfare check (mental health call) for her niece. Portland police officers responded to conduct a welfare check of the niece and Mr. Campbell. Officers knew that Mr. Campbell was suicidal and might be armed with a gun.

Outside the apartment, Officer Lewton overheard Mr. Campbell's girlfriend tell other officers that Mr. Campbell had calmed down and was inside the apartment, that if police entered it would aggravate the situation, that Mr. Campbell had a gun, and that her three small children were in the apartment. Officer Frashour learned that Mr. Campbell sent his girlfriend a text saying something along the lines of, "Don't make me get my gun, I ain't playing." Other officers were communicating with Mr. Campbell. The children left the apartment. The sergeant radioed that the officers were getting positive feedback from Mr. Campbell.

Mr. Campbell walked out of the apartment with both hands on the back of head; he was being compliant. He followed Lewton's orders to stop and walk backwards slowly and stop, which he did. Lewton told Mr. Campbell to do exactly what he said or he would be shot. Mr. Campbell turned with his hands still on the back of his head and said something like, "Go ahead and shoot me." Lewton told him to put his hands straight up in the air but Mr.

Campbell didn't move. He stood there with his back to the officers who were 10 to 15 feet away. Lewton shot Mr. Campbell with a less than lethal beanbag shotgun and hit him in the buttocks, which caused him to stumble and run. Lewton shot Mr. Campbell four or five more times as the latter ran for safety. Before Mr. Campbell reached a parked car, Frashour shot him in his lower back with a lethal AR-15 semi-automatic assault rifle. Neither officer saw a gun or weapon on Mr. Campbell and he was unarmed.

Police waited 30 minutes before allowing Mr. Campbell to receive medical attention. By then he was dead.

After talking to his union representative and attorney, Frashour changed his story and claimed he saw Mr. Campbell's hand go into his pants below his waistband. The police internal investigations bureau found that Lewton and Frashour violated policies and training. Lewton was suspended without pay for 480 hours. Frashour was fired. An arbitrator upheld Lewton's suspension but reversed Frashour's firing and ordered him reinstated with backpay and retroactive benefits.

Marva Davis, Mr. Campbell's mother, said, "My grandchildren are growing up without a father and we miss Aaron very much. Every time someone is killed by the police, it takes us back to that date when Aaron was shot in the back. Many Black families do not even trust the police department. I have talked to Black leaders, community leaders. And their message to the Black community is, 'Do not call the police.'" She filed a civil suit against the City of Portland, which settled for $1.2 million.

DAMIAN DANIELS
Killed August 25, 2020
San Antonio, Texas

A few days before August 25, 2020, Damian Daniels, a 30-year-old former U.S. military sergeant, was in his home when he began to experience a mental health crisis. Fearful, paranoid, and seeing things, he reached out to his mother, Annette Daniels, and his brother, Brendan Daniels. He was not threatening or suicidal. When his family contacted the VA hospital and the American Red Cross, the latter dispatched the Bexar County Sheriff's Department to Mr. Daniels' home. When the police arrived, Mr. Daniels was not home. The police department informed the family that they could not take Mr. Daniels against his will but they would involve a probate court to procure a court order to do so. Brendan Daniels informed the police department that the family was not seeking to forcefully remove his brother from his home, "because we don't want no altercation between him and the [police]." The next day, Mr. Daniels called the police requesting help as he was seeing apparitions. He refused medical assistance and the officer departed. The following day, Mr. Daniels again requested help and his family called the police using the same reference number they had used previously. Brendan Daniels told the officer that his brother was suffering from paranoia and that he may or may not be armed, hoping that this would prepare them to approach the situation with an eye to de-escalation. On August 25th, during this third police visit, Officer Jonathan Rodriguez was sent to Mr. Daniels's home. Mr. Daniels did not come to the door and his family members informed him that the police were coming to assist him. After the police spoke with Mr. Daniels for 30 minutes, the officers decided to take Mr. Daniels in. During this process, Rodriguez killed Mr. Daniels. As Brendan Daniels stated, "They were not sent there to detain him. My brother was not under arrest. He had not committed a crime. He simply needed mental health. He needed mental health."

Rodriguez had a previous domestic dispute, and in 2013, he was criminally charged by his department. In 2010, he shot another unarmed civilian who was suffering a mental health crisis. Despite those two prior incidents, Rodriguez remained on the force and was dispatched to this specific mental health call.

In large part, Mr. Daniels's death illustrates the perverse incentives whereby the more police departments respond to emergency calls, the more funding they receive, causing them to seek to respond to mental health calls in place of more qualified and more suitable agencies such as the American Red Cross. Indeed, across the country,

there is no universal protocol for dealing with mental health calls. Lee Merritt, attorney for the Daniels's family, pointed out that a non-police response to mental health crisis calls should be universally available as an accommodation under the Americans With Disabilities Act.

Immediately after the killing, Bexar County District Attorney Joe Gonzales met with the Daniels family and referred to this incident as a police murder. Although Rodriguez was placed on temporary administrative leave, no disciplinary action was taken against him. The family will face an uphill battling in overcoming qualified immunity in bringing a civil suit as they continue to search for justice and accountability.

PATRICK DORISMOND
Killed March 15, 2000
New York, New York

Patrick Dorismond was a law-abiding, 29-year-old man at the time he was killed by New York Police Department (NYPD) officers after he refused the demands of two undercover officers who assumed he was a drug dealer and harassed him to sell them drugs because of his race.

Mr. Dorismond was working as a security guard when his shift ended at approximately 11 o'clock. After going to a lounge with some work friends, he was waiting to catch a cab home when he and a friend, Kevin Kaiser, were approached by a man who asked to buy crack. Mr. Dorismond rebuffed the man saying, "Get the fuck away from me." The man, Anderson Moran, unbeknownst to Mr. Dorismond, was an undercover officer. Officer Moran continued to hound Mr. Dorismond. Moran later admitted in litigation that he targeted Mr. Dorismond and Mr. Kaiser because they appeared to be African-Americans. When Mr. Dorismond again rebuffed Moran, saying he would "whoop his ass," another undercover officer, Officer Julio Cruz approached and engaged Mr. Dorismond and his friend. The four men squared off.

At that point, Moran—who still had not identified himself as a police officer—gave the code signal for making an arrest and a third undercover officer, Officer Vasquez, approached. Vasquez had a history of misuse of his service weapon, having shot a neighbor's dog and fired it at the ceiling during a bar fight in Pennsylvania.

As recounted by Derek Sellers, attorney for the Dorismond family, "Immediately upon arriving at the scene, Officer Vasquez shot Patrick Dorismond in the chest, even as Dorismond was only squared off but had not physically engaged the officers. As he was laying on the ground, gasping for air by this point, the supervisor of the arrest team had arrived at the scene and told the police the other arriving police to cuff that dead motherfucker. They handcuffed Patrick Dorismond and they didn't give him any first aid."

After the killing, the NYPD, engaged in a smear campaign against Mr. Dorismond. New York's then mayor, Rudolph Giuliani unlawfully released Patrick's juvenile records and falsely stated that Mr. Dorismond had been arrested for crimes of violence and he had been convicted. Giuliani further stated that Mr. Dorismond was no altar boy. In fact, Mr. Dorismond was very religious and had indeed been an altar boy in his youth.

When the Manhattan District Attorney's (DA) Office investigated the killing, there was no body camera or bystander mobile phone video to contradict the official police version of the event. Officer Anthony Vasquez falsely claimed that Mr. Dorismond had grabbed at his gun and the gun discharged and Mr. Dorismond was accidentally shot in the chest. While a gunpowder residue test was administered on Mr. Dorismond's hands, and would have shown whether or not his hands were near the gun when it was fired, the police lost the test results and the test was not performed again. Thus, evidence crucial to a case against Vasquez was not available. The Manhattan DA's office concluded that there was insufficient evidence to go forward with a criminal prosecution against any of the officers, including Vasquez.

MANUEL ELIJAH ELLIS
Killed March 3, 2020
Tacoma, Washington

Manuel Ellis was walking home from a corner store with doughnuts in hand when officers in a car approached him for no apparent reason. Still, he complied when they called him over. After a brief conversation, one officer slammed the car door against Mr. Ellis's body, throwing him to the ground. They hit, punched, choked, and tasered him. His hands were up in the air but he was beaten repeatedly and hogtied as he was saying, "I can't breathe, sir." One officer's response was, "Shut the fuck up." After they put a spit mask over his head, the officers watched Mr. Ellis breathe his last breath.

The officers claimed that Mr. Ellis was banging on people's car windows. They claimed he suffered from "excited delirium" and that he had attacked their car. But independent videos and witnesses located by social justice activists contradicted the officers' claims and demonstrated that the officers had engaged in a cover-up for several months.

No officer has been held accountable for killing Mr. Ellis. No charges have been filed against them. A semi-independent investigation was conducted. The officers were put on administrative leave with pay and have taken vacations. Mr. Ellis's family intends to file a civil lawsuit.

"Our officials are corrupt. Our police system is completely jacked up and corrupt. And they literally tried to cover up my brother's murder," Mr. Ellis's sister said. "This is a straight up cover-up like my brother's human rights were violated."

"We're broken, generations of us are emotionally tired. Our bodies are weathered, and they and it causes us physical illness. It causes us lifelong ailments and diseases. It causes us generational trauma that we are passing on," according to a friend of the Ellis family, Ms. Jamika Scott. "We are traumatized. We live in a constant state of PTSD, we are hyper vigilant, we are fearful, we are anxious, we are depressed." She added, "It tears holes in families and communities. And it's not just one family, it's what happens to one family in this community, it happens to all of us. And it happens, it has lasting echoes throughout generations."

Ms. Scott, the Ellis family friend explained how police justify killing Black people: "There's this sense that because we're Black, because we're poor, because we're othered, because we're dark skinned, because we're big, because we're loud, whatever they think that whatever, you know, because we're not educated enough, because we're— we like rap music, because we our pants are sagging, because our butts are big, whatever, whatever they think of when they think of their stereotypical Black people."

MALCOLM FERGUSON
Killed March 1, 2000
New York City, NY

Malcolm Ferguson, a 23-year-old Black man, was hanging out with some friends in a building. Mr. Ferguson was unarmed and was not engaged in any criminal activity. Officer Rivera, who patrolled that segment of the Bronx, came into the building wearing regular clothes, not a uniform. Seth Harris, the attorney for the Ferguson family, told the Commission that "there was . . . a neighborhood program back at that time in the Bronx, where officers would just generally patrol what they called high crime areas. But really, that was just more of an excuse for them to stop young men of color, frankly."

For reasons unknown, but likely because he wanted to avoid police harassment, Mr. Ferguson ran towards the back staircase. Rivera, suspecting without evidence that Mr. Ferguson had drugs, chased him and a struggle

ensued. During the struggle, Rivera shot and killed Mr. Ferguson. Rivera claims the gun discharged accidentally, but the medical examiner explained that the barrel of the gun was touching Mr. Ferguson's temple when it went off. After the murder, protests erupted in New York City.

At the time, officers were allowed 48 hours after a wrongful death incident to speak with other officers and get their stories straight. Rivera was never indicted for killing Mr. Ferguson and retained his job. Mr. Ferguson's family prevailed in the civil trial in 2007. The jury found Rivera 100% responsible for Mr. Ferguson's death and awarded his family $10.5 million. The Corporation Counsel's Office for the City of New York appealed the civil suit, claiming that the jury awarded too much money to Mr. Ferguson's family and that the City should not have to pay the punitive damages against Rivera directly. The City did not prevail on either argument.

Police continued to threaten and abuse Juanita Young, Ferguson's mother. In 2009, more than a dozen officers raided Ms. Young's home, beat up and pepper sprayed her other son, James Ferguson, and sexually assaulted her daughter, Saran Young, while she held a child in her arms. After the killing, Ms. Young became an activist against police brutality.

GEORGE FLOYD
Killed May 25 2020
Minneapolis, Minnesota

On May 25, 2020, an unarmed George Floyd was stopped and accused by officers from the Minneapolis Police Department of using a counterfeit $20 bill or committing an act of fraud, a non-violent offense. In broad daylight, Officer Derek Chauvin kneeled on Mr. Floyd's neck for a total of nine minutes and 29 seconds, killing him. While he was face down on the ground and in the prone position and his arms handcuffed behind his back, two other officers, Lane and Kueng, kneeled on his back and legs at the same time. A fourth officer, Thao, did not intervene to stop the unlawful and excessive force, and instead stood guard to stop citizens from intervening to save Mr. Floyd's life, threatening them with mace. Much of the incident was caught on tape, as bystanders gathered and repeatedly pleaded with the police to release Mr. Floyd, who was clearly in agony and had been restrained after posing no threat whatsoever to the police. In fact, bystanders asked on 16 occasions for the police to check Mr. Floyd's pulse, fearing that he was being killed. As he was being choked, Mr. Floyd repeatedly cried out and begged the officers to release him. He stated, "They're going to kill me," and called out for his mother to save him, yelling, "Mama, Mama." He said, "Tell my kids I love them. I'm dead."

Mr. Floyd's last words were "I can't breathe, please." Blood began to drip out of his nose and witnesses told the officers his nose was bleeding. He lost consciousness. While restrained, Mr. Floyd said, "I can't breathe" 28 times.

While the Hennepin County Medical Examiner made no physical findings consistent with strangulation, an independent medical examiner concluded that Mr. Floyd was killed by mechanical asphyxia due to neck and back pressure, that pressure interfered with the blood flow to his brain, that Mr. Floyd died at the scene, and that there was no other cause of death, including pre-existing health conditions or intoxication.

The video of Mr. Floyd's killing was a flashpoint for the Black Lives Matter movement and ignited months of national and international protest against racist police brutality. The City of Minneapolis settled the family's wrongful death lawsuit for $27 million.

Nonetheless, as Benjamin Crump, attorney for the Floyd family, noted, "While the killing was captured on tape by a bystander, the first police report that came out on George Floyd was that he died of natural causes, while he was assaulting police, and resisting arrest."

Chauvin was arrested and charged with third degree murder. As the protests escalated, attorneys for the family

filed an urgent appeal before the United Nations. The charges against Chauvin were increased to second degree murder and second degree manslaughter. The other three officers were charged with aiding and abetting second degree murder. Chauvin's criminal trial began on March 8, 2021.

Chauvin had 18 complaints on his official record, two of which ended in discipline. He had official letters of reprimand and had been involved in three other police shootings, one of which was fatal. According to the former owner of a nightclub where Chauvin also worked, he used overly aggressive tactics when dealing with Black clientele. The attorneys for the Floyd family however, explained that the problem was not limited to Officer Chauvin.

As explained by Jasmine Rand, attorney for the Floyd family, "The Minneapolis Police Department officers engage in what's called Killology training. A review into Minneapolis Police Department, rev[eal] that its officers aim to kill, many of the officers had taken Killology training offered by the police union, a training in which officers are trained to approach situations with an aim to kill, not an aim to de-escalate and not an aim to engage in lawful and constitutional policing." Ms. Rand noted, "The Killology approach was also connected to the police shooting and killing of Philando Castile in Minnesota in 2016, who was fatally shot seven times at a traffic stop. The Minnesota, Minneapolis Police Department union president refused to stop Killology training, even after he was directed to do so by the city. And while speaking at a President Trump rally, he said that he believed that President Trump's policies supported Killology training within our police force, clear evidence of structural racism and clear evidence that the United States engages in systemic excessive force and extrajudicial killings." Ms. Rand added, "During the five year period from 2015 to 2020, the Minneapolis Police Department reported that its officers use violence against Black people at seven times the rate that they used violence against white people."

Indeed, the attorneys for the Floyd family stated that the killing of Mr. Floyd was an act of intimidation. Ms. Rand stated, "Derek Chauvin kneeled on George Floyd's neck in broad daylight on a street filled with spectators and seemed to take pleasure in killing him all while knowing he was being filmed sending a message to Black people in Minnesota and those who watched it throughout America that this could be you next. You could be the next Michael Brown. You could be the next Tamir Rice. You could be the next Jacob Blake, Philando Castile, that there are two different justice systems in America, one for Black injustice and one for white justice."

In discussing his brother's death, Philonise Floyd said, "Not only did they kill my brother, but having to watch the videos of my brother begging for his life, crying for mom has taken a part of me. I'm here today because I have to be the big brother now. I have to look out for not only his children, but America's children. His youngest daughter spoke about how she used to be on her father's shoulders. And I'm asking you to let his legacy continue to build a brighter future from structural racism and police brutality to do, not rule the day. I'm asking and seeking justice for all Black and brown men, women and children who have needlessly been killed by racism and police violence. I am asking to hold the United States accountable to their human rights obligations, so we can reach our full potential as a nation who values, loves and protects all of its people."

SHEREESE FRANCIS
Killed March 15, 2012
New York, New York

Twenty-nine year-old Shereese Francis was suffocated and murdered by New York Police Department (NYPD) officers. Ms. Francis was diagnosed with schizophrenia at the age of 20. For a month leading up to the murder, Ms. Francis had stopped taking her medication because of its side effects. However, this was not the first occasion on which she had refused to take her prescription. In most cases, Ms. Francis' mother had called an ambulance, which transported her to a nearby hospital for treatment. However, on March 15, 2012, Ms. Francis experienced a mental health episode, causing her to become uncooperative with her family. Her sister called 311, requesting an ambulance to bring Ms. Francis to the hospital. Citizens use such contact numbers to request non-emergency,

City services and information about City government programs. However, the 311 response team connected Ms. Francis's sister to a 911 operator. Within half an hour of the arrival of four police officers at the Francis residence, Ms. Francis was dead from asphyxia.

In an attempt to handcuff Ms. Francis, the four officers held her face down into a mattress while kneeling on her back, causing her to stop breathing. The four officers were not disciplined nor criminally charged for her death. The case was resolved for a settlement. There are procedures and protocols officers are supposed to follow when responding to a call about a person in emotional distress. The NYPD has a guide to "policing the emotionally disturbed." The six-page document was prepared by mental health professionals in an attempt to provide training on how to approach and understand the issues presented by mental illness and the manner in which such cases should be handled. The document reinforces the fact that "mental health is not a major driver of violent crime." It provides background information in an attempt to relieve the stigma surrounding mental illness.

Nonetheless, Ms. Francis was treated as a violent individual, evidenced by police officers beating and chasing her in her own home. To justify her killing, officers alleged that Ms. Francis was exhibiting erratic and violent behavior that threatened the security of the officers. In a report issued by the Internal Affairs Bureau (IAB), an officer stated that Ms. Francis was like a football player, claiming that an officer at the scene who was six feet five inches tall and weighed 260 pounds could not restrain her. Ms. Francis, however, did not have a history of violence and she helped her mother operate a preschool early childhood program.

Attorney, Steve Vaccaro, raised concerns with investigations conducted by the IAB into police-involved shootings. Although such an institution is supposed to conduct independent investigations, the outcomes of such investigations serve the interests of police officers and police unions. The IAB is a biased system. The IAB report on Ms. Francis' death portrayed the victim as an aggressive individual whose behavior prevented four officers from using de-escalation techniques to safely take her to a hospital. The report stated that Ms. Francis did not display signs of trauma, although evidence indicated that she appeared to be in a delusional state while being beaten and suffocated into submission. The report was leaked to *The Wall Street Journal* by "anonymous police sources" before it was made available to the Francis family. Mr. Vaccaro was required to file a lawsuit against the NYPD under the Freedom of Information Act to obtain the report.

Mr. Vaccaro testified that Ms. Francis's death was caused not only by the stigma attached to mental health issues, but also by the lack of police training. The NYPD neglected the procedures outlined in the six-page document titled, "Police Students' Guide: Policing the Emotionally Disturbed." Officers who attended the training did not value its teaching. They often arrived late and fell asleep during the training. The guide prohibits the use of force unless there is imminent danger. Nonetheless, Ms. Francis was beaten, with bruises left on her upper body. The NYPD sergeant and the Emergency Service Unit (a specialized unit of NYPD operated by highly trained officers with equipment for restraining people in a safe manner), which are required to respond to an "emotionally disturbed person" call, were not available. The Basic Life Support response team was asked to remain outside while the officers terrorized Ms. Francis.

When officers are faced with a nonviolent situation, they often create violence in order to use their training. As the attorney revealed, handcuffing individuals in a facedown position is extremely dangerous as it can cause compression asphyxia. However, officers are taught that such a method is the only effective way to subdue individuals under arrest. Police training has failed to address the deadly consequences of such procedures, especially on people who are overweight, as well as individuals experiencing a mental crisis. Police unions have opposed legislation to abolish such techniques. Mr. Vaccaro noted, "The political leaders of New York City are more willing to pay out large sums to fix the problems and the deaths and the destruction that the police force of New York City leaves behind them, than they are willing to muster the political will necessary to reform the police department."

He recommended that the police be defunded: "Allocate funds to institutions made up of mental health professionals and community health workers who have the knowledge and skills to respond and refer individuals in crisis to the appropriate resources."

ANTONIO GARCIA, Jr.
Killed July 17, 2017
Leavenworth, Kansas

Antonio Garcia was not home when an officer responded to a call at the Garcia household, knocked on the door, and spoke with Mr. Garcia's stepson. Officer Matthew Harrington radioed to police dispatch that this was not a criminal matter. Mr. Garcia pulled into his driveway; his car door and windows were closed.

As he approached Mr. Garcia's car, the officer put his right hand on his gun. The officer tried to open the car door but, likely fearing for his life as he had seen the officer put his hand on his gun, Mr. Garcia shut his car door. Mr. Garcia, who didn't have a weapon in his hand, never threatened or verbally interacted with the officer, who never warned Mr. Garcia that he intended to use his gun. The officer walked away and began firing at Mr. Garcia.

As Mr. Garcia was bleeding out in his front seat, Harrington did little to assist him. Harrington prevented Mr. Garcia's wife, Heather Garcia, who was a registered nurse, from providing medical assistance to her husband.

Mr. Garcia's family filed a civil lawsuit that was settled. The family's lawyer was permitted access to the video of the incident but was forbidden from disseminating it. Harrington was charged with involuntary manslaughter and is still awaiting trial. The judge ruled that Harrington's use of force did not constitute self-defense under the Kansas statute.

But Jasmine Roberson, Mr. Garcia's daughter, did not think involuntary manslaughter was a sufficiently serious charge against the officer. "Involuntary manslaughter means it was an accident," she said. It means that he "accidentally" did all of the following: "went to my father's car and pulled the door open . . . fired multiple shots at my father . . . shot my father in the head and chest . . . refused to allow his wife to render medical assistance . . . told people to leave the scene." She added, "So it would be his word against a dead Black man's. Nothing about his behavior was accidental. He intended to kill my father, and he was motivated to shoot based on my father's race."

Ms. Garcia said she witnessed the killing, "as well as four of my children and my grandchildren that saw their grandfather and their father murdered and they're now going through their own mental, mental health issues with that with post traumatic syndrome and other things."

ERIC GARNER
Killed July 17, 2014
New York, New York

Eric Garner was killed after New York City Police Department (NYPD) Officer Daniel Pantaleo put him in a prohibited chokehold while arresting him. Video footage of the incident generated widespread national attention. NYPD officers approached Mr. Garner on suspicion of selling single cigarettes. On cell phone footage of the encounter, Mr. Garner states, "Get away [garbled] for what? Every time you see me, you want to mess with me. I'm tired of it. It stops today. Why would you...? Everyone standing here will tell you I didn't do nothing. I did not sell nothing. Because every time you see me, you want to harass me. You want to stop me [garbled] selling cigarettes. I'm minding my business, officer, I'm minding my business. Please just leave me alone. I told you the last time, please just leave me alone." When Pantaleo approached Mr. Garner from behind and attempted to handcuff him, Mr. Garner pulled his arms away, saying, "Don't touch me, please." Pantaleo then placed his arm around Mr. Garner's neck and wrestled him to the ground.

When Pantaleo approached Mr. Garner, there was no justification for stopping or searching or trying to arrest him, because there was no credible report that he engaged in a felony law, common law, a penal law, or misdemeanor, as defined by the laws of the state of New York. As noted by Jonathan Moore, attorney for Mr. Garner's estate, the stop of Mr. Garner was consistent with the illegal stop-and-frisk pattern and practice of the NYPD which disproportionately stops and frisks people of color. From about 2008 to 2012, there were four million documented stops and frisks on the streets of New York, 90% of which were directed at people of color, and 90% of which led to no further investigative activity. Yet, even though Black people were stopped at a higher rate than whites, the incidence of contraband found on whites was a higher percentage than that found on Black people. Since New York entered a consent decree in the stop-and-frisk case, the number of stops has decreased, but the percentage of people being stopped remains the same in terms of the racial breakdown, which indicates that officers are still making decisions based on race more than any other factor.

With multiple officers pinning him down, Mr. Garner repeated the words, "I can't breathe" 11 times while lying face down on the sidewalk, handcuffed. After Mr. Garner lost consciousness, he remained lying on the sidewalk for seven minutes while the officers waited for an ambulance to arrive. When the EMTs arrived, they did not place Mr. Garner on oxygen, administer any emergency medical aid, or promptly place him on a stretcher. Mr. Garner was pronounced dead at an area hospital approximately one hour later. The medical examiner ruled Mr. Garner's death a homicide. An autopsy indicated that Mr. Garner's death resulted from "[compression] of neck, compression of chest and prone positioning during physical restraint by police".

On July 20, 2014, Pantaleo was assigned to desk duty and stripped of his service handgun and badge. On December 4, 2014, a Richmond County grand jury declined to indict Pantaleo. This decision stirred public protests and rallies, and by December 28, 2014, at least 50 demonstrations had been held nationwide in response to the Garner case. On July 13, 2015, an out-of-court settlement was reached, under which the City of New York would pay the Garner family $5.9 million. In 2019, the U.S. Department of Justice declined to bring criminal charges against Pantaleo under federal civil rights laws. An NYPD disciplinary hearing regarding Pantaleo's treatment of Mr. Garner was held in the summer of 2019. Pantaleo was fired on August 19, 2019, more than five years after Mr. Garner's death and after an administrative judge found that Pantaleo's "'use of a chokehold fell so far short of objective reasonableness that this tribunal found it to be reckless — a gross deviation from the standard of conduct established for a New York City police officer." At the time of Pantaleo's termination, he had a long disciplinary record, with seven disciplinary complaints and 14 individual allegations lodged against him. Four of those allegations were substantiated by an independent review board. While Pantaleo was disciplined, none of the other five officers involved in restraining Mr. Garner was disciplined.

As a result of Mr. Garner 's death, Police Commissioner William Bratton ordered an extensive review of the NYPD's training procedures, specifically focusing on the appropriate amount of force that can be used while detaining a suspect. An unnamed NYPD official quoted in the *New York Post* said that the $35 million spent on retraining efforts were ineffective and a "waste of time." On June 8, 2020, both houses of the New York state assembly passed the Eric Garner Anti-Chokehold Act, which stipulates that any police officer in the state of New York who injures or kills somebody through the use of "a chokehold or similar restraint" can be charged with a class C felony, punishable by up to 15 years in prison.

Despite these reforms, Gwen Carr, Mr. Garner's mother, continues to battle impunity, including the failure to discipline any of the other five officers involved in her son's death. Ms. Carr testified, "You all heard the story of Eric Garner. He said, 'I can't breathe' 11 times he said, 'I can't breathe, I can't breathe, I can't breathe.' But did this concern police officers? They decided to take his life. But you know, I say it is too late for my son. They killed him. It is no justice for him. But we must still stand for justice. We must get justice for those who come behind him. And then the future when they hear the name Eric Garner, I want them to say, because of his death, that the ones who came behind him got justice."

BARRY GEDEUS
Killed March 8, 2020
Ft. Lauderdale, Florida

Barry Gedeus was riding his bicycle to or from Walmart when an officer confronted him. The officer was responding to a report of a sexual assault by a man matching Mr. Gedeus's description. Mr. Gedeus had had some sort of consensual encounter with the woman who reported the alleged assault before the officer saw him. The woman who alleged the sexual assault said she had a knife and used it on the person who committed the assault. There were no defensive knife wounds on Mr. Gedeus's body.

After sighting Mr. Gedeus, the officer made a U-turn and aggressively pulled his car near Mr. Gedeus, who was slowing down on his bicycle. The officer struck Mr. Gedeus's bicycle so hard it cracked the windshield of the police car. Mr. Gedeus was unarmed and there is no allegation that he had a weapon. A struggle ensued and the officer fired eight shots at close range. All three shots that resulted in Mr. Gedeus's death hit the rear of his body and there is no evidence of front entrance wounds. The police assert this was a justifiable shooting because Mr. Gedeus was a fleeing felon.

The officer who killed Mr. Gedeus had 84 separate use of force complaints filed against him since his career began in 2006. Those complaints are unusual for the officer's explicit violence used in arresting, apprehending, and interviewing suspects.

A grand jury has not yet been impaneled in this case and the officer has not been indicted. He is back on duty. A civil rights lawsuit will be filed.

HENRY GLOVER
Killed September 2, 2005
New Orleans, LA

In 2005, several days after Hurricane Katrina, Henry Glover, a Black, 31-year-old father of five, and his cousins, arrived in the back loading area of a strip mall. The men intended to look for food and supplies, particularly baby clothes for Mr. Glover's infant child. The City of New Orleans had been underwater for days and many residents lacked access to basic necessities.

Officer Warren, a white officer, was guarding a police substation in the mall and testified that he believed that Mr. Glover had a gun and was attempting to enter the strip mall through the gate. Without warning, Warren then shot Mr. Glover from a second-floor balcony, striking him in the back. Mr. Glover's cousins flagged down a car and took Mr. Glover, who was still breathing, to an elementary school being used as a staging area for police officers and first responders. Upon arriving at the school, the police declined to help Mr. Glover and instead treated everyone in the car with suspicion and started beating Mr. Glover's cousins. Once the beating was over, the officers informed Mr. Glover's cousins that the car in which they arrived was in police custody. Officer Gregory McRae then drove the car and Mr. Glover's body to a levee and set it on fire.

After inspecting a full-body X-ray of Mr. Glover's remains, Dr. Kevin Whaley, a forensic pathologist, determined the case should have been treated as a possible homicide. However, the former Orleans Parish coroner, Frank Minyard, disagreed and originally classified the cause of death as an accident, then as undetermined, and ultimately declined to declare the killing a homicide. The next coroner, Jeffrey Rouse, finally declared Mr. Glover's death a homicide.

In 2010, a federal jury convicted Warren, McRae, and a third officer, McCabe, on charges connected to the kill-

ing and the cover-up. Specifically, McCabe was charged with filing a false and misleading police report with the intent to impede and obstruct the investigation of Mr. Glover's death. However, McCabe's conviction was later overturned by a U.S. District Judge based on newly revealed evidence. McRae was sentenced to 12 years in prison on a federal civil rights violation for committing manslaughter with a firearm.

When convicting Warren, U.S. District Judge Africk told him, "Henry Glover was not at the strip mall to commit suicide. He was there to retrieve some baby clothing. You killed a man. Despite your tendentious arguments to the contrary, it was no mistake." However, Warren's verdict was vacated by an appeals court for misjoinder. In 2013, Warren was tried alone and acquitted.

Orleans Parish District Attorney Cannizzaro declined to bring murder charges against Warren, even though Warren testified to shooting Mr. Glover. In 2016, Mr. Glover's family received a financial settlement as part of a lawsuit against the city, but the family has yet to see criminal charges filed against Warren in state court.

CASEY GOODSON
Killed December 4, 2020
Franklin County, Ohio

Deputy Sheriff Jason Meade murdered Casey Goodson, ending the life of a 23-year-old Black man. On the day Mr. Goodson was murdered, the U.S. Marshal Fugitive Task Force, joined by Meade, was enforcing a drug trafficking arrest warrant near Mr. Goodson's home. However, the task force left the suspect's home frustrated because they could not find the man they were looking for (the suspect later turned himself in police custody voluntarily). On his way back from the dentist, Mr. Goodson was shot in the back with three assault rifle bullets that had gone through a glass door that led into his home. He was carrying takeout food from Subway for his family at the time he was shot. Once his grandmother heard the gunshots, she rushed into the kitchen, where her grandson lay dead.

Mr. Goodson's five-year-old brother witnessed the execution of his older brother. He called his mom to inform her of Casey's death. Meade claims that Mr. Goodson's death was an act of self-defense, although Mr. Goodson was shot in the back multiple times. After the fact, the police claimed that Mr. Goodson was murdered because he was in possession of a concealed firearm, which the officer predicted he would use to kill him. Not only was Mr. Goodson unaware that Meade was following him, Mr. Goodson regularly carried his firearm as he had completed his concealed carry class, earning his license to carry a concealed weapon. These facts contradict Meade's plea of self-defense. The criminal investigation is ongoing under the direction of the FBI because the Columbus Division of Police Critical Incident Review Team cannot be trusted to conduct a thorough investigation as they are known for tampering with evidence. Meade has yet to be charged with murder or dismissed from the Fugitive Task Force.

Meade did not have a distinguished record as a police officer. In 2010, his supervisor noted that Meade was content with doing the "bare minimum" to get by at his job. Nonetheless, he was assigned to investigate civilian complaints against police officers before being assigned to work with the U.S. Marshals on the Fugitive Task Force. In 2018, he and his fellow officers shot two people in Pike County, Ohio. He was not disciplined because he claimed the shooting was legitimate. In 2019, Meade used a Taser without notifying his supervisors, which violates departmental policy. Based on an internal investigation, Meade, a correctional officer, was prohibited from having any contact with inmates, although that is the primary role of a correctional officer who is supposed to ensure the safety and wellbeing of the inmates he is charged with supervising. When asked to describe his job, Meade stated, "I hunt people, it's a great job," while glorifying the use of deadly force on innocent civilians with his Christian beliefs. In a church-delivered speech, while talking about Jesus and David, Meade stated that such men give clear examples of how he is justified in "throwing the first punch" in line of duty to set an example for other officers to follow. He described Jesus as the "malest man in the history of mankind." In his speech, Meade

described police use of deadly force as a form of "righteous release."

Meade was never reprimanded for the use of deadly force against civilians or for the hateful rhetoric he used in his church. Meade's conduct prior to Mr. Goodson's death did not prompt the police department to release him from his duty as a police officer although he was dangerous and unfit to protect the citizens of Columbus, Ohio.

Attorney Sarah Gelsomino attributes police violence to a lack of training and accountability. Meade's prior records did not affect his admissibility into the U.S. Marshal Task Force. Ms. Gelsomino testified that the federal agency task force does not conduct its own private investigation when recruiting officers. In many cases, the U.S. Marshal relies on the word of the local law enforcement agency and takes on whomever the agency recommends, whether or not the individual has undergone proper training or schooling. Moreover, when officers are recruited by the U.S. Marshals to enforce local arrest warrants on these joint task forces, it becomes unclear for whom they are working. The federal agency can deny accountability by saying that the officer was acting under the supervision of the local law enforcement agency. The local police agencies in turn also dismiss responsibility by stating that the officer acted as a federal agent. Such a blame game allows individuals who kill Black people to continue working as officers of the law because the agency that employed them refuses to take responsibility for their disciplinary actions. As the attorney points out, this is how officers like Meade get lost in the system.

As Ms. Gelsomino stated, there is a culture of impunity throughout policing in the U.S. that is insidious and dangerous if left unchecked. Officers enjoy a great deal of protection that allows them to kill without repercussions. Police unions are at the center of such impunity. These unions set procedural protections for officers involved in police shootings. This includes a 72-hour cooling-off period that allows officers to meet with their union representatives and legal team before submitting an official statement. Meade's statement was collected two weeks after Mr. Goodson's death, after Meade had consulted his lawyers and members of the police union. At the root, qualified immunity maintains such a system of police violence because it disqualifies officers from being held civilly liable for violating the U.S. Constitution that, in theory, guarantees the right to life of all citizens of the United States.

RAMARLEY GRAHAM
Killed February 2, 2012
Bronx, New York

Eighteen-year-old Ramarley Graham was killed in his family home in the Bronx in front of his grandmother and six-year-old brother by New York Police Department (NYPD) Officer Richard Haste, who had entered his home without legal justification. At the time of the killing, Mr. Graham had returned home after visiting the homes of various friends. Unbeknownst to Mr. Graham, the police were surveying some other activity and were following him. They approached the house and tried to knock down the door without success. They tried every means necessary to get inside the house. Eventually, they were able to get into the side entrance of the house, but failed to follow the protocol of calling emergency service units.

Upon entering the home, they found Mr. Graham, and pointed their guns at him as he stood with his grandmother and little brother by his side. As Mr. Graham moved slightly to the left, he was shot dead. Despite the police's false narrative that Mr. Graham was seen with a gun, no gun or contraband was found on Mr. Graham.

After the killing, the NYPD released a false narrative to the press that Mr. Graham was under surveillance for selling drugs. They stated that he was running from them, which caused them to pursue him. In service of this false narrative, they released a video of some other individual in all white and running as if he has done something wrong. Mr. Graham had worn all black and walked—not ran—through the front door of his home.

Haste, who killed Mr. Graham, had an extensive disciplinary record: six prior CCRB complaints against him,

and 10 allegations, one of them made just 15 months prior to killing Mr. Graham. After a campaign by the family, Haste was charged with manslaughter 1 and manslaughter 2, but the case was dismissed. Thereafter, the family mobilized to get a NYPD Department trial, where Haste was charged with reckless endangerment and other charges. The administrative law judge recommended his firing but Haste resigned before he could be fired. This process of attempting to hold Haste accountable for the killing of her son took Constance Malcolm, Mr. Graham's mother, more than five years.

Since her son's killing by the NYPD, Ms. Malcolm has been deeply involved in and successful in her efforts to change the laws in New York. As she testified, the harm to her family cannot be undone: "Ramarley was 18. I would never know what my son would have became. Could they rob me of that? They took that away from me. My son, Chinnor Campbell, he was six years old, when he watched his brother murdered in front of him. He watched a police officer cursing his grandmother and telling they're gonna shoot her if she won't shut up when she started questioning what happened to her grandson? My son, I say he's damaged because I don't know. He's 15. Now Chinnor is 15 now, I don't know what will happen if an officer tries to stop him, what the outcome going to be. My scare is, I might have to go bury another young Black man, because of what he saw happened to his brother. And he doesn't know how to articulate, articulate, or how to respond to officers, that we teach our kids you're supposed to respect and follow rules, you know, whenever they tell you to do something. But we know oftentimes, they do follow these rules, and they end up dead. Ramarley was in his home. Where it's supposed to be a safe, it's a sacred place, and he was supposed to be safe. But that never happened. His life was snuffed right in front of his, his sibling's face, his grandmother. And this officer was allowed to resign without any consequence."

FREDDIE GRAY
Killed April 19, 2015 after an injury sustained on April 12, 2015
Baltimore, Maryland

On the morning of April 12, 2015, Freddie Gray and some friends were walking in a low-income Black neighborhood in Baltimore, heading home after having breakfast. This neighborhood was heavily patrolled by police officers and Black community members were routinely stopped and frisked, and harassed, without just cause. Accordingly, community members were fearful of the police and often sought to avoid encounters with them. As Mr. Gray and his friends were chatting on their walk home, two Baltimore City policemen on bikes rode quickly toward them, intending to stop the young men without probable cause. Fearing unlawful harassment, Mr. Gray and his friends ran from the officers.

When the police caught Mr. Gray a few blocks away, he laid on the ground in surrender. They searched him, found a small knife that was not illegal to carry, then proceeded to hog tie and arrest him with no legal justification. As the attorney for the Gray family, William Murphy, testified, "A citizen videotaped the police hog-tying him, Mr. Gray screaming in agony until the police transport arrived, the police releasing his shackled feet from the handcuffs behind his back, attempting to stand him up and then dragging him by both arms with limp legs to the back of the van, sitting him down on a van bench and being driven away."

After 45 minutes, during which time the driver made additional stops, Mr. Gray was delivered to the precinct unconscious. In the intervening time, Mr. Gray had been subjected to a practice known within the Baltimore Police Department (BPD) as a "rough ride," in which prisoners are shackled and placed in the back of a police van without being seat-belted, before the driver proceeds to swerve and drive wildly in order to brutalize the prisoner, battering him against the interior of the van. By the time Mr. Gray arrived at the precinct, his spine was 85% severed. Despite his life-threatening injury, the police again waited before sending him in an ambulance to the Shock Trauma Unit at the University of Maryland Hospital. He died two weeks later.

When the video of Mr. Gray's shackling was released, followed by news of his serious injuries,
on April 21, 2015, people from around the country and the world came to Baltimore to participate in mass pro-

tests. The family of Mr. Gray retained Attorney William Murphy, who reached out to community leaders and civil rights organizations to request that the U.S. Department of Justice investigate the case and the Baltimore City Police Department's "rough ride" practice and other practices of racially disparate treatment. Mr. Murphy presented evidence to the Commissioners of numerous victims of the "rough ride" practice by the BPD spanning more than a decade, In 1997, Jeffrey Alston was paralyzed; in 2005, Dondi Johnson was killed; and in 2012, Christine Abbott was severely injured by this pattern and practice.

Attorney General Loretta Lynch, head of Department of Justice's Civil Rights Division, came to Baltimore and authorized an immediate investigation, which culminated in a report[389] issued on August 10, 2016. It found, "BPD engages in a pattern or practice of: (1) making unconstitutional stops, searches, and arrests; (2) using enforcement strategies that produce severe and unjustified disparities in the rates of stops, searches and arrests of African-Americans; (3) using excessive force; and (4) retaliating against people engaging in constitutionally-protected expression."

As a result of this damning report, Baltimore agreed to be bound by a court-approved consent decree and to be subject to monitoring and supervision to curb these unlawful practices.

After Mr. Gray's tragic death, six Baltimore City police officers were criminally charged for their involvement. After waiving their rights to trials by jury, the officers were acquitted by a judge sitting without a jury.

RITCHIE LEE HARBISON
Killed November 8, 2016
Henderson County, North Carolina

Ritchie Lee Harbison, a 62-year-old Black man, was killed by police after an encounter with law enforcement. Henderson County is a small county with a population of nearly 107,000—only 3.4 percent of which is comprised of people of African descent. Between 2013 and 2021, there were four police killings in the county. Two of the victims were Black.

Mr. Harbison was involved in a motor vehicle accident. He appeared emotionally disturbed, disrobed, and appeared to be in severe mental distress. When four police officers arrived, they claimed he was irrational and "non-compliant to any of [the officers'] commands." Maj. Frank Stout from the sheriff's office told *The Asheville Citizen Times* that Mr. Harbison was naked and clearly unarmed. The police allege that he charged them, and they tasered him. Mr. Harbison died shortly thereafter. As attorney J. Denton Daniels testified, the police "knew a Taser can be deadly and instead of the state or the county, providing some clear mechanism to respond to a mental health crisis. They had officers who, as the Commissioners heard, are in many ways militarized and trained to respond to crimes, [instead of responding] to what is really a mental health issue."

Indeed. police did not respond with de-escalation techniques, which are applicable protocols when facing a mentally disturbed person. Expert witness attorney Michael Avery explained, "The statements coming out of the sheriff's office do not indicate any effort whatsoever to comply with what the training is in this area. And instead, it looks like all the officers may have been shouting and screaming at this individual ordering him about and making no effort to understand what his predicament was."

In 2016, the U.S. Court of Appeals for the Fourth Circuit found that use of a Taser can be considered excessive force, even when some force is warranted.[390] Specifically, the court held that officers are prohibited from employing the devices to subdue resisting suspects unless they believe there is a "risk of immediate danger" to themselves or others. Mr. Harbison was unarmed, had no criminal history, and was not under the influence of

389 https://www.justice.gov/crt/file/883296/download
390 See *Estate of Armstrong v. Village of Pinehurst et al.*, 2016 U.S. App. LEXIS 380 (4th Cir. 2016).

intoxicating substances. The death certificate lists his cause of death as undetermined. It is clear from the record and reports that Mr. Harbison suffered a cardiac arrest, although it is unclear whether that was due to the use of a Taser, which can cause cardiac arrest, or due to positional asphyxiation.

The North Carolina State Bureau of Investigation opened an investigation into the death of Mr. Harbison, but ultimately no one was charged. The estate file for Mr. Harbison indicates a pending wrongful death action, but a review of the records of all courts that would have jurisdiction indicates no publicly available records. Efforts to make public information requests on the case have not been responded to in earnest, and the family, their attorney and the Sheriff's Office have declined to comment.

JASON HARRISON
Killed June 14, 2014
Dallas, Texas

Shirley Marshall Harrison called 911 for a crisis intervention team as she had many times before for her 38-year old son, Jason Harrison, who suffered from mental illness. Ms. Harrison informed the 911 operator, "My son needs to be taken to Parkland [Hospital]." She informed the operator that her son had a bipolar schizophrenic diagnosis, that he was off his medication, and he was "incoherent." She confirmed with the operator that the first responders sent would be persons trained in handling mental health crises. She also confirmed that there were no weapons and no one was injured in the house. The police had been to the Harrison home more than 100 times before without incident. It was well-known to the authorities that Mr. Harrison was nonviolent.

When the officers arrived, Ms. Harrison walked out with her purse and Mr. Harrison came to the door. When the police noticed a screwdriver in Mr. Harrison's hands, the officers began yelling orders to drop the screwdriver, though Mr. Harrison was not wielding it as a weapon. Mr. Harrison made no verbal threats or violent gestures. As Mr. Harrison turned in the direction of a walkway along the garage, as though he was going to walk past Officer Rogers, the officers continued to shout orders and shot Mr. Harrison, killing him. Within 10 seconds of the front door being opened, Mr. Harrison lay dying in his own driveway shot at least five times, twice in the back, by Officers Rogers and Andrew Hutchins. The latter officer was wearing a body camera. Both officers would later argue that Mr. Harrison raised the screwdriver and lunged at them but that narrative is not supported by the body camera footage.

After the incident, there was no criminal prosecution. On November 10, 2014, the family filed a Fourth Amendment excessive force case in the U.S. District Court for the Northern District of Texas—Dallas Division.[391] On March 14, 2016, Judge David Godbey granted summary judgment to defendants finding that the two officers had reason to believe there was a threat of imminent bodily harm. This decision demonstrates the problems of the excessive force case law, which allows police officers to apply deadly force with impunity as long as they state they felt fearful. Geoff Henley, attorney for Ms. Harrison, presented body camera footage that shows Mr. Harrison never lunged at either of the officers with the point of the screwdriver; while part of the conflict was out of the video frame, the video showed only the bottom of Mr. Harrison's arm slightly raised, and showed a posture inconsistent with lungeing.

The Dallas Police Department has an explicit policy requiring the use of less lethal force than deadly force if the opportunity provides. Nonetheless, as Mr. Henley, told the Commissioners, "In this encounter the cops are the architects of the situations, they are typically the ones who control the time, the space, the area of the engagement. In this particular case, of course, we knew the police knocked on the door, they're there, they're the ones who were setting the spacing from the beginning. And then of course, when, when Jason appeared in the doorway holding the screwdriver, the dynamic changed. But what was important to notice, neither one of those officers backed up, gave him some space, tried to talk him off the ledge instead of, you know, raising the tempo

391 See *Harrison v. The City of Dallas, Texas,* Civil Action No. 3:14-cv-3585-N.

of the engagement." Mr. Henley explained that courts evaluate imminent threat without regard to prior acts of police escalation or failure to de-escalate. Mr. Henley concluded, "The thin ray of good news from this case is that the Dallas Police Department has supposedly set up new protocols for addressing mental health crises, though... much still needs to be done."

BOTHAM SHEM JEAN
Killed September 6, 2018
Dallas, Texas

Botham Jean, a promising 26-year-old accountant at Pricewaterhouse Cooper, was killed in his own apartment by Officer Amber Guyger. Mr. Jean, who was unarmed, was sitting on his living room couch eating ice cream. Guyger claimed that she had mistakenly entered the apartment of Mr. Jean, thinking that it was her own apartment. After two hours of investigation, Texas Ranger David Armstrong told the Botham family that his death resulted from a "web of mistakes." Following a thorough investigation by an independent body, Guyger was convicted of murder and sentenced to 10 years in prison. Alllison Jean, Mr. Jean's mother, detailed the collective trauma being experienced by her family, stating, "Botham's death has had an impact on every family member."

Conversations exchanged via text between Guyger and her co-workers revealed her racist attitude toward Black people. During the January 2015 Martin Luther King Jr. Day parade, a co-worker asked Guyger, "When does this end lol" to which Guyger replied, "When MLK is dead...oh wait..." On September 4, 2018, a person named Ethridge appeared to playfully offer to give Guyger a German shepherd. "Although she may be racist," Ethridge wrote. She responded by saying, "It's okay, I'm the same."

Daryl Washington, attorney for the Jean family, testified, "All of the police shootings that we have been seeing and witnessing throughout the United States. And we know that there's been quite a few. Only 110 officers have been charged with murder or manslaughter. And of all the shootings that that we have seen, now, just five of those 110 officers have been convicted of murder, while 37 have been found guilty of lesser crimes. Out of the 42 victims 25 were Black."

MARQUISE JONES
Killed February 29, 2014
San Antonio, Texas

Marquise Jones was killed by Robert Encina, a San Antonio police officer. Mr. Jones was a passenger in a car that was involved in a fender bender at a local restaurant's drive-through. Encina, who was working undercover at the restaurant as a security guard, was called to the scene of the accident. Mr. Jones, who was on probation, decided that an encounter with a police officer would jeopardize his probation order. While Encina was speaking to the driver of the car, Mr. Jones exited the vehicle to walk home in order to avoid any interaction with the officer. Deborah Jones-Bush, Mr. Jones' aunt, testified, "But Marquise was very nervous about the situation that was going on and decided to go home which is only two blocks away from his home. And the officer never told him to stop, never told him he could not leave. Marquise then proceeded down the driveway of the restaurant drive thru and was shot at nine times, with one bullet hitting him and striking him in the back and he died. Officer Encina shot Marquise Jones nine times."

Daryl Washington, attorney for the Jones family, testified, "Despite the fact that this officer was not in danger, no third party was in danger. This police officer fired at Marquise, striking him in the back." Encina did not face criminal charges.

Mr. Washington identified several factors that perpetuate systemic violence against Black people in the United States. Many officers involved in police shootings, including Encina, have histories of committing physical as-

saults against people of color that do not result in meaningful suspension, immediate job termination, or criminal proceedings. Given that such officers are rarely reprimanded, they continue to kill, knowing that the U.S. criminal legal system will protect them. The lack of transparency allows police chiefs, police unions, and prosecutors to engage in cover-ups. Encina testified that he killed Mr. Jones in an act of self-defense against an armed African-American man, although Mr. Jones was shot in the back. A witness claimed that prior to Mr. Jones exiting the car, he saw him with something that resembled a gun. However, another witness, whom the defense attorney never approached to testify at trial, stated that the victim was unarmed. The witness who contradicted Encina's narrative was dismissed from the scene at the time of the shooting. A revolver was found in the vicinity of Mr. Jones' body, but neither his fingerprints nor DNA were found on the gun.

Furthermore, district attorneys assign criminal investigations of police shootings to former police officers, who serve at the discretion of police unions. In some cases, an individual in the attorney's office or a union representative drafts and writes police statements before trial. Furthermore, police officers can watch the body camera videos of the shooting in question before officially submitting their statements. Such measures are taken to legitimize police officers' use of force and protect the reputation of the U.S. criminal legal system that devalues the humanity of Black people. The district attorney's office rarely appoints an independent body to investigate such cases. At every stage of the investigation, police officers are treated as the victims rather than the perpetrator of police brutality in the U.S. Mr. Washington noted, "Whenever a young man is killed by a police officer, the first thing that we get is the background of the victim, the deceased individual who no longer could defend his or her name."

ANDREW KEARSE
Killed May 11, 2017
Schenectady, New York

Andrew Kearse was briefly chased by officers regarding a traffic violation. When they caught up to him, he couldn't stand or walk and it took three officers to carry him to the car. Mr. Kearse was in the back seat of the police car for 17 minutes. During that time, he pleaded for help 70 times, repeating the words, "I can't breathe." Mr. Kearse's cries for help were disregarded. He asked that the window be opened but the officer refused. The officer said that since Mr. Kearse could talk, he could breathe, and thus there was no medical condition or medical emergency. Ambulances were not summoned and no EMT's were called.

Instead of taking Mr. Kearse to a hospital, which was eight minutes away, the officers headed toward the police station. He died of a heart attack one minute before they arrived at the station.

The lawyers who filed a lawsuit for the family retained a medical expert who concluded that if Mr. Kearse had been treated promptly, his life would have been saved. There was a 78% to 80% chance he would not have suffered brain injury.

When Mr. Kearse's wife, Angelique Negroni-Kearse, saw him at the funeral home, she "let out of a screech that they never heard before because they sounded like my heart broke. And it did and it's been broken. It's an empty hole that I can never fill, refill. I'm sorry."

It took three years for the police chief to call Ms. Negroni-Kearse and tell her he would make a public announcement that he was sorry and they were wrong. But he did not fire the officer, who, she said, "was like a serial killer with no empathy and you still have this man on the job." The grand jury refused to indict the officer.

Mr. Kearse and his wife were together 11 years and married for 10 of them. She said she would have to raise seven children, including four under age 10, without her husband. "This wasn't just somebody just to throw away like

he's garbage and he's nothing. He was somebody. He was somebody and we had family and children together that miss him that I got to, I got to raise without, without him. It's unfair," she said.

LINWOOD LAMBERT
Killed May 4, 2013
South Boston, Virginia

https://inquirycommission.org/video-and-transcript-linwood-lambert-hearing-wednesday-january-20-international-commission-of-inquiry/

Linwood Lambert had a "lifetime of mental health issues." After he called the police on himself while experiencing erratic behaviors and other symptoms of mental illness, three officers responded. Because of the way he was acting and comments he made, they decided to take him to the hospital for a mental health evaluation. The unarmed Mr. Lambert voluntarily allowed the officers to handcuff him and sat quietly in the police car. Upon arrival at the hospital, Mr. Lambert became emotionally unbalanced and began to kick out a window of the police car. As he ran toward the emergency department, the officers chased and tasered him. Mr. Lambert never made it into the Emergency Room.

When Mr. Lambert fell to the ground, the officers descended upon him and continued to taser him. They used force to place the still handcuffed Mr. Lambert on his chest, put his legs in shackles, and brought him back to the police car. They discharged their Tasers more than 20 times. Tasers create neuromuscular incapacitation, which makes people unable to control their bodies or respond to commands. The officers placed Mr. Lambert back into the police car. But instead of entering the hospital, where they already were, they headed for the police station.

Mr. Lambert, who had no underlying heart condition, went into cardiac arrest in the backseat. When they arrived at the police department, officers found Mr. Lambert unresponsive. He was later pronounced dead at the hospital to which he had originally been transported.

The inexperienced forensic pathologist who performed the autopsy was overseen by a Virginia State Police official with no medical training or knowledge. Mr. Lambert had trace amounts of cocaine in his system, but the pathologist concluded that he died of "acute cocaine intoxication." The pathologist did not know about the tasering or the video of the incident before conducting the autopsy.

The Commonwealth attorney decided not to file criminal charges against the officers, concluding that Mr. Lambert died from "excited delirium," which is only diagnosed after someone dies after a police encounter. The video of the incident was kept secret until Mr. Lambert's sister filed a federal civil rights lawsuit, which was settled confidentially. The U.S. Department of Justice refused to launch an investigation into Mr. Lambert's death.

JUAN MAY
Killed June 22, 2014
Arlington, Texas

Juan May and several friends were celebrating a friend's birthday by taking a party bus to various spots around town. While on the bus, Mr. May's cousin, Patrick May, suggested that Officer Andres, who was off-duty, dance on the stripper pole inside the party bus. Andres was offended by Patrick's comment and became angry, using derogatory homophobic slurs against Patrick. In an attempt to diffuse the tension, Mr. May danced on the pole himself.

When the bus stopped, Mr. May assisted with cleaning up and Andres stood across from him. Mr. May told

Andres, "We aren't going to do all this tonight." Andres then said something to Mr. May which led Mr. May to strike him in the face with his hand. A fight erupted between the two and when it concluded, Andres went back to his car. People in the area yelled that Andres had gone to his car to retrieve a firearm. Hearing this, Mr. May went to calm Andres down. Andres yelled to Mr. May that he was a cop, entered his vehicle, retrieved his gun, and shot Mr. May in the chest.

When the police arrived, they spoke with Andres but did not offer any medical assistance to Mr. May. Mr. May was later transported to the hospital and pronounced dead. He was survived by three children. Shortly after his death, Mr. May's grandmother stopped eating due to her grief and passed away. Mr. May's sister, Jindia Blount, began to engage in activism and joined "Mothers Against Police Brutality."

In the aftermath of the killing, the district attorney was in rehab for substance abuse. In her absence, Andres was never indicted by a grand jury. Andres was placed on administrative leave after the shooting, but has since returned to his job. After an internal affairs investigation, Andres was exonerated. Mr. May's family filed a civil suit in district court against the Arlington Police Department (APD) and Andres for wrongful death, Fourth Amendment violations, municipal liability for covering up officer misconduct, civil rights violations, and other causes of action. The district court granted the Arlington APD and Andres's motion to dismiss for failure to state a claim.

KAYLA MOORE
Killed February 12, 2013
Berkeley, California

Kayla Moore, a Black mentally-ill transgender woman, was in her apartment with her caretaker when the police arrived. The officers were responding to a request for mental health assistance from Ms. Moore's friend, John Hayes. When the officers arrived, Ms. Moore was in the midst of a mental health crisis and was afraid that the officers were not actual police. The officers ordered Ms. Moore's caretaker out of the apartment and then, rather than determining if Ms. Moore needed a mental health evaluation, the officers ran Ms. Moore and Mr. Hayes' names into the system to see if they had any outstanding warrants. Upon locating one, the officers took Mr. Hayes into custody. After finding an arrest warrant for someone with Ms. Moore's birth name, but who was 20 years older than Ms. Moore, they decided to take Ms. Moore into custody as well.

When Ms. Moore stated that there must be a mistake and said that she would call someone to sort out the issue, police physically seized her. Ms. Moore struggled as officers tried to handcuff her, so the officers threw Ms. Moore face down on a futon. Six officers put their body weight on Ms. Moore as she yelled for them to get off of her and struggled to breathe. The officers tried to use a wrap device to immobilize Ms. Moore's legs. Ms. Moore then lost consciousness and fell to the floor face down and completely immobile. After a while, officers turned Ms. Moore on her side, realized she was not breathing, and began to perform chest compressions which exacerbated Ms. Moore's trauma from being held down earlier and killed her. Although there were several officers qualified to begin airway breathing, none of them initiated the necessary airway breathing that could have saved Ms. Moore's life.

As her sister, Maria Moore, testified, "[W]ith six offers on top of her putting her in this torture device, do they realize at some point she had stopped moving... [T]hey failed to check on Kayla. Because her last breath, her last words were get off me, I can't breathe. And they ignored her, her cries for help."

Ms. Moore's family testified that Oakland Police officers left her lying on her stomach with her dress pulled up, exposing her private parts. According to Adante Pointer, attorney for the Moore family, "Kayla died on her stomach without the dignity that anyone deserves, even an animal, because after they noticed that she was no longer responsive, comments were made about her sexual orientation... as opposed to these officers going and getting

the appropriate equipment in order to do CPR, they sat there and they talked about her in her sexual orientation and expressed some hesitancy of performing life saving measures."

Ms. Moore's father, her successor-in-interest, filed a Section 1983 claim against the City of Berkeley on her behalf for violation of the Fourth Amendment, wrongful death, excessive force, and discriminatory arrest. The district court granted the City's motion for summary judgment, determining that Ms. Moore's family did not present sufficient evidence to prove the officers did not reasonably accommodate Ms. Moore's disability or that she was discriminatorily arrested. Ms. Moore's family appealed the case to the U.S. Court of Appeals for the Ninth Circuit, but the court affirmed that the officers had probable cause to arrest Ms. Moore and the officers' use of force against Ms. Moore was objectively reasonable under the Fourth Amendment.

NATHANIEL PICKETT II
Killed November 19, 2015
Barstow, California

Nathaniel Pickett II was crossing the street in a marked crosswalk, having committed no crime. An officer first claimed that Mr. Pickett kind of glanced at him as he was crossing the street, and later said Mr. Pickett looked at him 10 different times in a matter of 10 seconds, which made him suspicious. The ride-along passenger in the officer's car never saw Mr. Pickett crossing the street. Mr. Pickett ran from the officer, who chased him and tried to grab him. As Mr. Pickett attempted to run away, he fell down some steps and injured himself. The officer threatened to taser Mr. Pickett and then began forcefully punching Mr. Pickett in his body, head, and face. Although the officer claimed that Mr. Pickett punched him 10 or 20 times, the ride-along partner never saw Mr. Pickett punch the officer. The defense expert who analyzed the video could not see any punch made or initiated by Mr. Pickett against the officer.

After asking Mr. Pickett for his name and birthdate, the officer told him to turn around. Mr. Pickett said, "No, man . . . I'm not doing anything!" The officer said, "Turn around! Turn around or you're going to get tazed! Turn around or you're going to get tazed! Turn around!" Mr. Pickett replied, "For what, man?!" The officer yelled, "Turn around! Turn around! Turn around! Turn around! Stop resisting! Give me your hands! Turn around!" After a struggle, the officer said, "I'm going to shoot you! I'm going to shoot you!" He then shot Mr. Pickett twice in his chest a few seconds apart at point blank range. The officer never called for medical care for Mr. Pickett, who bled to death from his wounds.

No criminal charges were brought against the officer. The federal civil lawsuit filed by the family resulted in a jury verdict of $33.5 million, apparently the largest verdict in U.S. history, although it was later reduced by the judge.

Dominic Archibald, Mr. Pickett's mother, said of her son, "He was my legacy, my faith in the present moment, and my hope for the future . . . In the final moments of the only life he had, my only child was stopped, beaten, and terrorized like a dog." A retired Army officer and combat veteran who served in Afghanistan, Iraq and Kuwait, she noted, "We have more stringent rules of engagement and human rights requirements against the known enemy than law enforcement has in the streets of America." Regarding the monetary judgment in the civil suit, she added, "You could never pay me for my child . . . Whatever comes is just a down payment on justice."

JEFFREY PRICE
Killed May 4, 2018
Washington, DC

Twenty-two year old Jeffery Price, who was riding his dirt bike, collided with a police cruiser driven by Officer Michael Pearson in Washington D.C. Mr. Price was pronounced dead at the hospital. Pearson claimed that Mr.

Price was riding in the wrong lane of travel, causing the officer to unintentionally crash into his dirt bike, which resulted in the death of Mr. Price. However, several witnesses on the scene contradicted Pearson's narrative. Attorney David Schurtz testified that the "accident" was a premeditated attempt to kill an African-American male. The independent investigation revealed that officers deliberately chased Mr. Price down Division Avenue, allowing the victim to be captured in a calculated trap at the intersection where Pearson's police cruiser crashed into Mr. Price's dirt bike, causing the fatal accident. Pearson ran through a stop sign, violating the state general order for vehicle pursuit, which forces an officer to come to a full stop when approaching a stop sign, even in the event of a high-speed chase, to avoid collisions involving police officers. The police chief dismissed that argument stating that they did not find an improper pursuit of Mr. Price.

Pearson was not charged with murder, nor he was disciplined by the Metropolitan Police Department (MPD). Mr. Shurtz explained that police officers in D.C target young Black men on dirt bikes and hit them with government vehicles, which may result in death or fatal injuries. As he explained, such deadly use of force against Black men constitutes a hate crime and should be considered as such. Once Mr. Schurtz was informed of such practice, he was able to collect between 200 and 300 affidavits telling the stories of African-Americans who have been hit or chased by police officers while on their bikes, driving them into dangerous paths. The MPD has failed to investigate these cases. A former police officer, Michael Pepperman, was assigned to the investigative body for biker motorcycle collisions. He was appointed to investigate the Price case, although he had been implicated in a previous motorcycle collision that led to the fatal injuries of another African-American male. Attorney Schurtz is currently working on a *Monell* case,[392] in which he seeks to prove the pattern and practice of police officers targeting Black men with such deadly force. As Commissioner Bert Samuels noted, in this new form of police violence, the weapon of choice has become police cars.

Mr. Shurtz suggests that eliminating qualified immunity will not do a great deal to address police brutality in the United States. This will allow politicians and chiefs to excuse police brutality as the doing of "one bad apple" while refusing to acknowledge the systemic police violence that exists in the United States.

DANIEL PRUDE
Died March 30, 2020
Rochester, New York

Daniel Prude, a 41-year-old Black man, died due to a brain injury suffered at the hands of police officers in Rochester, New York. While visiting his brother, Joseph Prude, in Rochester, Mr. Prude had been experiencing a mental health crisis. Before his brother could determine the appropriate course of action, Mr. Prude left his home. Joseph called 911, and officers responded to determine Mr. Prude's whereabouts. By the time police found him, he had completely disrobed himself while running in the middle of the road. The officers quickly subdued the unarmed and cooperative Mr. Prude, placing him in handcuffs with a mesh hood over his head. While the first officer placed his knee on Mr. Prude's back, allowing the second officer to hold his legs down, the third officer performed a triangle pushup on the side of Mr. Prude's head, thereby pressing his head and chest into the pavement. Mr. Prude suffered fatal brain damage. As there was no hope for recovery, the family removed him from life support. He died on March 30, 2020.

The lack of transparency in this police-involved killing is evident in the case of Daniel Prude. The Rochester Police Department (RPD) did not disclose any information, either to Mr. Prude's family or to the public, regarding the events leading to his death. The police union received the body camera videos and other evidence within two or three days after the killing. But the Prude legal team didn't obtain the body camera footage until six months later after filing several lawsuits under the Freedom of Information Act. The video was released to the public and

392 The Monell doctrine bars lawsuits against municipalities for acts of police officers unless the bad acts were done pursuant to a government custom or policy under *Monell v. Dep't of Social Servs. of New York.*

the family in September 2020.

The Mayor of Rochester fired the police chief, alleging that he had not disclosed any information regarding Mr. Prude's death to her. The Rochester Independent Counsel is investigating the police chief's termination to determine the validity of the mayor's accusations. The head of the Mental Health Crisis Team was also fired for releasing Mr. Prude's private medical records to the police department without authorization. Unbeknownst to the Prude family, the RPD had conducted an investigation that cleared the officers of any wrongdoing, alleging that Mr. Prude's death was caused by "excited delirium." The investigation concluded that there was no inappropriate action because the officers followed all established protocols.

The Rochester Police Department responded to the peaceful protests following the unjustifiable death of Daniel Prude in a hostile manner. Protesters were struck with tear gas, as well as approximately 6,000 rubber bullets in an attempt to provoke physical violence and confrontation. Nearly 100 protesters were injured while others were detained illegally.

As a result of the protests, the attorney general's office now conducts investigations of police-related killings instead of the local district attorney's office. There is an ongoing criminal investigation to determine the culpability of police officers in the death of Mr. Prude. Moreover, Rochester initiated The Person in a Crisis Team to respond to emergencies concerning mental health and substance abuse cases.

Training that discusses how officers should manage a mental health crisis is not part of police culture in Rochester. As Donald Thompson, attorney for the Prude family, testified, the lack of officer training caused the death of Daniel Prude. Before introducing the Person in Crisis Team, Rochester did not have resources to assist individuals experiencing a mental health breakdown during a police encounter. As the attorney suggested, the officers did not have the discipline or personality type to provide Mr. Prude the required medical and psychological assistance. Instead of offering Mr. Prude humanized attention, officers asked him whether he was HIV positive or diagnosed with COVID-19. The video camera footage does not show the officers attempting to engage the victim in a conversation to calm him down. Nor did the officers offer Mr. Prude clothing, as he was surrounded by seven police officers, completely naked while in the middle of the street. Moreover, the officers arrived at the scene to make an arrest rather than attempt to aid the victim. They became impatient, agitated, and frustrated because Mr. Prude could not be silenced as he was saying things that the officers could not understand. The officers deemed it more suitable for the officers to arrest Mr. Prude rather than help him return home safely. As Mr. Thompson said, the only way to remedy police violence against individuals like Daniel Prude is to confront the racist culture within police institutions that does not acknowledge the importance of humanizing mental health patience, especially for those who are of African descent..

In March 2021, a grand jury declined to indict any of the officers involved in the case on any charges.

TAMIR RICE
Killed November 22, 2014
Cleveland, Ohio

Tamir Rice, a 12-year old Black boy, was at the park with a toy gun. A 911 caller sitting at a nearby gazebo reported that someone, likely a minor, was pointing a pistol at random people at the recreation center, but mentioned the gun was likely fake. When the dispatcher informed Officers Loehmann and Garmback about the call, they did not mention the gun was likely fake or that Tamir was a young boy. After the caller left, Tamir sat down under the gazebo. When the officers arrived, they claimed to have seen a black toy gun sitting on the table and Tamir putting it into his waistband. Loehmann exited the car and told Tamir to put his hands up. The officer claims he told Tamir to put his hands up three times, but the whole event which occurred within seconds of the arrival of

police, transpired too quickly for him to have done so. The officers alleged that Tamir reached into his waistband and pulled out the toy gun and Loehmann fired two shots. The whole altercation was recorded on video and happened in less than two seconds.

Tamir's sister, Tajai, who was also playing at the park at the time, ran over to Tamir but was tackled to the ground by officers and unable to offer him any aid or comfort. Officers did not provide any medical assistance to Tamir. Instead, an FBI agent who happened to be in the park at the time offered him aid. Tamir died the next day from a gunshot wound to the torso. After the killing, protests erupted in Cleveland.

Timothy McGuinty, chief prosecutor in Cuyahoga County at the time, presented the case to the grand jury. Tamir's family and those involved in his case said that McGuinty presented the case to the grand jury as if he was "a defense attorney for the cops." The officers were also allowed to prepare and make statements to the grand jury, but were not cross-examined. The grand jury did not indict Loehmann or Garmback. The U.S. Department of Justice also declined to bring criminal charges against the officers. Tamir's family filed a wrongful death suit against Loehmann, Garmback, and the City of Cleveland. In 2016, the lawsuit was settled and the Rice family received $6 million. The 911 dispatcher who failed to tell the officers Tamir was a young boy and the gun was likely fake was suspended for just eight days. Loehmann was fired from the police force and Garmback, who had previous excessive force complaints on his record, was merely suspended for several days.

MOMODOU LAMIN SISAY
Killed May 29, 2020
Snellville, Georgia

Momodou Sisay, a Black Gambian Muslim, was driving through the town of Snellville, Georgia at 3:00am when an officer tried pulling him over for an expired tag. Mr. Sisay, shaken by the recent murder of George Floyd and afraid of what an officer could do to him in the middle of the night, continued to drive.

The officer followed Mr. Sisay and then administered a controversial position intervention maneuver (PIT maneuver) with his squad car, forcing Mr. Sisay's car off the road, into some trees and bushes, and left hanging over the ledge of a cliff. Squad cars then surrounded Mr. Sisay's vehicle. While surrounded, Mr. Sisay told his girlfriend on the phone, "I'm surrounded by armed officers. I think they're going to kill me." At least 100 officers arrived at the scene and the SWAT team was called. Police claim that as they approached Mr. Sisay's car, which was hanging off of an embankment on the side of the road, he refused to comply with verbal orders and flashed a handgun at officers. However, Mr. Sisay's family disputes that he brandished a gun at the officers. Officers then fired three rounds of shots at Mr. Sisay, killing him. More than 200 bullet holes were found on Mr. Sisay's car.

The officers were wearing body cameras during the killing, but have not released the footage. The Gambian government has contacted the U.S. State Department, urging a "transparent, credible, and objective investigation" into the killing of Mr. Sisay. The Sisay family has retained attorney Abdul Jaiteh but they have not yet filed a lawsuit against the officers. Mr. Jaiteh said there were Eighth Amendment cruel and unusual punishment and Fourteenth Amendment equal protection violations.

MUBARAK SOULEMANE
Killed January 15, 2020
West Haven, Connecticut

Mubarak Soulemane, a mentally ill 19-year-old, was driving an allegedly stolen car when spotted by Connecticut State Trooper Brian North. Although the dispatcher told the trooper not to chase the car, the officer chased him until Mr. Soulemane's car was trapped to a standstill. The video of the incident shows North exiting the vehicle with his gun drawn, and shooting Mr. Soulemane seven times through the window, while the victim was just

sitting in the car, killing him on the spot. The penalty for car theft is not death, however, and in this case the trooper acted as judge, jury, and executioner. This officer was not in any imminent danger. Despite the Connecticut State's attorney having this case under investigation for over a year, as of the date of the hearing there has been no result of the investigation and North remains on the force.

As noted by the Soulemane family's attorney Sanford Rubenstein, "Since local prosecutors need the police to make their cases there is an existing conflict, or at least an appearance of conflict by the public with regard to having local district attorneys investigate police killings... A model for this is in New York state, where state law has authorized the Attorney General to investigate and prosecute police officers who killed innocent victims. In addition, a number of the killings that I have referred to in the list of 20 were mentally ill individuals."

Attorney Mark Arons, concurs: "Connecticut is a good example of inherent bias built into the system. There is a state's attorney who is investigating acts of police violence and brutality. The state's attorney is an employee of the state of Connecticut. The state trooper who brutally murdered Mubarak is likewise an employee of the state of Connecticut. As far as that goes, city and municipal police officers, although they're employees of the town or the city, they would also be prosecuted by a member of the state's attorney's office. So they are all on the same team, if you will."

Omo Klumsum Muhammad, the mother of Mr. Soulemane, testified about the devastating impact of her son's killing on herself and the family. But she is "praying for justice" and so far "justice have never came. It's been over a year that I'm still waiting for justice. . . My son is been suffering from this illness[393] for over six years before this trooper took his life away, murdered my son put seven bullets on my son. He was in the car trapped. He shouldn't deserve to die the way he was murdered."

ALBERTA SPRUILL
Killed May 16 2003
New York, New York

In the spring of 2003, an unnamed confidential informant for the New York Police Department was deemed unreliable and decertified. But because the decertification was not entered into the system, the decertified informant provided information to the NYPD about drug dealing. The police did not look into the informant's credibility nor run a check on the name he provided, Melvin Boswell, who turned out to have been in prison at the time.

Based on the informant's information, police secured a no-knock warrant and violently entered the apartment of Alberta Spruill, a 57-year old city worker, who lived alone. They knocked the door off its hinges, threw in a stun grenade, making a loud flash and a bang. Ms. Spruill was thrown to the floor and handcuffed so violently that the autopsy showed blood vessels had burst in her shoulders. When the police realized their mistake, Ms. Spruill could not catch her breath. The police called EMS to the scene. Ms. Spruill was taken to the hospital. Twenty minutes later, she was pronounced dead from cardiac arrest. The autopsy that followed indicated that her death was caused by a police raid, including use of the flashbang stun grenades, as well as being thrown to the floor.

As explained by Derek Sells, attorney for Ms. Spruill's estate, race played a role in the stop-and-frisk of the confidential informant that initiated the conduct that led to Ms. Spruill's death. Race played a role in the fact that the police did not conduct any background check, nor did the prosecutors perform any background check on the reliability of the confidential informant. Further, the no knock warrant was secured in part based on the police's racial profiling of the neighborhood in which the apartment was located and the police's implicit bias against the community's predominantly Black residents as armed and dangerous drug dealers.

After Ms. Spruill's death, NYPD Commissioner Ray Kelly issued a 24-page report on the raid, detailing consis-

393 Apparently, Mr. Soulemane suffered from schizophrenia.

tent errors and poor judgment by members of the NYPD. Almost every decision leading up to the raid seems to have been flawed, from commanding officers not sharing crucial information, to the failure to seek requisite approval for the use of flash grenades, to officers' failure to raise concerns about the reliability of the informant. Ms. Spruill's apartment was not properly surveilled to see if it likely sheltered drugs or guns. The drug dealer whose cache of drugs and weapons was being sought in the raid had in fact been arrested four days earlier on an assault warrant, but this information was not shared.

When the raid sparked public outrage, the NYPD published new guidelines calling for more reliability when taking tips from informants, and promising to conduct proper surveillance and confirm addresses prior to sending in a SWAT team. But later, during the course of a lawsuit that concluded in 2004, and stemming from another mistaken raid, the City of New York disavowed the post-Spruill reforms and stated they were merely discretionary, unenforceable, and could be revoked at will by any mayor or police commissioner.

DARIUS TARVER
Killed January 21, 2020
Denton, Texas

A week before his death, Darius Tarver was in a serious collision. His car rolled over, he was found non-responsive at the scene, and responders had to cut him out of the car. He was admitted to ICU trauma but released after a short time with no observation even though he was still suffering from injuries related to the collision. Mr. Tarver suffered severe injuries to his face and head, including internal brain damage that left him with an extreme sensitivity to light, noise, and sound. He also exhibited bizarre and erratic behavior and had extreme mood swings.

On January 21, 2020, Mr. Tarver was home in his apartment complex with his roommate. Because of his extreme sensitivity to light, Mr. Tarver used barricades made of bed sheets, bedspreads, or the mattress to cover his door to keep out light. He seemed to be in an excited state, muttering incomprehensibly and making religious references. His roommate was fearful and believing this to be an urgent situation, left the apartment and called law enforcement. He described Mr. Tarver's symptoms in detail, noting that he wasn't behaving like himself, but that he was nonviolent, apparently in need of help. Other neighbors also called the police, at least one of whom reported a man in the hallway who seemed focused on the lights and who removed or used a frying pan to knock out some hallway light fixtures. Other residents were concerned that Mr. Tarver was pounding on some doors.

The four officers who came to the apartment complex saw Mr. Tarver slowly descend the stairs with a frying pan in his hand and some other weapon like a kitchen knife in his pocket. Upon seeing the kitchen knife, they decided they had authority to use lethal force. Mr. Tarver stood still, looking, talking about God protecting him. His voice was not loud and there was no indication he intended to become aggressive. Officers began shouting commands to drop his weapons but gave Mr. Tarver little time to respond before starting to taser him. He fell forward, apparently out of control of his neuromuscular functions, and dropped the frying pan. Mr. Tarver was tasered a second time and then shot, apparently in the torso, and lost control of the weapons. He stood up and limped over to the pan but didn't have the strength to lift it. As he limped forward, officers shouted ineffective commands and fired their weapons two more times into Mr. Tarver's body center, causing him to fall down. They delayed getting him treatment and he perished from his wounds. The officers are still on the job although the investigation has not been completed.

Kevin Tarver, Mr. Tarver's father, a pastor and member of the police advisory council, called the officers "impatient," adding, "It wasn't about trying to protect my son's life, about trying to save their life. They wasn't in any imminent danger nor threat. But they escalated the situation, they did not de-escalate the situation. And because of their actions, they killed my son, and they have not owned up to it." He said the police chief lied, saying that Mr. Tarver raised the pan, tried to attack two officers, and resisted arrest, but that account was belied by the fact

that the officers never even tried to handcuff Mr. Tarver.

BREONNA TAYLOR
March 13, 2020
Louisville, Kentucky

Breonna Taylor, an EMT, was sleeping soundly in her bed with her boyfriend Kenneth Walker. At the time, police had been investigating two men they believed were selling drugs out of a house that was not near Ms. Taylor's; one of those men was Ms. Taylor's ex-boyfriend, Jamarcus Glover. For a while, the City of Louisville had been trying to clear the area where Mr. Glover lived in order to gentrify it. The police unit investigating Mr. Glover was tasked with targeting "roadblocks" to a large development plan for the neighborhood. Identified as a "primary roadblock," Mr. Glover was thus targeted by this unit. The officers obtained a no-knock warrant for Ms. Taylor's apartment because the police believed Mr. Glover had used her apartment to receive packages. However, before the raid, the warrant was changed to a "knock and announce" warrant. Shortly after midnight, Louisville police, dressed in plainclothes, forced entry into Ms. Taylor's home using a battering ram. Officers did not announce themselves. Ms. Taylor and Mr. Walker both heard the noise and called out, asking who was there. When no one responded, Mr. Walker grabbed his gun and shot a warning shot, allegedly striking Sergeant Jonathan Mattingly in the thigh, although later evidence indicated that the shot that hit Mattingly may have been fired by other police officers. The police responded by shooting 32 rounds of shots into the apartment; six shots hit Ms. Taylor.

Ms. Taylor coughed and struggled to breathe for five minutes after she was shot. The officers called an ambulance to give medical attention to their colleague, but not Ms. Taylor. Mr. Walker called 911 and Ms. Taylor did not receive medical attention until 20 minutes after being shot. Ms. Taylor was pronounced dead on the scene.

After the shooting, the officers filed an incident report claiming Ms. Taylor had not been injured and there was no forced entry. The three officers involved were all put on administrative leave. Only one officer, Brett Hankinson, was indicted. However, Hankinson was indicted for wanton endangerment for the bullets that went into the neighboring apartment, not for Ms. Taylor's death. Mr. Walker was arrested for attempted murder of a police officer, but those charges were dropped. In September 2020, Mr. Walker filed suit against the Louisville Metro Police Department for misconduct.

In May 2020, the FBI announced it would conduct its own independent investigation into the killing. Ms. Taylor's family filed a wrongful death lawsuit on her behalf against the officers and the City of Louisville. The suit was settled and the Taylors were paid $12 million, but the officers and the city admitted no liability or wrongdoing.

It took weeks for Breonna Taylor's murder to spark outrage and contribute to the widespread protests all over the country following George Floyd's death. As a result, Louisville voted to ban all no-knock warrants and members of Congress have introduced policing reform bills in response. Louisville Police Department also announced they would offer housing credits to officers so more would actually live in the Louisville Metro area.

VINCENT TRUITT
Killed July 13, 2020
Atlanta, Georgia

Vincent Truitt was killed by a Cobb County police officer in Atlanta, Georgia. The Georgia Bureau of Investigations has refused to name the officer who fired the deadly shot. The 17-year-old was a passenger in an "alleged" stolen vehicle. The driver led the officers on a brief pursuit. The vehicle came to an abrupt stop when the police performed a PIT (Pursuit Intervention Technique) maneuver. The driver exited the vehicle and immediately

fled on foot. As Mr. Truitt attempted to run away, he was shot twice in the back. Not only was the victim handcuffed, but the officers also undressed Mr. Truitt while the minor laid lifelessly on the ground. The last words of Mr. Truitt to the officer were, "Why did you shoot me? I am dying." Although a gun was found at the scene, the evidence does not indicate that Mr. Truitt presented the gun in an offensive manner, brandished it, or pointed it at the police. Flynn Broady, the District Attorney, has refused to release police body camera footage or any surveillance videos of the shooting to the public. The officer in question is still working with the Cobb County Police Department while under investigation for this killing. As the Commissioners stated, justice for victims of police violence in the U.S. must address systemic oppression, which dehumanizes Black people and is a root cause of police brutality. Police violence is not the result of the misconduct of "a few bad apples" within police institutions across the U.S. Legislation addressing police reforms must go hand in hand with policies that acknowledge the existence of racial profiling and the deadly, disproportionate use of force on innocent Black men, women, and children. Venethia Cook, Mr. Truitt's mother, stated that justice for her son requires full transparency and accountability that treats police officers as perpetrators of criminal offenses rather than victims. Moreover, the close-knit relationship between police officers, police unions, and prosecutors should be addressed as it threatens the way in which people of African descent interact with the law. Although the prosecutor watched the police body camera footage that incriminates the officer, he has yet to demand an arrest warrant or file charges in the case.

SHEM WALKER
Killed July 11, 2009
Brooklyn, New York

Shem Walker, an Army veteran and father of two, was killed in front of his mother's home. Mr. Walker routinely checked on his 75-year-old mother, who lived in a neighborhood often riddled with drug trade. Residents had complained about drug dealing and a recent shooting had occurred nearby.

An undercover officer in plainclothes working an anti-drug operation was sitting on the stoop in front of Mr. Walker's mother's home. Another undercover officer was working nearby as backup for a buy-and-bust operation. They were called "ghosts." A third officer was in front of a bodega two doors away.

The police had made three arrests before the events leading to Mr. Walker's death. The undercover officer never revealed himself as a police officer to Mr. Walker before drawing his gun and firing three shots, killing Mr. Walker While he was on the sidewalk in front of his mother's home

The prosecutor conducted an investigation but did not convene a grand jury. The officer who killed Mr. Walker was never charged with a crime. Mr. Walker's family filed a civil suit and reached a $2.25 million settlement. The suit alleged improper and careless initiation of a confrontation with Mr. Walker without probable cause, improper use and discharge of a firearm, firing numerous shots that struck Mr. Walker several times, and carelessly and recklessly using physical force in the unwarranted confrontation with Mr. Walker.

A community activist testified that local activist groups organized a march over the Brooklyn Bridge to protest Walker's death and that a street had been named for Shem Walker.

PATRICK WARREN SR.
Killed January 10, 2021
Killeen, Texas

Patrick Warren, Sr. was shot to death by Officer Reynaldo Contreras, a five-year veteran of the Killeen police department, following a request for mental health services. Mr. Lee Merritt, attorney for the Warren family, explained that the reason the family called the sheriff's office was that the day before Mr. Warren was killed by

police, his family reached out to a Mental Health Resource Officer provided by the Bell County Sheriff's Department.

Mental Health Resource Officers are specially trained officers who receive 40 additional hours of training beyond the required 40 hours of training on how to address individuals suffering from mental health distress. The officer who responded to Mr. Warren's home the day before his death initially had a similar approach to that of Contreras. But he was in plainclothes, and although he had a weapon, it was not on display. He also brought a backup officer with him.

After the officer was invited into the home, he sat down on the couch and he spoke with Mr. Warren. He utilized best practices and was able to successfully convince Mr. Warren to go to a treatment facility. Mr. Warren went to that facility and returned home that night. When Mr. Warren was experiencing a crisis with some "manic" aspects the following day, the family called the same number. The sheriff's department sent Contreras instead of health workers or a trained Mental Health Resource Officer.

Contreras did not have the additional, critical training of the previous Mental Health Resource Officer who seemed to understand that the people they are encountering are considered patients, not criminal suspects, or offenders.[394]

When Contreras arrived at the door, he had his weapon on display. The family had specifically requested that the responding officer not display his weapon. Contreras stated that the threat that caused him to leave the home and take a tactical position outside was that he got "a bad feeling" when he stepped into the house. Contreras said he was suspicious. He said Mr. Warren seemed "creepy" even though he was visible, standing in the light with his hands showing that he held no weapon. This "creepy" feeling was enough for him to escalate to a tactical position outside and to draw a stun gun.

When Mr. Warren exited the house, Contreras told him to get on the ground, which Mr. Warren did not do. Contreras then discharged a stun gun of 50,000 volts of electricity. This caused Mr. Warren to fall to the ground in great pain but it only exacerbated his condition. Contreras escalated the encounter by brandishing his firearm and shooting Mr. Warren more than three times in rapid succession until he collapsed to the ground a second time.

Contreras's actions were later ratified by the Chief of Police of Killeen, Texas, Charles F. Kimble. Kimble has asserted that Contreras received more than adequate training on dealing with citizens in mental health crises and that his actions reflected the training that he had received.

In addition to the Warren case, attorney Lee Merritt provided examples of approximately 10 other cases of escalating and killing Black persons in mental health crises, including Everett Palmer, who died in police custody and whose body was returned to his family with key organs missing.

TYRONE WEST
Killed June 18, 2013
Baltimore, Maryland

Tyrone West was giving one of his neighbors a ride to work using his sister's 1999 Mercedes. Mr. West and his neighbor were followed by two officers in an unmarked police vehicle. The officers then initiated a traffic stop,

394 Persons in mental health crises are people who simply need help, and should be treated accordingly. There is a conflict between training officers receive with respect to escalation of the use of force to demand compliance and when compliance is not immediately attained, and escalation of force against individuals in mental health crisis because the use of force spectrum is ineffective for those in mental health crisis.

citing "suspicious" behavior and backing into an intersection. The officers asked Mr. West and his neighbor if either of them was carrying drugs and asked them to step out onto the curb. There are conflicting reports about what happened next. Some eyewitnesses say that Mr. West and the neighbor just came out of the car, and others say that the police were abusive, pulling Mr. West out of the car by his dreadlocks. The officers then shouted expletives at Mr. West and told him to get on the ground. The officers tasered Mr. West on his neck at least four times. They then searched his car and found no drugs. Later, the officers claimed they saw something bulging out of Mr. West's sock. When an officer reached for Mr. West's foot, Mr. West brushed his hand away.

The officers then grabbed and arrested Mr. West. During the arrest, the officers rolled him over on his backside and one officer put his knee on Mr. West's back. The officers also pepper sprayed Mr. West several times. In reaction to the pepper spray, Mr. West screamed and tried to get up and the officers started beating him with fists and batons in response. Mr. West was able to get up briefly and ran off, but when the officers caught up to him, he laid face down with his arms spread out. The officers then continued their beating. More officers then entered the scene, and at least seven joined in the beating of Mr. West.

The officers claimed that one officer noticed that Mr. West had stopped breathing and the officers made efforts to resuscitate him. However, eyewitnesses said that an officer stood on Mr. West's back and neck for five minutes. The paramedics reported that they were not called to help Mr. West, but to help the officers who got pepper spray in their eyes from their use of it. It took 30 to 45 minutes for the paramedics to take Mr. West to the hospital. He died of cardiac arrhythmia.

Mr. West's family filed a Section 1983 action against the City of Baltimore and settled with the city for $1 million. The Baltimore Police department conducted an internal investigation. Eight officers were put in administrative positions, but city prosecutors concluded there was not enough evidence to charge any of them. In 2014, Mayor Rawlings-Blake commissioned another investigation, which found that the officers did not use excessive force nor did officers' force contribute to Mr. West's death, but the officers did not completely follow protocol. The independent review board instead blamed his death on the extreme heat that day, dehydration, and a medical issue aggravated by the encounter with the police.

Mr. West's murder led to many protests against police brutality in Baltimore. His family became involved in activism against police brutality in Baltimore and Maryland at large. The family campaigned for Marilyn Mosby to replace Gregg Bernstein as state attorney and Mosby won the race. Once she entered office, Mosby reneged on her campaign promises and informed Mr. West's family that she would not reopen the investigation into his murder.

TARIKA WILSON
Killed January 4, 2008
Lima, Ohio

Tarika Wilson, the mother of six children ages one through 8, was holding her 14-month-old baby when she was shot dead. Ms. Wilson lived with her boyfriend, Anthony Terry, in a two-story home. Police, who suspected Mr. Terry of drug dealing and argued that he posed a danger to others, applied for and received a no-knock warrant for his arrest.

The officers waited for Mr. Terry to go inside the home before executing the warrant in the evening, knowing that Ms. Wilson and her children would be there as well, and despite the fact that they had the opportunity to arrest him outside. Armed with automatic rifles and machine guns and wearing vests and helmets, the officers burst through the door. Mr. Terry was downstairs with his dogs. When police set off stun grenades that made a loud noise and emitted a bright light, Ms. Wilson took her children upstairs and told them to get down on the floor to protect them. She was standing up holding her baby named Sincere.

One officer with the team went upstairs, holding a semi-automatic rifle that would emit three bullets automatically when the trigger was pulled, despite knowing that the person they were seeking was located on the ground floor. Ms. Wilson posed no resistance to the officer. The 60-year-old officer squeezed the trigger and three bullets were ejected. One bullet ripped through Sincere's index finger and severed it. The bullet then entered Ms. Wilson's chest, killing her.

The officer who killed Ms. Wilson was charged only with misdemeanor reckless assault. The all-white jury acquitted him. Ms. Wilson's family filed a civil suit against the police department and received a $2.5 million settlement.

OUSMANE ZONGO
Killed May 22, 2003
New York, New York

Ousmane Zongo, a wood instruments maker from Burkina Faso, West Africa, was working in a storage unit in a warehouse repairing African artifacts when he heard the commotion of a police raid on an alleged counterfeit CD ring operating out of a different storage locker. Mr. Zongo had no involvement in the counterfeit ring.

Mr. Zongo, who was unarmed, entered the hall to see what was happening and saw Brian Conroy, a plainclothes officer with a gun in his hand. Apparently thinking he was about to be robbed, Mr. Zongo ran through a maze of corridors of lockers until he reached a dead end.

Conroy chased Mr. Zongo and fired his semi-automatic pistol five times. Four bullets hit Mr. Zongo, who was taken by ambulance to the hospital. He died on the operating table several hours later.

A grand jury indicted Conroy for second degree manslaughter. The trial ended in a hung jury–10 to two for conviction. Conroy waived jury for the retrial and tried his case to a judge. The judge acquitted him of secondary degree manslaughter and convicted him of negligent homicide but imposed no jail time. The officer retired with his pension. The family's civil suit resulted in a monetary award of $3 million for Mr. Zongo's wife and two small children in Burkina Faso.

APPENDIX 2 - INTERNATIONAL LAW ADDENDUM ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I. PROTECTED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The Right to Life

The right to life is a fundamental human right without which all other rights would have no meaning.[395] The U.S. is obligated to respect, protect, and ensure equally, without discrimination of any kind, the right to life of all persons within its territory and subject to its jurisdiction, and to effectively investigate, prevent, punish, and redress violations of that right. International human rights treaties and other standards require States, as an integral part of these duties, to ensure that the investigation of every potentially unlawful death is independent, impartial, prompt, thorough, effective, credible, and transparent.[396]

The U.S. has ratified[397] human rights treaties guaranteeing the right to life and freedom from torture and discrimination, and imposing on States duties to prevent, investigate, and punish violations. They include the *International Covenant on Civil and Political Rights*[398] (ICCPR); the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*[399] (UNCAT); and the *International Convention on the Elimination of All Forms of Racial Discrimination*[400] (ICERD).

Article 6(1) of the ICCPR provides, "Every human being has the inherent right to life [which] right shall be protected by law. No one shall be arbitrarily deprived of his life." The right to life is also a rule of customary international law and is considered a *jus cogens* norm.[401] The right to life is non-derogable, which means there can be no exceptions to this guarantee.

The ICCPR, in Article 14, guarantees the accused the right to be presumed innocent and to a fair trial by an impartial tribunal. When a suspect is deprived of life in the absence of lawful self-defense or judicial process, it constitutes an extrajudicial killing.

States parties to the ICCPR have a legal obligation to adopt a domestic legal framework to ensure and protect the right to life, which includes investigation and accountability. States that fail to do so are in violation of their international legal obligations, Christof Heyns, UN Special Rapporteur on extrajudicial, summary, or arbitrary executions, wrote in his April 1, 2014 report to the Human Rights Council.[402]

Every child also has the "inherent right to life," as stated in article 6 of the *Convention on the Rights of the Child*[403] (CRC), which the United States has signed.

395 *Myrna Mack-Chang,* at 121 ¶ 153 (Nov. 25, 2003); Nowak, *supra* n. 222.
396 UNHRC, *General Comment No. 36: Article 6 (Right to Life)*, at ¶ 28.
397 U.S. Const. art. VI. (When a State ratifies a treaty, it becomes a State Party. The provisions of treaties the U.S. has ratified are part of U.S. law under the Supremacy Clause of the U.S. Constitution. Article VI says that treaties "shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding").
398 ICCPR, at ¶ 171.
399 CAT, at ¶ 85.
400 ICERD, *supra.*
401 The highest form of customary international law is a *jus cogens* norm. *Jus cogens* are considered so significant that no State can derogate from their provisions. States cannot pass laws authorizing practices that violate *jus cogens* norms, there is no statute of limitations for prosecuting violations of *jus cogens* norms, and there can be no immunity for *jus cogens* violations.
402 Report on Extrajudicial, Summary or Arbitrary Executions, *supra.* n. 231
403 CRC, *supra* n. 228 (the U.S. has signed the CRC).

There are two components to the right to life. First, every person has the right not to be arbitrarily deprived of his or her life and there are limitations on the use of force. Second, when there is reason to believe that a life may have been taken arbitrarily, a proper investigation and accountability are required.

The Human Rights Committee (HR Committee), which interprets the scope of ICCPR provisions and identifies binding obligations of States Parties to ensure rights, states in its General Comment No. 36[404]:

> Deprivation of life is, as a rule, arbitrary if it is inconsistent with international law or domestic law. A deprivation of life may, nevertheless, be authorized by domestic law and still be arbitrary. The notion of "arbitrariness" is not to be fully equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.

International "soft law" contains two primary instruments that explain when law enforcement officials can use force. They are the *Code of Conduct for Law Enforcement Officials* (Code of Conduct),[405] and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990* (Basic Principles).[406] These instruments, which have been endorsed by a large number of States, are considered authoritative statements of the law.[407]

The duty of States to ensure equal and non-discriminatory protection of the right to life and effective remedies for violations was recognized in 1948 by the UN *Universal Declaration of Human Rights*[408] (UDHR) and the Organization of American States' (OAS) *American Declaration on the Rights and Duties of Man* (ADRDM).[409] The U.S. and all OAS members are considered signatories to the ADRDM and thus have undertaken to respect the rights and fulfill the duties set out in the ADRDM.

The U.S. signed[410] the *American Convention on Human Rights* (ACHR). Although the U.S. has not ratified the ACHR, the Inter-American Commission on Human Rights has established that the ACHR "may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration."[411]

The *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* specifically extends the non-derogable prohibition of extra-judicial, arbitrary, or summary executions to killings by state actors:

> Such executions shall not be carried out under any circumstances including, but not limited to...excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority. [412]

The HR Committee has made clear that:

> States parties should take measures not only to prevent and punish deprivation of life

404 UNHRC, *General Comment No. 36: Article 6 (Right to Life)*.
405 Adopted by the General Assembly in its resolution 34/169 (1979); Report on Extrajudicial, Summary or Arbitrary Executions, *supra.* n. 231
406 G.A. Res. 45/111 (Dec. 14, 1990). (adopted without a vote the same year welcomed the Basic Principles).
407 Report on Extrajudicial, Summary or Arbitrary Executions, *supra.* n. 231
408 G.A. Res. 217 (III) A.
409 Int-Am. Comm'n on H.R., American Declaration of the Rights and Duties of Man (1948).
410 VCLT (provides in Article 18 that when a State signs, but doesn't ratify a treaty, it must refrain from acts which would defeat the object and purpose of the treaty. The U.S. generally considers Article 18 to be customary international law); *See* Maria Frankowska, The Vienna Convention on the Law of Treaties Before United States Court, 28 VA. J. Int'l L. 281, fn. 82 (1988).
411 Mary and Carrie Dann, Case 11.140, Inter-Am. Comm'n H.R., Report No. 75/02, Case 11.140 ¶ 96 (Dec. 27, 2002).
412 *See* Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, *supra* n. 258.

> by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.[413]

State duties to ensure an effective remedy for unlawful deaths are an inextricable part of the State duty to protect the right to life. Both the IACHR interpreting the ACHR and the HR Committee have determined that a failure to ensure the investigation of a potentially unlawful death in accordance with international law standards can itself be a violation by the State of the right to life.[414] The IACHR further determined that violations of any person's rights under the ACHR "carried out by an act of public authority or by persons who use their position of authority is imputable to the State."[415]

The Right to Security

The ICCPR, ICERD, and CRC protect the right to security and liberty. Article 9 of the ICCPR provides:

> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

In General Comment No. 35,[416] the HR Committee declared that the right to security of person protects individuals from "infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained." The Committee ties the right to security of person to violent policing, writing that States Parties "should also prevent and redress unjustifiable use of force in law enforcement."

Likewise, in Article 5, ICERD says:

> 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.

The CRC, Article 37, says, "No child shall be deprived of his or her liberty unlawfully or arbitrarily."

Non-discrimination Requirement

The right to non-discrimination is enshrined in ICERD; ICCPR; CRC; ACHR; the *Convention on the Elimination of All Forms of Discrimination Against Women*[417] (CEDAW); the *Convention on the Rights of Persons with Disabilities*;[418] (CRPD) and the *Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance*.[419]The non-discrimination requirement is a *jus cogens* norm.

413 Nils Melzer, Targeted Killing in International Law 104-5 (Oxford University Press 2008).
414 *See Case of Velasquez Rodriguez v. Honduras*, Order of the Court, Inter-Am. Comm'n H.R. (ser. C) No. 4 ¶ 176 (July 29, 1988).
415 *Id.* at 164.
416 CCPR General Comment No. 35, *supra* 378.
417 CEDAW, *supra* n. 240 (the U.S. has signed CEDAW).
418 G.A. Res. 61/106 A, Convention on the Rights of Persons with Disabilities (CRPD) (Jan. 24, 2007) (the U.S. has signed the CRPD).
419 Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance, June 5, 2013, U.N. Doc No. 54915.

The ICERD, in Article 1, defines racial discrimination as:

> any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the *purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. (emphasis added).

ICERD prohibits practices that have a discriminatory *purpose or effect*. U.S. jurisprudence only prohibits practices that have a discriminatory purpose or intent. See *McClesky v. Kemp.*[420] The Committee on the Elimination of Racial Discrimination[421] (CERD) has called on the U.S. to review the legal definition of racial discrimination and prohibit it in all forms—effect as well as purpose.

States must adopt both reactive and proactive stances to combat racially motivated violence by police.[422]Institutionalized racism or ethnic discrimination impacts on patterns of accountability.

In Article 2, ICERD requires that States take *effective measures* to review, amend, rescind, or nullify any laws or regulations that have the effect of creating or perpetuating racial discrimination by any persons, group, or organization.

ICERD, Article 6, contains the right to seek "*just and adequate reparation or satisfaction* for any damage suffered as a result of [acts of racial discrimination that violate his or her human rights and fundamental freedoms under ICERD]."(emphasis added)

The ICCPR, in Article 2, provides:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 1 of CEDAW defines "discrimination against women" as follows:

> any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

CEDAW, in Article 2, requires States Parties to "condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women." It also requires that States Parties incorporate the principle of equality in legislation and adopt prohibitions and sanctions for discrimination against women. They must "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."

Article 1 of the CRC defines "child" as every human being under the age of 18. In Article 2, States Parties are required to respect and ensure the rights in the Convention "without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

420 *See McCleskey*, 481 U.S. 279.
421 CERD/C/USA/CO/7-9.
422 Report on Extrajudicial, Summary or Arbitrary Executions, *supra.* n. 231

In Article 19, the CRC provides:

> States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 5 of the CRPD states, "States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided."

The Right to Mental Health

The *International Covenant on Economic, Social and Cultural Rights*[423] (ICESCR), in Article 12, guarantees "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

Article 2 of the ICESCR states, "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The CRPD provides in Article 5, "States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided."

Prohibition Against Torture

The UNCAT, ICCPR, and the American Declaration prohibit torture and cruel, inhuman, or degrading treatment or punishment (CIDT). The prohibition of torture is a *jus cogens* norm. It is never allowed. Article 6 of UNCAT provides, "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

In Article 1, UNCAT defines torture as:

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The UNCAT, in Article 16, also prohibits:

> other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

In 2014, the Committee Against Torture (CAT), which interprets UNCAT, released concluding observations

423 ICESCR, 933 U.N.T.S. 393. The U.S. has signed the ICESCR.

on the combined third to fifth periodic reports of the U.S. (observations on U.S. reports),[424] in which it addresses racism and violent acts of torture in policing, particularly against Black people in the United States. CAT was "concerned about numerous reports of police brutality and excessive use of force by law enforcement officials," particularly against individuals "belonging to certain racial and ethnic groups," immigrants, and LGBTQ individuals.

Taser Use May Be Torture, or Cruel, Inhuman, or Degrading Treatment or Punishment

In 2020, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued the "The United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement."[425] It describes *conducted electrical weapons* (*Tasers/stun guns*) as follows:

> 7.4.1 Conducted electrical weapons are typically used to deliver pulses of electrical charge that cause the subject's muscles to contract in an uncoordinated way, thereby preventing purposeful movement. This effect has been termed "neuromuscular incapacitation."

The Guidance states in para. 7.4.11 that Tasers should not be used to overcome purely passive resistance to the instructions of an official by inflicting pain. Repeated use of tasering "should be avoided whenever possible."

Most significantly, the OHCHR warns that Taser use may amount to torture or cruel, inhuman, or degrading treatment or punishment in certain circumstances. It states:

> 7.4.12 -The risk of inflicting pain or suffering so severe that it may amount to an element of torture or cruel, inhuman or degrading treatment or punishment is especially high when a weapon is used in drive-stun mode to apply electricity directly to an individual without incapacitating them.

In its 2014 observations on U.S. reports, CAT stated that it was "appalled" by the number of deaths reported as a result of using *electrical discharge weapons* (*Tasers*).[426] CAT recommended that the U.S. "ensure that electrical discharge weapons are used exclusively in extreme and limited situations – where there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only." In addition, CAT opined that the U.S. should "revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women." Significantly, CAT said that it was "of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality."[427]

The Inter-American Commission on Human Rights says that torture is an aggravated form of inhuman treatment perpetuated with the purpose to obtain information or confessions, as a preventative measure, or to inflict punishment.[428] The distinction between torture and other CIDT "primarily results from the intensity of the suffering inflicted."[429]

CAT has opined that "information, education and training provided to [U.S.] law enforcement or military personnel are not adequate and do not focus on all provisions of the Convention, in particular on the non-

424 CAT/C/USA/3-5 at C. 26.
425 U.N. Doc. HR/PUB/20/1.
426 CAT/C/USA/3-5 at C. 27.
427 *Id.*
428 *Michael Gayle v. Jamaica*, Case 12.418, Inter-Am. Comm'n H.R., Report 92/05 (Oct. 24, 2005).
429 *Id.* at ¶ 62.

derogable nature of the prohibition of torture and the prevention of [CIDT]."[430] CAT is particularly concerned with "the frequent and recurrent shootings or fatal pursuits by the police of unarmed Black individuals."[431]

CAT stated in General Comment No. 2[432] that those exercising superior authority (which includes public officials) "cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventative measures."

The CRC, in Article 37, provides, "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

Article 5 of the Code of Conduct specifies that law enforcement officials may not invoke superior orders as a defense to a charge of torture.

The Duty to Seek Medical Attention

The Code of Conduct sets forth the duty of law enforcement officials to secure medical attention for people in their custody. Article 6 states, "Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required."

The Duty to Ensure Effective Remedies for Violations

The ICCPR, ICERD, and UNCAT all require effective remedies for violations of the rights guaranteed in those treaties.

The HR Committee stated that impunity may be "an important contributing element in the recurrence of … violations," and that the Article 2(3) State duty to provide an effective remedy may in appropriate cases require guarantees of non-repetition and changes in relevant laws and practices.[433]

In Article 2, the ICCPR requires that States Parties "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy" and "that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State." They must also "develop the possibilities of judicial remedy" and "ensure that the competent authorities shall enforce such remedies when granted."

Article 6 of ICERD also mandates that States Parties 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" that violate that 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.

Article 14 of UNCAT states that "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his depen-

430 Conclusions and Recommendations of the Committee Against Torture, ¶ 23.

431 Comm. Against Torture, Concluding observations on the combined third to fifth periodic reports of the United States of America, U.N. Doc. CAT/C/USA/CO/3-5 at ¶ 26 (Dec. 19 2014).

432 Comm. Against Torture, General Comment No. 2, U.N. Doc CAT/C/USA/CO/3-5 (Jan. 24, 2008).

433 UN Doc. CCPR/C/74/CRP.4/Rev.6, at ¶ 16, 18.

dents shall be entitled to compensation."

In Article 11, UNCAT requires that States Parties systematically review "interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment . . . with a view to preventing any cases of torture."

The Inter-American Court of Human Rights (IACtHR) requires that States "adopt all necessary measures, not only to prevent, try, and punish deprivation of life as a consequence of criminal acts, in general, but also to prevent arbitrary executions by its own security agents.[434]

Article 2 of CRC requires States Parties to "take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."

The Duty to Investigate

In *Velasquez Rodriguez v. Honduras*,[435] the IACtHR ruled that States Parties to the ACHR have a duty to investigate violations of the "inalienable" right to life arising from their duty to protect that right and,

> 156. In cases of extra-legal executions, it is essential for the States to effectively investigate deprivation of the right to life and to punish all those responsible, especially when State agents are involved, as not doing so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life.
>
> 157. In this regard, safeguarding the right to life requires conducting an effective official investigation when there are persons who lost their life as a result of the use of force by agents of the State.

The UNCAT imposes upon States Parties the obligation to ensure the prompt, impartial investigation of allegations of torture, protection of complainants and victims, compensation and rehabilitation for victims, and, in the case of death, compensation for dependents.

Article 12 of UNCAT says that State Parties "shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

The *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (UN Investigation Principles)[436] reflect a global consensus on the standards required for the investigation of potentially unlawful deaths. They require a thorough, prompt, and impartial investigation of all suspected cases of extra-legal, arbitrary, and summary executions (Article 9); independence and impartiality of those conducting autopsies (Article 14); and government action to bring to justice to persons identified by the investigation as having taken part in extra-legal, arbitrary and summary executions (Article 18).

The Human Rights Committee's General Comment No. 36, article 6 (Right to Life), released in 2019, confirms the binding obligations on ICCPR State Parties to ensure investigations in all cases of potentially unlawful deaths that are impartial, prompt, thorough, transparent, and effective.

General Comment No. 36, paragraph 29 establishes that when the unnatural death occurs in custody there is a

434 *Myrna Mack-Chang,* at 121 ¶ 152 (Nov. 25, 2003)
435 *Case of Velasquez Rodriguez, supra.* n. 414
436 Economic and Social Council Res. 1989/65.

presumption of arbitrary deprivation that can only be rebutted by a proper investigation:

> 29. Loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State's compliance with its obligations under Article 6.

APPENDIX 3: INTERNATIONAL LAW ADDENDUM ON CRIMES AGAINST HUMANITY

Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, art 7 (entered into force 1 July 2002).

Article 7 (1) (a): Elements of the Crime against Humanity of murder:

1. The perpetrator killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population.
2. The conduct constituted, or took place as part of, a mass killing of members of a civilian population.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population

Article 7 (1) (e) Elements of the Crime against Humanity of imprisonment or other Severe Deprivation of Physical Liberty:

1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.
2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (f) Elements of the Crime against Humanity of Torture states:

1. The perpetrator intentionally inflicted severe pain or suffering, whether physical or mental.
2. Upon a person in the custody or under the control of the accused.
3. Torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (h) : Elements of the Crime against Humanity of Persecution:

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.

2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.

3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as

impermissible under international law.

4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.22

5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (k): Elements of Crime against Humanity of other Inhumane Acts:

1.The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.

2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.

3. The perpetrator was aware of the factual circumstances that established the character of the act.

4. The conduct was committee as part of a widespread or systematic attack directed against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

The definitions of actions set forth in paragraph 1 state:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;[437]

...

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.

The Rome Statute Provides for Individual Criminal Responsibility

Article 25:

In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime.

437 *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 90, art 7 (entered into force 1 July 2002).

The Rome Statute Provides for Jurisdiction over Heads of State and Other Government Officials

Article 27: Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

The Elements of Crimes[438] defines the elements of each crime, but there are elements common to each. In the Introduction to Article 7, Crimes against Humanity, the Elements of Crimes describe two common elements found as the last two elements for each crime: the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and the perpetrator knew that that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.[439]

438 Available at https://asp.icc-cpi.int/iccdocs/asp_docs/Publications/Compendium/ElementsOfCrime-ENG.pdf.

439 **Elements of Crimes**
Article 7
Crimes against humanity
Introduction
.....
2. The last two elements for each Crime against Humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack.
3. "Attack directed against a civilian population" in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that "policy to commit such attack" requires that the State or organization actively promote or encourage such an attack against a civilian population.

The footnote to paragraph 3 further explains, "a [State] policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action."

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International Commission of Inquiry on Systemic Racist Police Violence against People of African Descent in the United States

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