

The United States of America

**Submission to the Committee on the Elimination of Racial
Discrimination**

**Tenth, Eleventh, and Twelfth Periodic Reports on the International
Convention on the Elimination of All Forms of Racial
Discrimination**

United States Department of State

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1. The Government of the United States of America welcomes the opportunity to submit this report, which, along with the Common Core Document and Annex, responds to the Committee’s Request for the tenth, eleventh, and twelfth periodic reports of the United States under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD” or “Convention”). A list of acronyms is included in Annex 1 to this report. This report discusses measures giving effect to U.S. undertakings under the CERD and related measures to address racial discrimination in the United States from the date of submission of the previous U.S. periodic report on June 12, 2013 (CERD/C/USA/7-9) (“2013 Report”) through the date of submission of the present report. It takes into account the U.S. oral presentation to and productive discussion with the Committee on August 13-14, 2014, the Committee’s Concluding Observations of September 25, 2014 (CERD/C/USA/CO/7-9) (“Concluding Observations”), the one-year U.S. follow-up report submitted on September 21, 2015, the Committee’s letter of May 24, 2016, and the Committee’s letter of June 12, 2020. This report was prepared by the Department of State (DOS) with extensive input and assistance from a range of federal departments and agencies. Input was also solicited from non-governmental organizations (NGOs) and public interest groups. Recognizing that work still needs to be done to ensure equality for all, and acknowledging the focus on racial and ethnic equality during the International Decade for People of African Descent, this report shares our efforts and progress in addressing issues related to racial discrimination in the United States.

2. The United States notes the discussion of U.S. reservations, understandings, and declarations to the Convention contained in ¶¶ 145 through 173 of the Initial U.S. Report (CERD/C/351/Add.1, October 10, 2000), relating, *inter alia*, to freedom of speech and association and regulation of private conduct. The United States maintains its position regarding all its reservations, understandings, and declarations, and with respect to other issues as discussed in this report.

3. The United States notes that some of the Committee’s recommendations fall outside the scope of obligations arising under the Convention. However, in the spirit of cooperation, the United States has included some information on those matters in this report, even where we may not agree that a given request bears directly on obligations under the Convention, as noted below in ¶¶ 72, 84, and 121.

4. As explained in ¶ 237 of the Initial U.S. Report and ¶ 318 of the 2007 Report (CERD/C/USA/6, October 24, 2007), the United States interprets the Committee’s reference to “unjustifiable disparate impact” in General Recommendation XIV consistent with U.S. law to reach race-neutral policies or practices that have an adverse and racially disproportionate impact, unless there is a substantial legitimate justification for the policies or practices and there is no alternative that would achieve the same legitimate purpose with a less adverse impact. As noted below in ¶¶ 6, 32, 45, 55, 67, 73, 77, 101, 114, 117, and 123, in the view of the United States, CERD article 2 (1)(c) does not impose obligations contrary to existing U.S. law.

Article 1

5. **Applicability of the Convention at the national level (¶ 5 of the Concluding Observations).** Existing U.S. constitutional and statutory law and practice provide protections against racial and ethnic discrimination on the bases

covered by article 1 of the Convention in all fields of public endeavor, and provide remedies for those who, despite these protections, become victims of discrimination. For descriptions of relevant U.S. provisions and laws, see sections II and III of the Common Core Document.

6. To the extent this discussion covers matters involving disparate impact, it is the United States' view, as described in ¶ 4 above, that the CERD does not impose obligations contrary to existing U.S. law.

7. On January 20, 2021, President Biden issued Executive Order (EO) 13985 on Advancing Racial Equity and Support for Underserved Communities, instructing the entire federal government to pursue and prioritize a comprehensive approach to affirmatively advance equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.

8. Monitoring and enforcement of U.S. laws prohibiting discriminatory disparate impact are actively pursued. For example, in October 2017, the Department of Housing and Urban Development (HUD) resolved a complaint against the State of Maryland after it was alleged that Maryland's approval requirements prevented the placement of Low-Income Housing Tax Credits in predominantly white neighborhoods, thereby limiting housing opportunities for African American and Hispanic communities. Maryland agreed to increase the number of affordable housing units by at least 1,500 units, change the approval criteria, and pay \$225,000 to the Baltimore Regional Housing Campaign. In 2015, the U.S. Supreme Court affirmed that Title VIII of the Civil Rights Act of 1968, the Fair Housing Act (FHA), authorizes disparate impact claims, recognizing that housing discrimination does not have to be intentional to be illegal, and noting, at the same time, that a causal connection to the defendant's policies must be shown, Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 576 U.S. 519 (2015). On January 26, 2021, President Biden issued a Presidential Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies, instructing HUD to take all steps necessary to examine the effects of its rules on disparate impact and affirmatively furthering fair housing to ensure compliance with HUD's statutory duty to implement the FHA's discriminatory effects standard.

9. The FHA also requires that federal agencies and federal grantees further the purposes of the Act in their programs and activities. HUD complies with this obligation by requiring recipients of certain HUD funding to undertake affirmatively furthering fair housing activities to undo historic patterns of segregation and other types of discrimination, and to afford access to long-denied opportunities.

10. The Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ) and the Department of Labor (DOL) Office of Federal Contract Compliance Programs (OFCCP) have also actively pursued disparate impact claims, often in the context of systemic discrimination. From Fiscal Year (FY) 2013 through FY 2020¹, the EEOC resolved over 2,750 systemic investigations, resulting in monetary recovery of over \$227 million and substantial changes to remedy discrimination and prevent future discriminatory conduct in the workplace. Additionally, in that period, OFCCP resolved 867 discrimination cases with a total financial remedy of \$95,217,582

¹ The U.S. Fiscal Year (FY) runs from October 1 through September 30. Thus, FY 2013 began on October 1, 2012 and FY 2020 ended on September 30, 2020.

in back pay, benefits, lump sum, and salary adjustments. In one case resolved in FY 2020, Cisco Systems, Inc. agreed to pay \$2,000,000 in back pay and interest to female, Hispanic, and Black employees to remedy systemic pay violations. Cisco will also devote \$550,000 per year for minimum salary adjustments, totaling at least \$2,750,000 over five years in equity pay adjustments. In FY 2019, OFCCP secured an agreement from Goldman Sachs to pay \$9,995,000 in back pay and interest to approximately 600 affected workers at its corporate headquarters in New York City to resolve findings of race and gender-based compensation discrimination. From 2014 through 2019, DOJ recovered over \$111 million in seven separate disparate impact pattern or practice cases and obtained significant policy changes to prevent future discrimination against employees and applicants. For example, in 2019, DOJ and the EEOC settled lawsuits against the City of Jacksonville, Florida, and its firefighters' union, respectively, challenging the fire department's use of promotional practices that had a disparate impact on African Americans. The consent decree provides for the development of new promotional exams for 10 positions, up to 40 settlement promotion positions for qualified African American firefighters, significant pension awards for qualified African American firefighters, and a \$4.9 million settlement fund for eligible promotion candidates. In addition, in November 2020, DOJ reached a settlement with Baltimore County, Maryland resolving claims that the Baltimore County Police Department discriminated against African American applicants for employment by using hiring examinations that disproportionately excluded African American applicants and were not job-related. The agreement requires the county to pay \$2 million in back pay and hire up to twenty of the previous African American applicants after they demonstrate that they meet current qualifications for hire.

11. The United States' reservation to article 2 concerning application of the Convention to private conduct remains necessary. The United States understands that identification of the rights protected under the Convention by reference in article 1 to the fields of "public life" reflects a distinction between spheres of public conduct that are customarily subject to government regulation, and spheres of private conduct that may not be. At the time it became a party to the CERD, the United States carefully evaluated the treaty to ensure it could fully implement all the obligations it would assume. In this case, the definition of "racial discrimination" under article 1(1) of the Convention, the obligation imposed in article 2(1)(d) to bring to an end all racial discrimination "by any persons, group or organization," and the specific requirements of paragraphs 2(1)(c) and (d) and articles 3 and 5 could be read as requiring States parties to prohibit and punish purely private conduct generally beyond the scope of governmental regulation under U.S. law. For this reason, the United States crafted a formal reservation that U.S. undertakings in this regard are limited by the reach of constitutional and statutory protections under U.S. law as they may exist at any given time. See ¶ 77 of the 2007 Report.

Article 2

12. **National human rights institution (¶ 6 of the Concluding Observations)**. As discussed in ¶ 31 of the 2013 Report, the United States continues to believe it has in place sufficient multiple and complementary protections and mechanisms to reinforce its ability to guarantee respect for human rights.

13. **Special measures (¶ 7 of the Concluding Observations)**. Article 2(2) requires States parties to take special measures "when the circumstances so warrant." The decision concerning when such measures are warranted is left

to the judgment and discretion of each State Party and, as described in our previous reports, the United States has special measures in place as contemplated by the Convention. The decision concerning what types of measures should be taken is also left to the judgment and discretion of each State Party, and the United States maintains its position that, consistent with the Convention, special measures taken for purposes recognized as compelling by the U. S. Supreme Court may be race-based if the use of race is narrowly tailored to the compelling purpose. See ¶ 33 of the 2013 Report.

14. It continues to be the United States' view that, consistent with its human rights treaty obligations, the United States may adopt and implement appropriately formulated special measures consistent with U.S. constitutional and statutory provisions, and is afforded broad discretion to determine both when circumstances warrant the taking of special measures and how, in such cases, it shall fashion such measures. The U.S. Supreme Court repeatedly has affirmed that universities have a compelling interest in obtaining "the educational benefits that flow from student body diversity," and that it is permissible to consider race as part of a holistic approach to achieving these goals. Grutter v. Bollinger, 539 U.S. 306, 343 (2003); see Fisher v. University of Texas at Austin, 136 S. Ct. 2198 (2016) (upholding the admissions program of the University of Texas, which considered an individual's race as one of several factors). The United States strongly supports diversity in elementary, secondary, and higher education because racially diverse educational environments help prepare all students to succeed.

15. **Racial profiling (¶ 8 of the Concluding Observations)**. DOJ's Civil Rights Division (CRD) may investigate and bring suit against law enforcement agencies that engage in a pattern or practice of racial profiling in violation of the U.S. Constitution. Between 1994 and January 2021, DOJ opened 70 civil investigations into police departments. As of January 2021, CRD was enforcing 17 settlement agreements. For example, in 2017, CRD reached an agreement with the City of Baltimore, Maryland, that prohibited police officers from engaging in bias-based policing and other unlawful law enforcement conduct, required the police department to revise its impartial policing policy and other policies, and mandated training for officers. After an investigation following a highly publicized police shooting in Ferguson, Missouri, CRD reached agreement with the city in March 2016 resolving allegations of discriminatory policing against African Americans and other unlawful law enforcement conduct. The Ferguson agreement requires significant reforms, including policy revisions; increased training, including training in bias-free policing; robust accountability systems; and enhanced data collection. President Biden has called for the enactment of the George Floyd Justice in Policing Act, a bill that would prohibit racial profiling. In March 2021, the House of Representatives passed the bill through the chamber.

16. On January 20, 2021, President Biden issued Proclamation 10141, Ending Discriminatory Bans on Entry to the United States, which revoked EO 13780 and other proclamations that had prevented certain individuals from entering the United States from primarily Muslim and African countries. President Biden declared that "those actions are a stain on our national conscience and are inconsistent with [the United States'] long history of welcoming people of all faiths and no faith at all."

17. On January 20, 2021 President Biden issued EO 13993, Revision of Civil Immigration Enforcement Policies and Priorities, which articulated the current Administration's baseline values and priorities for enforcement of civil

immigration laws. On the same date, the then-Acting Secretary of the Department of Homeland Security (DHS) issued a Department-wide memorandum, Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities, which did four things. First, it directed a comprehensive Department-wide review of civil immigration enforcement policies. Second, it established interim civil immigration enforcement priorities related to national security, border security, and public safety. Third, it rescinded several existing policy memoranda issued by the previous administration, which conflicted with the current Administration's values and priorities. Fourth, it directed DHS component agencies to issue interim guidance implementing the revised enforcement priorities.

18. On February 18, 2021, U.S. Immigration and Customs Enforcement (ICE) issued interim guidance on ICE's civil immigration enforcement and removal priorities. The interim guidance focuses the agency's civil immigration enforcement and removal resources on threats to national security, border security, and public safety. The guidance defines which cases are presumed to present such threats and do not require prior approval. The guidance also sets forth a pre-approval process for any civil immigration enforcement action that does not meet the presumption criteria. In addition, the guidance sets forth weekly reporting requirements to ensure coordination and consistency and to inform the development of the Secretary's final enforcement guidelines.

19. DHS policy prohibits racial profiling across all DHS law enforcement, investigation, and screening activities. DHS also adheres, where applicable, to DOJ's 2014 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity. As part of DHS's commitment to improving policies and operations, ICE is currently reviewing its 287(g) program. The 287(g) program utilizes two models: the jail enforcement model (JEM) and the warrant service officer (WSO) model. JEM authorizes certain state or local law enforcement personnel to identify and process for removal non-citizens with criminal convictions or pending charges who are arrested by state and local law enforcement agencies. WSO authorizes certain state and local law enforcement personnel to serve and execute administrative warrants to incarcerated non-citizens in their agency's jail. ICE is required to provide continuous oversight of partnering state and local law enforcement agencies and to inspect these partnering agencies every two years to ensure compliance with ICE policies and procedures.

20. DOJ conditions receipt of federal financial assistance on assurances from a recipient that it will comply with federal civil rights laws and applicable statutory provisions prohibiting discrimination based on bases such as race, color, and national origin. Recipients of DOJ Office of Justice Programs (OJP) federal financial assistance must sign assurances that they will carry out programs and activities in accordance with civil rights laws, including Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin. The assurances also include additional nondiscrimination provisions in Title I of the Omnibus Crime Control and Safe Streets Act of 1968, the Juvenile Justice and Delinquency Prevention Act of 1974, and the Victims of Crime Act of 1984, which are applicable to OJP awards made under these statutes. DHS also conditions federal funding to recipients of financial assistance on nondiscrimination, including a prohibition against discrimination based on race, color, or

national origin. Recipients of DHS financial assistance must complete a DHS Civil Rights Evaluation Tool at the time of award.

21. Both OJP's Office for Civil Rights and DHS's Office for Civil Rights and Civil Liberties (CRCL) actively pursue profiling investigations. DHS/CRCL reviews and investigates civil rights and civil liberties complaints filed by the public or reported by reputable news organizations regarding DHS policies and activities and involving a range of alleged abuses, including discrimination based on race and ethnicity as well as discrimination or inappropriate questioning related to entry into the United States. DHS/CRCL has opened 251 complaints alleging discrimination and/or profiling since January 1, 2013.

Articles 2 and 4

22. **Racist hate speech and hate crimes (§ 9 of the Concluding Observations)**. Regarding the U.S. reservation to article 4, there has been no change in the view expressed in ¶ 48 of the 2013 Report that the United States cannot accept any obligation that could limit protections for freedoms of expression, peaceful assembly, and association guaranteed in the U.S. Constitution. At the same time, the federal government aggressively prosecutes hate crimes under federal statutes barring violence, attempted violence, threats, and property damage based on racial and other forms of bias. Most states have hate crime laws as well.

23. Federal agencies, including DOJ and DHS, work together to prevent violence and threats meant to intimidate or coerce specific populations on the basis of race, religion, ethnicity and other protected categories. On May 14, 2021 DHS issued a National Terrorism Advisory System Bulletin, which describes a heightened threat environment from domestic violent extremists who have at times been driven by long-standing racial and ethnic tension, including opposition to immigration. Pursuant to executive orders issued in January 2021, DHS/CRCL is leading a DHS-wide Equity Task Force to ensure the principles of racial equity are implemented throughout DHS's policies, programs, and activities.

24. The Federal Bureau of Investigation (FBI) is currently investigating over 200 hate crimes nationwide. Between January 2017 and March 2021, DOJ charged more than 105 defendants involved in committing bias-motivated crimes. During that same time, DOJ has obtained convictions of more than 80 defendants involved in committing bias-motivated crimes. Recent actions include: the February 2020 indictment of a man in Texas on hate crimes and firearms charges in connection with the murder of 23 people and attempted murder of 25 others at a Walmart in El Paso on August 3, 2019, with the indictment alleging that the man uploaded a document to the Internet on the same date stating, "This attack is a response to the Hispanic invasion of Texas"; and the November 2020 sentencing of a Louisiana man to 300 months of imprisonment for intentionally setting fire to three African American churches.

25. DOJ aggressively prosecutes "true threats" of bodily injury based on racial, ethnic, and religious bias, which are not protected by the U.S. Constitution and violate federal hate crime laws. For example, in February 2021, an Indiana man pleaded guilty to making threats to intimidate his Black neighbor, including burning a cross, displaying a swastika and signs with racial slurs, and displaying a machete near the signs. The burning of a cross is a symbol that the Ku Klux Klan and other white supremacists have used historically to threaten violence against African

Americans. In February 2019, an Oregon man pleaded guilty to intentionally obstructing parishioners and staff at a Catholic church in Eugene in the free exercise of their religion. The man had vandalized church property and left bullets and a note threatening violence against members of the church staff. In addition, in August 2019, a Virginia man was sentenced to 60 months in prison for a hate crime and for threatening employees of the Arab American Institute.

26. In 2017, DOJ began its Hate Crimes Enforcement and Prevention Initiative, a working group composed of experts from throughout DOJ, including attorneys, FBI officials, program specialists, and experienced federal mediators and trainers. That year, the Initiative held a summit with over 40 diverse community organizations working on hate crimes prevention. In August 2020, DOJ issued a comprehensive report with recommendations and action steps to combat hate crime. DOJ is moving forward on key recommendations in the report, including developing a hate crimes training curriculum for law enforcement through the Office of Community Oriented Policing Services' Collaborative Reform Initiative Technical Assistance Center. This training will provide law enforcement with strategies to improve identification of, and responses to, hate crimes; a new outreach and engagement program to develop strong community bonds; and ways to incentivize and reward innovative practices to improve identification and reporting of hate crimes. In October 2018, the Initiative also launched a hate crimes website. Over 1 million people have visited the site, and over 3,700 people have found their way to the FBI's crime reporting portal, www.justice.gov/hatecrimes. In 2019, DOJ added a Spanish-language version of the website, <http://www.justice.gov/hatecrimes-espanol> and in March 2021, DOJ added instructions in seven additional languages on how to access the FBI Tip Line.

27. On January 26, 2021, President Biden issued a Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States. The memorandum directs DOJ to explore opportunities to support the efforts of state and local agencies, as well as Asian American and Pacific Islander (AAPI) communities and NGOs, to prevent discrimination, bullying, harassment, and hate crimes against AAPI individuals, and to expand collection of data and public reporting regarding hate incidents against such individuals. DOJ is working to combat discrimination and violence through direct federal law enforcement action and capacity building, training, support, and outreach. <https://www.justice.gov/opa/pr/readout-department-justice-s-efforts-combat-hate-crimes-against-asian-american-and-pacific>.

28. The FBI National Training Initiative (NTI) works to strengthen civil rights education throughout the country by providing standardized training and materials that field offices may provide to their law enforcement partners, NGOs, and community groups. The NTI conducts hundreds of seminars, workshops, and training sessions for local law enforcement, minority and religious organizations, and community groups to promote cooperation, reduce civil rights abuses, and provide education about civil rights statutes. Each year, the FBI also provides hate crimes training for new agents and hundreds of current agents. The Emmett Till Act outreach and education initiatives, run by CRD and FBI, will be expanded in the second half of 2021 and 2022. In August 2018, CRD and the FBI conducted a two-day hate crimes training for federal prosecutors at DOJ's National Advocacy Center in Columbia, South Carolina. The DOJ Community Relations Service facilitated 16 Hate Crimes Forums in FY 2018, nine forums in FY 2019,

and eight forums in FY 2020, throughout the country, bringing together federal and local law enforcement, community speakers, federal agencies, and advocacy organizations. Each forum draws from 50 to 400 participants.

29. The United States is working to improve its hate crimes data collection. In February 2015, the FBI issued new Hate Crimes Data Collection Guidelines and Training Manual, Version 2.0, which include new bias types, definitions, and scenarios for categories related to religion, ethnicity, race, and ancestry. This manual is being updated to reflect the transition to the National Incident-Based Reporting System that began on January 1, 2021. Although police data reporting at the state and local levels is voluntary, DOJ encourages such reporting, recognizing the importance of full data collection. Thousands of city, county, college and university, state, tribal, and federal law enforcement agencies voluntarily submit data to the FBI's Uniform Crime Reporting (UCR) Program's Hate Crimes Statistics Program. The Hate Crimes Statistics publication, issued in November 2020 and covering calendar year 2019, reported 7,314 hate crimes incidents involving 8,559 related offenses. Also, in FY 2019 and FY 2020, the FBI's UCR Program and Civil Rights Unit cohosted seven hate crimes training sessions in six states for local law enforcement agencies. Approximately 400 law enforcement officers and records personnel attended. The training demonstrates the need for, and benefits of, hate crime statistics collection and encourages participants to discuss this important topic with colleagues in their local agencies and communities.

30. The DOJ Bureau of Justice Statistics obtains data from a nationally representative sample of U.S. households, utilizing about 240,000 interviews on criminal victimization, involving 160,000 unique persons in about 95,000 households each year. The National Crime Victimization Survey (NCVS) is used to estimate the number of crimes in the prior year, whether reported to the police or not. Data from the NCVS show that the total number of hate crimes occurring annually is many times greater than the number of hate crimes recorded by police and captured through the UCR data collection process. A major objective of the Hate Crimes Enforcement and Prevention Initiative is to explore ways to improve data collection in the UCR, including through training for law enforcement agencies and officers, educational efforts for minority communities to reduce the number of hate crimes that go unreported, and process changes to improve data collection. In addition to the training programs outlined above, a recent grantee of DOJ's National Institute of Justice (NIJ) is surveying 3,000 law enforcement agencies about local policies on reporting hate crimes to help identify the best ways to encourage victims of attacks to come forward and to support them when they do. The survey will also gather profiles of hate crime offenders and capture challenges in defining, investigating, and documenting hate crimes. A follow-up phase will survey 250 prosecutors about cases that ended in arrest.

31. Concerning the tragic events in Charlottesville, Virginia, the United States notes that the perpetrator who drove his car into a crowd of counter-protestors on August 12, 2017, killing one woman and injuring dozens, has been convicted and is serving a sentence of life in prison. The man pleaded guilty to 29 violations of the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act.

Articles 2 and 5

32. **Environmental pollution (§10 of Concluding Observations)**. Noting its views described in ¶ 4 above regarding matters involving disparate impact, the United States provides the following regarding efforts to address environmental pollution. Seventeen federal departments and agencies work to ensure environmental and public health protection for all Americans, regardless of race, color, national origin, or income, through the Federal Interagency Working Group on Environmental Justice (EJIWG). In January 2021, EO 14008 elevated the EJIWG to become the White House Environmental Justice Interagency Council. The Council works to improve health, quality of life, the environment, and economic opportunities in overburdened communities and enhance multiagency support for holistic community-based solutions to address environmental justice issues. Each federal agency involved in the Council is requested to make annual Environmental Justice Implementation Progress Reports, see, e.g., the Department of Health and Human Services' (HHS's) 2017 Progress Report, <https://www.hhs.gov/sites/default/files/2017-hhs-ej-progress-report.pdf>, and the Environmental Protection Agency's (EPA's) Environmental Justice FY 2019 Progress Report, https://www.epa.gov/sites/production/files/2019-11/documents/11.19.19_ej_report-final-web-v2s.pdf. EPA's environmental justice priorities focus on demonstrating tangible results in minority, low income, tribal, and indigenous communities; supporting the efforts of partners, such as states and tribes; and directly engaging and supporting the efforts of communities to improve environmental quality, public health, and economic vitality. Of central importance, as reflected in President Biden's executive orders, is addressing and mitigating the impacts of climate change in ways that further equity and justice. EO 14008 calls on all federal agencies to improve administration of their programs to support fair and effective implementation of federal environmental laws, to provide protection from disproportionately high and adverse human health or environmental impacts on minority, low-income, tribal and indigenous populations, and to advance sustainable economies.

33. The Environmental Public Health Tracking Network (EPH Tracking) in the HHS Centers for Disease Control and Prevention (CDC) (<https://ephtracking.cdc.gov>) hosts and displays important environmental, health, and population data on the Data Explorer. EPH Tracking's collaborative team of experts monitors broad public health concerns affecting at-risk communities and vulnerable populations across the nation. EPH Tracking's web-based, multi-tiered, interoperable system of data, tools, and services offers the ability to identify demographic factors, environmental burdens, socioeconomic conditions, and public health concerns directly related to environmental justice. High-quality data and expertise allow scientists, health professionals, policymakers, and members of the public to see where hazards and health problems are occurring and how they are changing over time, and to take action. EPH Tracking has a national scope with sub-geographies including states, counties, and census tracts. CDC funds [26 state and local health departments](#) to develop their own tracking networks, which feed into the national network. Several of these tracking programs are working with their environmental justice communities and have created tools and resources specifically for their jurisdictions, <https://www.cdc.gov/nceh/tracking/topics/EnvironmentalJustice.htm>.

34. Climate change disproportionately impacts communities of color. Multiple U.S. federal agencies work to protect health by preparing communities and individuals to adapt to climate change. This includes collection and provision of climate and health data, development of technical guidance, administration of grants and cooperative agreements, and implementation of adaptation programs. This work is ongoing and is amplified in 2021 in response to EOs 13990, 14008, and 14013. HHS is creating a climate and health strategy, and the U.S. Global Change Research Program maintains a cross-federal workgroup on climate and health that includes environmental justice. CDC's Building Resilience Against Climate Effects framework includes a step to identify at-risk communities and incorporates justice, equity, diversity, and inclusion into climate adaptation planning. Agencies, including EPA, the National Oceanic and Atmospheric Administration, and the National Air and Space Agency, collect data relevant to the health impacts of climate change on communities of color.

35. EPA oversees the Environmental Justice Small Grants Program and the Environmental Justice Collaborative Problem-Solving Cooperative Agreements Program, both of which provide assistance to communities in addressing high and adverse human health or environmental impacts on minority and low-income populations. In addition, EPA has re-established the State Environmental Justice Cooperative Agreements program to support state, tribal, and local governments' efforts to address environmental justice. EPA has also started a webinar series on environmental justice to support state efforts to integrate environmental justice in their operations and address environmental justice concerns. HHS also provides grants to states and local jurisdictions, such as those made available for Native Americans to support tribes dealing with environmental issues. Examples include the Navajo COVID-19 Home Water and Wastewater Improvements Mission and the Navajo Nation COVID-19 Water Access Mission. CDC also funds Environmental Health Capacity grants, which include recipients from the Northwest Portland Area Indian Health Board and the Sacramento Native American Health Center. In addition, through the Agency for Toxic Substances and Disease Registry (ATSDR), the Land Reuse Health Program works with communities to help redevelop sites that may be contaminated with chemicals. The program has led over 60 projects to improve community health throughout the United States. Brownfields and land reuse sites present environmental justice issues due to the disproportionate prevalence of economically disadvantaged communities near hazardous waste sites. ATSDR's Partnership to Promote Local Efforts to Reduce Environmental Exposure awards funds to 28 state health departments to evaluate past and present exposure to environmental hazards and to prevent future exposures.

36. In furtherance of its 2014 Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples, in November 2020, EPA initiated an environmental justice webinar series for tribes and indigenous peoples to help build capacity, identify EPA programs and resources that can be used to address priority environmental justice concerns, and provide a forum for tribes and indigenous peoples to share how they are using these programs to address their concerns.

37. In 2016, EPA published a final interpretive rule clarifying that Section 518 of the Clean Water Act (CWA) contains an express delegation by Congress to Indian tribes to administer certain CWA regulatory programs over their entire reservations, thereby streamlining the process by which federally recognized tribes can seek authorization to administer applicable environmental programs under the CWA. This facilitates interested tribes in

carrying out CWA program responsibilities affecting their reservations, their environments, and the health and welfare of the reservation populace.

38. One way federal agencies can identify and address environmental justice concerns is through the National Environmental Policy Act (NEPA) process, which requires agencies to assess the environmental and related social and economic effects of proposed actions prior to making decisions. The NEPA process also provides opportunities for public review and comment on those evaluations. In 2016, the EJIWG developed the [Promising Practices for EJ \(Environmental Justice\) Methodologies in NEPA Reviews](#) report, which is a compilation of methodologies gleaned from agency practices. The document has been referenced in environmental reviews from several federal agencies.

39. EPA is committed to affirmatively advancing equity, civil rights, racial justice, and equal opportunity, and to ensuring that its mission to protect human health and the environment embraces all persons in the United States, regardless of race, color, national origin, disability, sex, or age. EPA's External Civil Rights Compliance Office enforces federal civil rights laws that prohibit discrimination, including: Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments of 1972; Section 13 of the Federal Water Pollution Control Act Amendments of 1972; the Age Discrimination Act of 1975; and 40 C.F.R. Parts 5 and 7, with regard to applicants for, or recipients of, financial assistance from EPA. Going forward, EPA will work to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities and to ensure the enforcement of civil rights laws.

40. Clean up of hazardous and solid waste is performed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (the "Superfund" law) and the Resource Conservation and Recovery Act. For example, under Superfund authority, EPA has a strong partnership with the Navajo Nation to address abandoned uranium mines on or near the Reservation. See the recently released Ten Year Plan to Address Impacts of Uranium Contamination in the Navajo Nation at <https://www.epa.gov/navajo-nation-uranium-cleanup>.

41. With respect to activities of transnational corporations, the United States is supportive of the business and human rights agenda and participates in the Voluntary Principles on Security and Human Rights Initiative. See ¶ 177 of the 2013 Report.

42. **Right to vote (¶ 11 of the Concluding Observations).** The right to vote is the foundation of American democracy. Shelby County v. Holder, 570 U.S. 529 (2013) shifted voting rights enforcement primarily to responsive litigation in the courts, including by DOJ; the Biden Administration has repeatedly urged legislation to restore the Voting Rights Act and re-establish a more proactive enforcement procedure to stop racially discriminatory restrictions and limitations on voting before they can take effect. On March 4, 2021, with support from the Administration, the U.S. House of Representatives passed H.R. 1, the For the People Act, which contains a number of provisions to protect the right to vote and make it more equitable and accessible for all Americans to exercise that right. H.R. 1 would reform redistricting to curtail gerrymandering and modernize elections and make them more secure. Consistent with the current Administration's commitment to racial equity, the bill would also expand the tools available to DOJ to enforce the voting rights of all Americans.

43. Most states place restrictions on voting eligibility for persons who have been convicted of certain serious crimes. The standards and procedures for imposition of such limitations vary from state to state. According to the National Conference of State Legislatures, as of April 2021, persons with felony convictions in the District of Columbia, Maine, and Vermont do not lose their right to vote, even while they are incarcerated. In 19 states, persons with felony convictions lose the right to vote only while incarcerated; the right is automatically restored upon release. In 18 states, persons with felony convictions lose the right to vote during incarceration and for a period thereafter, typically while on parole and/or probation. Voting rights are automatically restored after this time period. After release from incarceration, persons with felony convictions may also have to pay any outstanding fees, fines, or restitution before rights are restored. In 11 states, persons with felony convictions lose the right to vote indefinitely for some crimes, or require a governor's pardon for voting rights to be restored, face an additional waiting period after completion of sentence (including parole and probation), or require additional action before voting rights can be restored. Generally, restoration is not automatic; additional action is required.

<http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>. On March 7, 2021, the President signed an Executive Order to promote voting access and allow all eligible Americans to participate in our democracy. This Executive Order leverages the resources of the federal government to increase access to voter registration services and information about voting, including for citizens in federal custody. The order will establish an interagency steering group on Native American voting rights. It also directs the Attorney General to take steps to support formerly incarcerated individuals in obtaining means of identification that satisfies state voter identification laws.

44. The U.S. Senate held a hearing on District of Columbia voting rights in September 2014 and the House of Representatives held a hearing on September 19, 2019. On April 22, 2021, the House passed legislation that would grant statehood to the District of Columbia. The matter will now go to the Senate for consideration.

45. **Homelessness (¶ 12 of the Concluding Observations)**. Noting its views described in ¶ 4 above regarding matters involving disparate impact, the United States provides the following regarding efforts to combat homelessness. HUD, HHS, and other members of the U.S. Interagency Council on Homelessness (USICH) work closely on multiple fronts to reform practices that perpetuate poverty and result in homelessness. In 2010, USICH and partner agencies launched the first comprehensive federal strategic plan to prevent and end homelessness. After extensive stakeholder input, a revised plan, called "Home, Together," was published for FYs 2018-2022. USICH further promoted policy alternatives to the criminalization of homelessness through publications including Reducing Criminal Justice System Involvement among People Experiencing Homelessness (2016), Connecting People Returning from Incarceration with Housing and Homelessness Assistance (2016), and Strengthening Partnerships Between Law Enforcement and Homelessness Services Systems (2019). HUD also issued a public notice concerning use of arrest records in housing decisions, prohibiting blanket bans on renting to people with criminal records. For an overall description of federal programs and legislation, see Homelessness: Targeted Federal Programs and Recent Legislation, Congressional Research Service, <https://digital.library.unt.edu/ark:/67531/metadc282282/>.

46. HUD also requires local “Continuum of Care” consortiums vying for a share of \$2.2 billion in homelessness assistance funding to explain specifically how their communities are combating criminalization of homelessness. HUD Continuum of Care Program Competitions encourage communities to avoid policies that criminalize homelessness. Among the results has been the decision of the City of Vancouver, Washington, to repeal its camping ban. HUD has issued guidance on the use of nuisance ordinances and incorporated questions about criminalization in its Notice of Funding Availability, the mechanism used to fund homelessness programs in communities. To help prevent low-income residents from becoming homeless, HUD provides more than \$37.9 million in rental assistance for low-income residents annually. Overall, an estimated 4.7 million families receive assistance through HUD’s core rental programs each year.

47. In 2015, USICH released a report on Ending Homelessness for People Living in Encampments. USICH also released guidance to reentry service providers, corrections agencies, and state and local governments on removing barriers to housing and services for individuals with criminal records who are experiencing homelessness. In 2020, USICH released an updated strategic plan that includes a renewed focus on racial disparities. The Federal Interagency Council on Crime Prevention and Reentry, led by DOJ, has supported efforts to reduce recidivism and prepare motivated individuals for successful reentry into society. HUD and DOJ launched an \$8.7 million demonstration grant pilot program to expand permanent supportive housing models for the reentry population. DOJ’s Office on Violence against Women (DOJ/OVW) administers a grant program that funds transitional housing assistance and support services to victims of domestic and sexual violence, and DOJ administers the Second Chance Act program, which funds state, local, and tribal governments in reducing recidivism for people returning from incarceration.

48. HHS administers several programs addressing homelessness, including, within the Administration for Children and Families, the Runaway and Homeless Youth Programs and Early Care and Education for Homeless Children; and within the Substance Abuse and Mental Health Services Administration, Projects for Assistance in Transition for Homelessness, Services in Supportive Housing, and Cooperative Agreements to Benefit Homeless Individuals. Under the McKinney Vento Homeless Assistance Act, the Department of Education (ED) provides funds to states that support services to over 1.3 million children in grades pre-K through 12 who are experiencing homelessness. In addition, the American Rescue Plan, enacted in March 2021, allocates \$800 million for additional support to students who are experiencing homelessness.

49. HUD’s 2019 Annual Homeless Assessment Report to Congress found that roughly 580,000 persons experienced homelessness on a single night in January 2020, with 61% staying in sheltered locations prior to the global COVID-19 pandemic. Forty-eight percent of people experiencing homelessness identified as White and 39% identified as African American. American Indian, Alaska Native, Pacific Islander and Native Hawaiian populations accounted for 5%, and those identifying as Hispanic or Latino accounted for 23%. HUD estimates that chronic patterns of homelessness increased by 15% between 2019 and 2020. Further, HUD and its public and private partners advance actions to prevent and end youth homelessness through the Youth Homelessness Demonstration Program, which

requires communities receiving funds to assess the needs of populations at higher risk of experiencing homelessness, including racial and ethnic minorities.

Articles 3 and 5

50. **Discrimination and segregation in housing (¶ 13 of the Concluding Observations)**. Racially discriminatory housing practices and policies have kept communities of color from accessing safe, high-quality housing and from the chance to build wealth that comes through homeownership for generations. On January 26, 2021, President Biden issued a memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies, recognizing the role the federal government played in creating legacies of residential segregation and discrimination that remain present today. In April 2021, consistent with HUD's statutory obligation and this Presidential mandate, HUD submitted rules regarding affirmatively furthering fair housing and combating disparate impact under the FHA to the Office of Management and Budget for review, with the ultimate goal of enforcing the FHA in a manner that effectuates the Act's broad purposes and this Administration's policy goal of a housing market free from both intentional discrimination and policies and practices that have discriminatory effects.

51. The federal government is working with communities to end housing discrimination, provide redress to those who have experienced it, eliminate racial bias and discrimination in all stages of home-buying and renting, lift barriers that restrict housing and neighborhood choice, promote diverse and inclusive communities, ensure sufficient physically accessible housing, and secure equal access to housing opportunity for all. In 2019, HUD and its state and local partners received and investigated 7,679 housing discrimination complaints and obtained over \$16.7 million in compensation for victims. Of these cases, 30% were based on race and color, while 10% were based on national origin. In 2019, through its Fair Housing Assistance Program, HUD provided state and local government partners over \$24.4 million to support local enforcement and education and outreach activities. That same year, HUD's Fair Housing Initiatives Program awarded \$38 million in grants to 170 organizations for private enforcement to prevent or eliminate discriminatory housing practices and for educational initiatives to inform individuals of their rights and responsibilities.

52. DOJ/CRD actively enforces the FHA, including its prohibitions on discrimination based on race, color, or national origin. For example, in August 2019, CRD resolved a case alleging that the owners and operators of an apartment complex in Tennessee had discriminated based on race when they denied an application from an African American prospective tenant because of his criminal record, but approved the applications of two similarly situated white prospective tenants with felony convictions. Between August 2018 and July 2019, CRD entered into a series of settlements to resolve allegations that a California company discriminated against Hispanic homeowners by targeting them for predatory mortgage loan modification services and interfering with their ability to receive financial assistance to maintain their homes. In July 2017, CRD reached a settlement with a large apartment complex operator in North Attleboro, Massachusetts, resolving allegations that the company had steered persons of South Asian descent to particular buildings and away from others. CRD also actively enforces fair housing rights violations by state and local governmental entities. For example, it resolved cases in 2015 against the Housing Authority of the County of Los Angeles, the Los Angeles County Sheriff's Department, and the Cities of Lancaster

and Palmdale alleging discrimination against African Americans who participated in the federal “Section 8” housing voucher program.

53. DOJ/CRD also brings cases alleging unlawful discrimination in mortgage lending in violation of FHA and the Equal Credit Opportunity Act. For example, in August 2019, CRD resolved a case alleging that an Indianapolis, Indiana lender had discriminated based on race by intentionally avoiding providing mortgage loans in predominantly African American neighborhoods in the city, a practice known as redlining. Similarly, in May 2018, CRD resolved a case against KleinBank in Minnesota alleging that the bank had engaged in unlawful redlining in the Twin Cities area in violation of the Equal Credit Opportunity Act and the FHA. In July 2020, the Consumer Financial Protection Bureau (CFPB) filed suit against Townstone Financial, Inc., in Illinois, alleging that the bank had engaged in unlawful discouragement and redlining of predominantly minority neighborhoods and had discriminated in its treatment of loan applications; the matter is pending. Moreover, the CFPB has also provided consumers with non-public forms of relief from unlawful redlining through its supervision of financial institutions.

54. DOJ/CRD also enforces the Religious Land Use and Institutionalized Persons Act (RLUIPA), which protects the rights of persons of religious communities to build places of worship and religious schools. Although this law is not focused on race, DOJ found in studies in 2010 and 2016 that Christians from congregations consisting primarily of minorities, and members of minority religious congregations such as Muslims and Sikhs that often include members of racial or ethnic minorities, have their religious rights impacted more frequently than individuals from congregations consisting primarily of non-minorities. Recent actions include a November 2020 consent order resolving claims that the city and planning commission in Meriden, Connecticut violated RLUIPA by denying the application of an Islamic Center to establish a mosque, and by maintaining a zoning code that treats religious assemblies and institutions on less than equal terms with nonreligious assemblies and institutions; the April 2019 resolution of a case involving efforts by a Muslim organization to build a cemetery in Farmersville, Texas; filing of a court brief in March 2019, supporting the right of a Native American group to worship on ancestral land in Mahwah, New Jersey; filing of a court brief in July 2018, supporting the right of a Hindu organization to construct a temple in Howard County, Maryland; and resolution in June 2017 of a case involving efforts by a Bosnian Muslim congregation to locate a mosque in a building in Des Plaines, Illinois.

55. **Education (¶ 14 of the Concluding Observations)**. Noting its views described in ¶ 4 above regarding matters involving disparate impact, the United States provides the following concerning its efforts in education. Through legislative reauthorization and several programs administered by ED, the United States continues to work to ensure equal opportunity and help foster student achievement in education. For example, the 2021 American Rescue Plan included \$122.8 billion to support schools in reopening safely and remaining open to provide on-site instructional services, especially to the most vulnerable students, and to address the academic, social, emotional, and mental health needs of students. ED has distributed most of the funding, which can be used by state education agencies and school districts to equitably expand opportunities for students in greatest need, including students from low-income backgrounds, students of color, students with disabilities, English learners, migratory students, students experiencing homelessness, and children in foster care. The act includes a new “maintenance of equity” provision limiting the

reduction in state per-pupil funding for high-need and highest-poverty school districts and limiting school districts from reducing per-pupil funding and the number of full-time-equivalent staff per pupil in high-poverty schools. The Department has also issued guidance outlining best practices for addressing the needs of students, particularly those from communities disproportionately impacted by COVID-19 or from historically underserved student subgroups.

56. Responding to COVID-19 and the economic crisis disproportionately impacting families of color, in January 2021 ED extended a pause on federal student loan payments, interest, and collections. In March 2021, ED expanded that pause to all defaulted loans in the Federal Family Education Loan Program, protecting some of the most vulnerable borrowers. In addition, in 2021, ED discharged approximately \$1.6 billion of debt for 45 Historically Black Colleges and Universities (HBCUs) – 13 public institutions and 32 private institutions – under the HBCU Capital Financing Program. This action, which was authorized by the Consolidated Appropriations Act of 2021, provides these institutions with additional resources to educate and graduate students.

57. In addition, in 2019, the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act was enacted, providing permanent funding for HBCUs, Tribal Colleges and Universities, and institutions such as Hispanic-serving institutions, Asian American and Native American Pacific Islander-serving institutions, and other minority-serving institutions serving millions of students each year. This act supports science, technology, engineering, and math (STEM) programs and provides a stable, predictable source of funding to help these institutions strengthen academic and institutional capacity that ultimately benefit students.

58. In 2016, ED published significant disproportionality regulations under the Individuals with Disabilities Education Act. These regulations promote equity by targeting widespread disparities in the treatment of students of color with disabilities. The regulations address several issues related to significant disproportionality in the identification, placement, and discipline of students with disabilities based on race or ethnicity. Consistent with the regulations, states and school districts are required to identify and address the root causes of significant disproportionality. Accordingly, states and districts must review and revise policies, practices, and procedures when significant disproportionality is found. States submitted data under these regulations for the first time in 2020.

59. The Elementary and Secondary Education Act of 1965 (ESEA) was amended in 2015 by the Every Student Succeeds Act, which increased state flexibility to determine how best to help meet children's needs and included several requirements promoting effective use of federal education funds to improve educational outcomes. For example, the law requires states to set ambitious goals for closing student achievement and graduation rate gaps and provides states with flexibility to develop innovative assessments. States must identify schools for comprehensive or targeted support and improvement, including the lowest-performing schools in each state, schools with low graduation rates, and schools in which any subgroup of students, on its own, would place the school among the lowest-performing 5% of all schools receiving funds under Title I, Part A of ESEA. The law requires school districts to identify the causes of the school's low performance and to use evidence-based models to address these challenges. It includes dedicated funding for schools identified for support and improvement. In this process and in other areas, ED works with state and local educational authorities, as well as civil society groups, to help states and

school districts provide equal access to educational opportunity for all children, including addressing factors that contribute to the education achievement gap.

60. ED funds the Center on Positive Behavioral Interventions and Supports (PBIS), which supports schools, districts, and states in building capacity to implement a multi-tiered approach to social, emotional, and behavioral support for students. In August 2019, over 27,000 U.S. schools, 30% of all U.S. schools, serving over 15 million students, were implementing school-wide PBIS to address student behavior. Several studies have demonstrated statistically significant positive outcomes of PBIS, including reduced problem behavior, increased pro-social behavior, improved emotional regulation, improved academic achievement, and improved perceptions of school safety. For example, one study in Wisconsin schools implementing PBIS found that the percentage of out-of-school suspensions of African American students decreased from 15.68% in 2009-2010 to 6.01% in 2015-2016. Similarly, out-of-school suspensions of Latino students decreased from 5.54% to 2.82% over the same period.

61. ED also funds four Equity Assistance Centers that provide technical assistance at the request of government agencies to address equity issues related to desegregation of public schools based on race, national origin, sex and religion.

62. ED's Office for Civil Rights (OCR), which works to ensure equal access to education and promote educational excellence throughout the United States, vigorously enforces federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and age. DOJ and OCR share responsibility for enforcing Title VI of the Civil Rights Act of 1964, which prohibits recipients, including public schools and private schools that receive federal financial assistance, from discriminating based on race, color, or national origin. DOJ and OCR investigate and resolve claims of discrimination, including allegations concerning racially discriminatory school discipline, racial discrimination in access to educational resources, racial harassment that creates a hostile environment, and failure to provide English learners with meaningful access to educational programs and services.

63. DOJ and OCR also have issued guidance to clarify schools' nondiscrimination obligations. Many guidance documents are designed to safeguard the civil rights of students from historically marginalized and underserved groups. As part of an effort to create more equitable access to educational resources, in 2014 OCR issued guidance concerning school districts' obligations to provide students with equal access to educational resources without regard to race, color, or national origin. In 2015, OCR and DOJ/CRD issued guidance addressing school districts' obligations to ensure that English learners can meaningfully participate in educational programs and services. The United States is also taking steps to ensure the coronavirus pandemic does not deepen existing disparities in access to educational opportunities. A January 2021 Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers directed OCR to "deliver a report as soon as practicable on the disparate impacts of COVID-19 on students in elementary, secondary, and higher education, including those attending historically black colleges and universities, Tribal colleges and universities, Hispanic-serving institutions, and other minority-serving institutions...."

64. DOJ/CRD continues its work to ensure schools are not segregated based on race, and all students are treated equally without regard to race. For example, in November 2020, CRD announced a settlement with Federal Way Public Schools in Washington to resolve an investigation into allegations of peer-on-peer harassment on the basis of religion and national origin. CRD's investigation raised concerns that the district had failed to respond promptly and appropriately to numerous students' complaints of harassment, including complaints from Muslim students and a Latino student that they were subjected to serious and repeated verbal and physical harassment. In April 2019, CRD worked with the Choctaw County Mississippi School District to resolve a longstanding school desegregation case. Among other actions, the school district revised policies and trained staff to ensure nondiscriminatory student discipline and identification of gifted and talented students. The district also took steps to increase applications from qualified African American teachers, including through recruitment trips at HBCUs, advertising in publications that target diverse populations, and participating in statewide job fairs. Additionally, in February 2018, CRD reached agreement with the Jackson County Florida School District, requiring the school district to take remedial steps to ensure nondiscriminatory recruitment, hiring, promotion, and student discipline, while declaring that it had satisfied its desegregation obligations in the areas of student assignment to schools, transportation, extracurricular activities, and facilities.

65. It is unlawful to deny elementary and secondary school children in the United States equal access to a free public education based on actual or perceived immigration status, Plyler v. Doe, 457 U.S. 202 (1982). In 2014, ED and DOJ jointly issued guidance regarding school responsibilities under Plyler, including examples of permissible enrollment practices, and examples of the types of information that may not be used as a basis for denying a student entrance to school.

66. Preventative efforts are important, and data can be helpful in informing that work. Since 1968, ED has conducted the Civil Rights Data Collection (CRDC), which measures student access to courses, programs, staff, and resources impacting education equity and opportunity for students. The 2018 CRDC results, released in October 2020, covered over 50 million students in nearly every public school in the United States, constituting a valuable resource for federal agencies, policymakers, educators, parents, students, and the public. The results included information on topics such as grade 8 Algebra I enrollment and passing rates by race; high school STEM enrollment by race; referrals to law enforcement by race; harassment or bullying reports by race; students disciplined for harassment or bullying by race; students subjected to restraint or seclusion by race; and suspensions and expulsions by race.

67. **Health care (§ 15 of the Concluding Observations)**. Noting its views described in ¶ 4 above regarding matters involving disparate impact, the United States provides the following regarding efforts to improve health care. Increasing the availability of and access to affordable, quality health care services and tackling health disparities that are rooted in systemic racism continue to be priorities in the United States. This includes expanding access to quality, affordable health coverage and prohibiting discrimination based on race, color, national origin, sex (including sexual orientation and gender identity), age, or disability in various health programs. The Administration

is committed to building on the successes of the Affordable Care Act, which has significantly expanded coverage for people of color.

68. The United States is also committed to reducing the country's unacceptably high maternal mortality and morbidity rates, and the racial disparities that particularly impact Black and Native American communities. The current Administration has made it easier for states to expand postpartum coverage for low-income individuals from 60 days to 12 months. In addition, HHS' Health Resources and Services Administration (HRSA) Title V Maternal and Child Health Services Block Grant Program is a key source of support for promoting and improving the health and well-being of the nation's mothers. Four of its National Performance Measures address maternal health, and each state must select at least one of these measures to address with Title V funds. HRSA also supports research addressing the needs of underserved populations.

69. Regarding standardization of data collection systems, offices of vital statistics at the state level are generally standardized in the coding of births and deaths. The CDC encourages use of standardized forms such as the U.S. Standard Certificate of Death or Live Birth, which is used to compute infant mortality. In addition, CDC, the Association of Maternal and Child Health Programs, and the CDC Foundation are collaborating to enhance and standardize Maternal Mortality Review at the state and local levels. The Maternal Mortality Review Information Application was developed to support and standardize data abstraction, case narrative development, committee decisions, and analysis to better document and ultimately prevent maternal mortality. In 2020, HHS awarded \$340 million to support families through the Maternal, Infant, and Early Childhood Home Visiting Program, which serves families living in almost one third of U.S. counties. States and territories have flexibility to tailor the program to serve community needs, including by targeting services to communities with concentrations of risk, such as premature birth, low-birth-weight infants, and infant mortality. HHS also supports American Indian and Alaska Native communities through [Tribal Maternal, Infant, and Early Childhood Home Visiting Program development grants](#).

70. According to [Health, United States, 2018](#), infant mortality figures decreased by an average of 2.9% per year from 2007 to 2011 and then decreased by an average of 0.6% per year to 5.79 infant deaths per 1,000 live births in 2017. <https://www.cdc.gov/nchs/hus/index.htm>. From 2007 to 2017, infants of non-Hispanic Black and non-Hispanic American Indian or Alaska Native women consistently had the highest mortality rate, whereas infants of non-Hispanic Asian or Pacific Islander women consistently had the lowest mortality rate. In 2017, the infant mortality rates for non-Hispanic Black women (10.88 per 1,000 live births) and non-Hispanic American Indian or Alaska Native women (8.90 per 1,000 live births) were over twice the rate for non-Hispanic Asian or Pacific Islander women (4.03 per 1,000 live births).

71. On December 3, 2020, HHS released an Action Plan and announced a partnership with the March of Dimes to reduce maternal deaths and disparities that put women at risk prior to, during, and following pregnancy. Among other things, the Action Plan commits HHS to investing in health care providers serving the most vulnerable women and efforts to strengthen rural maternal care delivery. The Action Plan also spotlights new HHS investments in maternal health research and data collection through partnerships among state maternal health task forces, perinatal

quality collaboratives, and maternal mortality review committees. The partnership with the March of Dimes will address the disparity in maternal health outcomes for Black women through the implementation of evidence-based best practices to improve healthcare quality in hospital settings.

72. By its terms, the Convention does not apply to distinctions, exclusions, restrictions, or preferences made by a State Party between citizens and non-citizens. Nonetheless, in the spirit of cooperation, the United States notes the following. In August 2016, HHS, HUD, and DOJ sent a joint letter to state and local agencies clarifying that immigration status is not a bar to providing certain services to protect the life or safety of individuals, such as emergency shelter, short-term housing assistance, crisis counseling, soup kitchens and community food banks, and medical and public health services. <https://www.hhs.gov/civil-rights/for-individuals/special-topics/national-origin/joint-letter-august-2016/index.html>. A 2016 Wall Street Journal survey of 25 U.S. counties with the largest unauthorized immigrant populations found that 20 of them have programs that pay for low-income uninsured persons to have doctor visits, shots, prescription drugs, lab tests, and surgeries at local providers. <https://www.wsj.com/articles/illegal-immigrants-get-public-health-care-despite-federal-policy-1458850082>.

Articles 2, 5(b) and 6

73. **Gun violence (¶ 16 of the Concluding Observations)**. Noting its views described in ¶ 4 above regarding matters involving disparate impact, and its reservation discussed in ¶ 11 above concerning the application of the CERD to the private conduct of non-State actors, the United States provides the following in relation to gun violence. Since 2001, DOJ has implemented Project Safe Neighborhoods (PSN), its premier strategy to reduce violent crime, bringing together all levels of law enforcement and the communities they serve to reduce violent crime and make neighborhoods safer for everyone. Through PSN, DOJ continues to focus on targeting violent criminals, including those committing gun violence, directing all U.S. Attorneys' Offices to work in partnership with federal, state, local, and tribal law enforcement and local communities to develop effective, locally-based strategies to reduce violent crime.

74. DOJ's National Public Safety Partnership (PSP) program—which was launched in 2014 as the Violence Reduction Network—continues to complement PSN. While PSN operates in all 94 districts, PSP works with a small number of jurisdictions that are experiencing violent crime rates substantially higher than the national averages. The PSP program is an intensive training and technical assistance program designed to help identified sites enhance their capacity to address the significant violent crime in their locations. PSP has engaged with more than 40 sites since its inception, and on April 21, 2021, announced that it would expand to up to an additional 10 sites this year.

75. In April 2021, the President and the Attorney General announced a series of further actions to address the public health epidemic of gun violence, including significant investments in evidence-informed community violence interventions, a commitment to study firearm trafficking, and additional regulatory steps. The President also called for legislation to reduce gun violence, including “red flag” laws that allow courts to temporarily restrict people in crisis from accessing firearms, a ban on assault weapons and high-capacity ammunition feeding devices, changes to

existing laws to close loopholes that allow dangerous abusers to access firearms, and repeal of the law that helps shield firearms manufacturers from lawsuits.

76. In addition, ED administers Project Prevent, a discretionary program providing grants to local educational agencies to increase their capacity to help schools in communities with pervasive violence better address the needs of affected students and break the cycle of violence. First awards were made in 2014, with a second round of awards in 2019 to local education agencies in 14 States totaling about \$10 million for five years.

Articles 5(b) and 6

77. **Excessive use of force by law enforcement officials (§ 17 of the Concluding Observations)**. Noting its views described in ¶ 4 above regarding matters involving disparate impact, the United States provides the following concerning efforts to address excessive use of force by law enforcement officials. To make communities safer, we must begin by building trust between law enforcement and the people they are entrusted to serve and protect. We cannot build that trust if we do not hold police officers accountable for abuses of power and tackle systemic misconduct—and systemic racism—in police departments. The U.S. government is concerned about excessive use of force and takes measures to address such activity when it occurs to persons of all races and ethnicities. There are over 18,000 police departments in the United States, created and governed by local city, county, municipal, and tribal governments and laws, but also subject to federal law. Officials at all levels—federal, state, and local—are engaged in conversations about improving trust and accountability between police and the communities they serve to promote public safety and ensure the well-being of officers and individual community members alike. In cases of misconduct that violate the Constitution or a federal statute, DOJ/CRD can investigate and prosecute individual officers under the “color of law” provisions of 18 U.S.C. § 242. From FY 2017 to FY 2020, CRD charged more than 240 defendants, including individual police officers, with willfully violating constitutionally protected rights (or conspiring to do so) while acting under color of law. In that same time period, CRD obtained convictions of 200 defendants, including police officers, for these charges. In FY 2019, DOJ charged 83 defendants, including police officers, with color of law offenses, and obtained convictions of 46 defendants. CRD may also investigate and bring civil suit against agencies that engage in a pattern or practice that violates the U.S. Constitution or laws of the United States. For example, in 2017, CRD reached agreement with the City of Baltimore, Maryland, prohibiting police officers from using excessive force and other misconduct, requiring the police department to revise its use of force policy and other policies, and mandating training for its officers.

78. Regarding the tragic death of George Floyd in May 2020, former officer Derek Chauvin was recently found guilty of murder and manslaughter charges in state court proceedings. The State of Minnesota has filed aiding and abetting charges against the three other officers involved in the arrest and restraint that led to Mr. Floyd’s death. All of the officers involved were fired as a result of their conduct. DOJ is conducting an independent investigation into whether the death of Mr. Floyd involved criminal violations of federal civil rights laws. On May 7, 2021, DOJ [announced](#) that four former Minneapolis police officers were indicted on federal civil rights charges for the death of Mr. Floyd and that Mr. Chauvin was also charged in a separate indictment for violating the civil rights of a juvenile. DOJ also recently launched a pattern-or-practice investigation of the Minneapolis Police Department (MPD). The

investigation will assess all types of force used by MPD officers, including use of force involving individuals with behavioral health disabilities and uses of force against individuals engaged in activities protected by the First Amendment. DOJ also recently opened a pattern-or-practice investigation into the Louisville/Jefferson County Metro Government (Louisville Metro) and the Louisville Metro Police Department (LMPD) following the police-involved killing of Breonna Taylor. The investigation will assess all types of force used by LMPD officers, including use of force against individuals with behavioral health disabilities or individuals engaged in activities protected by the First Amendment.

79. In September 2018, DHS issued a Department-wide policy on use of force. The policy articulates standards and guidelines related to use of force by DHS law enforcement officers and agents and affirms the duty of all DHS employees to report improper uses of force. In May 2014, U.S. Customs and Border Protection (CBP) issued a new CBP Use of Force Policy, Guidelines, and Procedures Handbook designed to provide enforcement personnel with a single use of force reference, incorporating best practices and recommendations from use of force reviews conducted by CBP and the Police Executive Research Forum during 2012 and 2013. The Handbook is based on the constitutional standard for reasonable application of force, federal statutes, and applicable DHS and CBP policies, and reminds enforcement personnel that “respect for human life and the communities we serve shall guide all employees in the performance of their duties.” The DHS Commitment to Nondiscriminatory Law Enforcement and Screening Activities policy statement is referenced in the Handbook and included as an appendix to it. In addition to updating the policy, CBP reviewed and redesigned its basic training curriculum, established a Law Enforcement Safety and Compliance (LESC) Directorate to evaluate use of force policy and procedures, installed border fence training venues, and purchased use of force simulator systems designed to provide officers and agents with more realistic job-specific training experience. LESC trains CBP Use of Force Instructors to deliver the latest and most advanced instruction on proper use of force techniques and tactics, and mandates recurring field-level training for use of force techniques and devices, policy training, and also de-escalation training, risk assessment, and mitigation to potentially prevent the need for use of force.

80. In February 2016, in response to recommendations from the CBP Integrity Advisory Panel, CBP launched a new Assaults and Use of Force Reporting System (AUFRS). The transition to a single, unified system allows CBP more accurately to collect information on assaults and uses of force without relying on different individual systems that may have been duplicating (or not fully collecting) relevant information. In August 2017, the system was renamed Enforcement Action Statistical Analysis and Reporting (E-STAR) due to incorporation of vehicle pursuit reporting capabilities. CBP has completed a six-month evaluation and is preparing to release a final report regarding the use of Incident Driven Video Recording Systems, which includes body worn, vehicle mounted, and other video recording technologies.

81. In May 2017, CBP began tracking and publicly reporting assaults and uses of force using two metrics: the overall number of incidents, and the singular actions (assaults and uses of force) within those incidents. <https://www.cbp.gov/newsroom/stats/assaults-use-force>. The number of incidents demonstrates the frequency with which CBP officers and agents are involved in encounters involving assault or use of force, and the number of

singular actions demonstrates the intensity of those incidents. Singular uses of force in FY 2018 were 8.2% lower than FY 2017; however, incidents involving uses of force were 16.3% higher. Incidents involving assaults on CBP officers and agents increased 22% from FY 2017 to FY 2018; however, singular assaults decreased 6.3%. Singular uses of force in FY 2019 were 9.3% higher than FY 2018 and use of force incidents were 11.1% higher. Incidents involving assaults on CBP officers and agents increased 7.6% from FY 2018 to FY 2019 and singular assaults increased 11.2%. Changes and improved reporting due to the implementation of AUFERS/E-STAR may have contributed to differences between current and prior year numbers.

82. To make its investigative process more transparent and accountable, in 2014 CBP created a response plan to investigate, monitor, and report use of force incidents involving CBP officers or agents. As part of that plan, a CBP cross-component Use of Force Incident Team was created to respond to use of force incidents that result in serious physical injury or death. In addition, a National Use of Force Review Board (NUFRB) and a Local Use of Force Review Board (LUFBRB) were created to review all use of force incidents that occur in CBP. The NUFRB reviews use of force incidents resulting in serious physical injury or death, or any incident involving the discharge of a firearm. The Board, which includes senior officials from CBP, CRCL, ICE, and DOJ, reviews each incident to determine if the use of force was consistent with CBP policy and to identify and assess any issues involving training, tactics, equipment or policy. As of January 2020, 16 meetings of the NUFRB had reviewed 57 incidents involving the use of deadly force or the discharge of a firearm. The LUFBRB reviews use of force incidents that do not meet the threshold of the NUFRB, but are still reported as a use of force. Every law enforcement agency, including CBP, is part of the ongoing national discussion about how, when, where, and why officers and agents should use force.

83. On September 30, 2020, the DHS Office of Partnership and Engagement, Office for State and Local Law Enforcement, established a contract with the Homeland Security Systems Engineering Institute to conduct a Simulation Experiment focused on law enforcement applied use of force. CBP, DHS ICE, the Federal Law Enforcement Training Center (FLETC), and the U.S. Secret Service are supporting members. The goal of the Simulation Experiment is to deter and reduce fatalities and injuries due to law enforcement use of force through understanding of the factors that contribute to each officer's decision-making process and to provide law enforcement evidence-based data to examine and evolve policies and procedures, develop Concept of Operations and Tactics, Techniques, and Procedures for operations, and examine current technologies and configurations.

Articles 2, 5, and 6

84. **Immigrants (¶ 18 of the Concluding Observations)**. As noted in ¶ 72 above, distinctions, exclusions, restrictions, or preferences made by a State Party between citizens and non-citizens fall outside the scope of CERD. Nonetheless, in the spirit of cooperation, the United States offers the following information. It is U.S. government policy to enforce civil immigration laws while adhering to due process and safeguarding the dignity and well-being of all families and communities regardless of citizenship. As a general matter, when a non-citizen is placed in removal proceedings before an immigration court, the U.S. government is required to provide that non-citizen fair access to contest removability. This may include the ability to apply for any form of relief or protection for which

the non-citizen may be eligible, including asylum, withholding of removal, and protection from removal under regulations implementing U.S. obligations under the Convention Against Torture.

85. On February 2, 2021, President Biden issued EO 14011, Establishment of Interagency Task Force on the Reunification of Families, which condemned the intentional separation of children from their parents or legal guardians that occurred under the use of the Zero Tolerance Policy and established a Family Reunification Task Force to identify and reunite families. On March 1, 2021 the Secretary of Homeland Security announced the guiding principles of the Task Force, including, to the extent possible under the law, identifying opportunities for the families to pursue legal immigration status.

86. On February 2, 2021, President Biden issued EO 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans. Pursuant to EO 14012, DOS, DHS, and DOJ are developing plans to remove barriers that impede access to immigration benefits and fair, efficient adjudications of those benefits, and to identify and make recommendations regarding whether to rescind any actions that fail to promote access to the legal immigration system. Further, DHS and DOJ are required to conduct a review of the policies and rules governing the adjudication of asylum claims to determine whether the U.S. provides protection for those fleeing domestic or gang violence in a manner consistent with international standards. On February 19, 2021, DHS also began phase one in the effort to begin processing people who were forced to “remain in Mexico” while their asylum claims were adjudicated under the Migrant Protection Protocols.

87. Regarding Operation Streamline, now called the Criminal Consequence Initiative (CCI), as of February 2021, only the Del Rio sector uses CCI and uses it only sparingly. The May 2015 DHS Office of Inspector General Report “Streamline: Measuring its Effect on Illegal Border Crossing” recommended that CBP measure the effect of Streamline on illegal entry over multiple years; develop and implement a cost estimate for enforcement consequences; develop and implement a plan to determine the feasibility and appropriateness of funding Special Assistant U.S. Attorneys for Streamline prosecutions in more sectors; develop guidance on using Streamline for non-citizens expressing fear of return; and, with ICE, determine appropriate staffing levels for Streamline. CBP concurred in all five recommendations and has taken steps to implement them, including creation of a working group to develop additional training and potential controls. Specifically, CBP worked with U.S. Citizenship and Immigration Services (USCIS) on refresher training to ensure correct handling of cases of individuals who express a fear of return to their countries of origin during Border Patrol processing.

88. Regarding detention and release of certain non-citizens arrested inside the United States, if an ICE officer denies bond (or sets a bond the non-citizen considers too high), a non-citizen may ask an Immigration Judge for a redetermination of the custody decision, per 8 U.S.C. § 1226. The non-citizen or ICE may also appeal the Immigration Judge’s custody redetermination to the Board of Immigration Appeals. Under the law, certain criminal and terrorist non-citizens are subject to mandatory detention pending removal proceedings.

89. The United States has taken steps to modernize its legal immigration system and its humanitarian components, such as improving services for applicants, reducing burdens on employers, and modernizing the information

technology infrastructure underlying the visa processing system. These reforms support use of thorough and individualized assessments for decisions concerning immigration status. ICE has hired a Legal Access Coordinator to oversee its Legal Access Initiative, which seeks to enhance detained individuals' access to legal counsel and legal resources, including legal group presentations conducted by *pro bono* legal service providers and subcontractors as part of the DOJ /Executive Office for Immigration Review's (DOJ/EOIR's) Legal Orientation Program. DOJ/EOIR provides counsel to detained individuals who are found mentally incompetent to represent themselves in proceedings before the agency. For non-detained individuals, including children, DOJ/EOIR operates the Legal Orientation Program for Custodians of Unaccompanied Alien Children and the Immigration Court Helpdesk. Additional information about these programs is available at <https://www.justice.gov/eoir/office-of-legal-access-programs>. DOJ/EOIR recently created the Immigration Court Online Resource, a digital, interactive platform for respondents, detained and non-detained, representatives, and the general public to become familiar with immigration court proceedings and options for protection and relief from removal, <https://icor.eoir.justice.gov/>.

90. The Blue Campaign, DHS's unified voice to combat human trafficking, has produced human trafficking training and awareness materials for DHS employees, state and local law enforcement, and other target audiences, which contain information on the various forms of immigration relief available to trafficking victims, including Continued Presence, U nonimmigrant status, and T nonimmigrant status. FLETC has developed a one-day introductory human trafficking awareness training program for federal, state, local, tribal and territorial law enforcement agencies. Additionally, pursuant to a 2014 regulation promulgated under the Prison Rape Elimination Act (PREA), DHS/ICE and DHS/CPB have developed policies and training to prevent, detect, and respond to sexual abuse and assault in DHS custody.

91. Raising awareness about human trafficking can be an important preventative measure. In 2020 and early 2021, ED hosted four webinars for educators to raise awareness about and combat human trafficking in schools, including one webinar focused on vulnerable populations, such as children who are homeless, neglected and delinquent, have disabilities, or are Native American. In January 2021, ED released the second edition of Human Trafficking in America's Schools, a guide for educators on ways to identify and help prevent child trafficking. At the same time, ED released Addressing the Growing Problem of Domestic Sex Trafficking in Minors through Positive Behavioral Interventions and Supports.

92. DOL's Wage and Hour Division (WHD) continues to protect migrant workers from exploitative and abusive working conditions and to ensure appropriate protections for workers engaged in harvesting and hazardous work in agriculture. WHD has Community Outreach and Resource Planning Specialists in all 54 district offices, making WHD's services more accessible to the nation's workforce and regulated sectors. Regarding hazardous work in agriculture, the Fair Labor Standards Act generally provides for a minimum age of 16 years for employment in any agricultural occupations declared by the Secretary of Labor to be particularly hazardous. DOL works to improve the safety and health of farm workers, including by collaborating with farming organizations on educational programs that address hazardous agricultural work practices and conditions.

93. DOL's Occupational Safety and Health Administration (OSHA) has standards that cover agricultural operations, information on solutions to common agricultural hazards, and other resources such as publications to help employers create and maintain safe and healthy work environments (www.osha.gov/agricultural-operations). Farmworkers are at high risk for fatalities and injuries, work-related lung diseases, noise-induced hearing loss, skin diseases, and certain cancers associated with chemical use and prolonged sun exposure. Since 2011, OSHA has been educating employers and workers about the dangers of working in heat (www.osha.gov/heat) through training sessions, outreach events, information sessions, publications, social media messaging, and media appearances.

94. The 2014 Workforce Innovation and Opportunity Act (WIOA) establishes the United States' workforce development system, designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the workers they need to compete in the global economy. WIOA's nondiscrimination provisions prohibit discrimination on many bases, including race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for beneficiaries and applicants, and participants only, on the basis of participation in any WIOA Title I-financially assisted program or activity. The statute additionally provides that participation in programs and activities financially assisted under WIOA must be available to "citizens and nationals of the United States, lawfully admitted permanent resident non-citizens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States."

95. In addition to DOL, DHS, USCIS, DOJ, and DOS are actively involved in various aspects of oversight and enforcement of the requirements applicable to foreign workers in the United States. A list of resources and mechanisms for reporting labor abuses is available on the USCIS webpage, Report Labor Abuses. <https://www.uscis.gov/working-united-states/information-employers-employees/report-labor-abuses>.

96. Title VII and other laws enforced by the EEOC generally extend to all employees and applicants for employment in the United States, regardless of birthplace, authorization to work, citizenship, or immigration status. Employers are held accountable for violation of many equal employment opportunity laws without regard to the legal status of workers, although certain limited remedies may not be available to undocumented workers. For example, in EEOC v. Global Horizons, Inc., et al., No. 2:13-cv-03045-EFS (E.D. Wash.; court order Apr. 2016), a federal court ordered a farm labor contractor to pay \$7,658,500 for a pattern or practice of subjecting Thai farmworkers in Washington State to a hostile work environment and other forms of discrimination that it described as "fear, anxiety, anger, intimidation, humiliation, shame, and . . . an unrelenting sense of imprisonment." In FY 2020, the EEOC settled with Green Acre Farms and Valley Fruit Orchards, the remaining defendants in the Global Horizons case. Green Acre and Valley Fruit agreed collectively to pay \$325,000 to Thai farmworkers who were brought to the United States to work on the farms on H-2A visas by Global Horizons. The farms also agreed, among other relief, to treat workers from farm labor contractors as employees and to implement training for all managers and supervisors with the authority to hire and fire, as well as human resources employees, regarding compliance with Title VII. This case exhibits EEOC's role in combatting human trafficking through enforcement of employment laws. In addition, in FY 2020, the EEOC resolved one employment discrimination charge linked to human trafficking through the administrative process. The EEOC increases public awareness about human trafficking and

its link to EEO laws through outreach and training, in addition to investigations and litigation. In FY 2020, the EEOC conducted or otherwise participated in 120 outreach events that included the issue of human trafficking, reaching 12,020 attendees. The EEOC also conducted two sessions in which EEOC staff and the staff of its state and local government partners were trained on identifying and developing human trafficking-related discrimination charges, including the EEOC's annual meeting with state and local government Fair Employment Practices Agencies.

97. DOL/OFCCP enforces federal contractor compliance with EO 11246, which in addition to requiring affirmative action, also prohibits federal contractors and subcontractors from discriminating based on race, color, religion, sex, sexual orientation, gender identity or national origin. The agency enforces compliance through neutrally selected compliance evaluations and complaint investigations. OFCCP remedies findings of discrimination through financial relief, corrective actions, and/or placement opportunities, as appropriate. For example, in June 2020, OFCCP received a favorable ruling from DOL's Office of Administrative Law Judges (OALJ) in a case involving discrimination based on race and national origin. The complaint alleged, among other violations, that from February 2011 through January 2012, WMS Solutions LLC hired Hispanic construction laborers and then harassed and discriminated against them, while allowing supervisors of other federal contractors to assault them physically, make racial slurs, and threaten them with deportation. OALJ ordered WMS to pay \$960,905 in back wages, damages, and interest to remedy the alleged discriminatory hiring and compensation practices, including allegations based on race and national origin. OALJ also ordered the company to implement a zero-tolerance anti-harassment policy and train all managers and employees on their anti-discrimination obligations.

98. On November 18, 2016, the EEOC approved new [Enforcement Guidance on National Origin Discrimination](#), which outlines the employment discrimination prohibition and provides employers with practices to promote compliance with the law. In 2020, the EEOC resolved 6,927 charges of national origin-based employment discrimination and recovered \$26.3 million for affected workers. For race discrimination, the EEOC in FY 2020 resolved 22,719 charges and recovered \$74.8 million. In addition to the laws that the EEOC enforces, DOJ enforces the Immigration and Nationality Act's anti-discrimination provision, which protects U.S. citizens and non-U.S. citizens with authorization to work in the United States from certain types of employment discrimination based on citizenship, immigration status, or national origin, including in hiring, firing, recruitment, or during the process of verifying employees' authorization to work in the United States. In FYs 2016-20, employers distributed or agreed to pay over \$6.7 million in civil penalties and nearly \$594,000 in back pay for discrimination victims.

99. On June 6, 2017, DOL announced actions to increase protections of U.S. workers while more aggressively confronting entities committing visa program fraud and abuse. DOL vigorously enforces all laws within its jurisdiction governing non-immigrant visa programs, including WHD's conducting civil investigations to enforce labor protections provided by visa programs. The EEOC is a "Certifying Agency" for U nonimmigrant status and can help workers who are victims of certain crimes apply to remain in the United States and continue to work. In FY 2020, the EEOC signed 18 U nonimmigrant status certifications supporting U nonimmigrant status petitions and declined to certify four.

100. Regarding International Labor Organization (ILO) Conventions Nos. 29 and 138, the 1998 ILO Declaration on Fundamental Principles and Rights at Work declares that all ILO Members have an obligation, arising from membership in the Organization, to respect, promote, and realize in good faith the principles concerning the fundamental rights that are the subject of the ILO's eight core conventions, including elimination of forced labor and effective abolition of child labor. The United States has demonstrated, in its follow-up reports under the Declaration, that U.S. workers enjoy the fundamental principles and rights at work. U.S. law provides protections from forced labor and child labor without regard to citizenship status.

101. **Violence against women (§ 19 of the Concluding Observations)**. Noting its views described in ¶ 4 above regarding matters involving disparate impact, and its reservation, discussed in ¶ 11 above, concerning the application of the CERD to the private conduct of non-State actors, the United States provides the following information. The United States is concerned about violence against women and takes aggressive action to prosecute perpetrators and provide services to victims. Regarding violence against women in Indian Country, in May 2016, DOJ's NIJ produced a report on violence against American Indian and Alaska Native (AI/AN) women and men. It found that over 4 in 5 AI/AN women (84%) had experienced violence in their lifetimes; 66% had experienced psychological aggression, 56% sexual violence, 55% physical violence from an intimate partner, and 49% stalking. Despite the need for support and protection, 38% of AI/AN female victims were unable to access medical services. The report also found that 97% of victims had experienced violence by an interracial perpetrator at least once in their lifetimes. In addition, NIJ has launched the National Baseline Study, the first nationally representative study of crime and victimization committed against AI/AN women living in Indian Country and Alaska Native villages.

102. The United States has been working to address this issue for a number of years. The Department of Interior (DOI) Bureau of Indian Affairs (BIA) is implementing a strategic plan to address domestic violence and family violence in Indian Country, including providing additional personnel at regional, agency, and tribal levels to work on these issues. The BIA employs 9 Victim Specialists and 2 supervisors under its Office of Justice Services (OJS) to provide direct and immediate assistance to victims and their families throughout Indian Country. The BIA Victim Assistance Program also provides training and technical assistance to tribes, and participates in local, regional, and national task forces to combat violence against indigenous women and girls. For example, the BIA Victim Assistance Program partnered with the National Indian Gaming Commission in 2017 to provide training to gaming and hotel operations staff across the United States on recognizing human trafficking situations and on intervention methods. The BIA also has a Family Violence Prevention Specialist to provide program oversight, develop gap analyses and best practice models, and organize training and technical assistance efforts involving the OJS Victim Assistance Program, the DOJ/OVW, and the HHS Domestic Violence Program. In collaboration with DOJ and HHS, the BIA has also published a Child Protection Handbook.

103. Because tribal prosecutors specializing in domestic violence are important in addressing violence against women in Indian Country, the Tribal Special Assistant United States Attorney Initiative, funded at \$2,250,000 in 2020 through a partnership between DOJ/OVW and the Bureau of Justice Assistance (BJA), trains cross-deputized tribal prosecutors in federal law and procedure and investigative strategies so they can pursue domestic or sexual

violence cases in tribal court, federal court, or both. Additionally, the BIA has provided 78 prosecutor positions in Indian Country, one-on-one technical assistance for these prosecutors, and funding to tribes to host and conduct training on implementation of the tribal jurisdiction provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Funding is also allocated for public defenders, probation officers, and at times, victim specialists. In an effort to provide a strong core domestic violence component and infrastructure to tribal courts, the BIA also provides funding for training in trial skills for domestic violence cases.

104. DOJ/OVW administers 19 grant programs authorized by the Violence Against Women Act (VAWA) and subsequent legislation, designed to reduce domestic violence, dating violence, sexual assault, and stalking by strengthening services to victims and holding offenders accountable. Four programs address violence against AI/AN women by ensuring the availability of services for victims and improving the criminal justice response to domestic violence, dating violence, sexual assault, stalking, and sex trafficking in tribal communities; and three programs focus on providing culturally specific services and providing services to underserved populations.

105. Through the Grants to Indian Tribal Governments Program, which supports efforts to address and prevent violence against AI/AN victims by enhancing victim services and holding offenders accountable, DOJ/OVW awarded over \$32 million in grants to tribal governments in FY 2019. Other relevant programs include the Tribal Domestic Violence and Sexual Assault Coalitions Grant Program, which supports efforts to form and sustain non-profit, non-governmental tribal domestic violence and sexual assault coalitions; the Tribal Sexual Assault Services Program, which enhances the ability of tribes to provide services for sexual assault victims; and the Grants to Tribal Governments to Exercise Special Domestic Violence Jurisdiction Program, which assists tribal governments in planning, implementing, and exercising “special domestic violence criminal jurisdiction” to hold accountable non-Indians who commit crimes of domestic violence or dating violence, or violate certain protection orders in Indian Country.

106. DOJ/OVW and the BIA administer programs to support tribal government exercise of the special domestic violence criminal jurisdiction recognized in VAWA 2013. OVW funds can be used to strengthen tribal criminal justice systems to support exercise of this jurisdiction; provide indigent criminal defendants with effective assistance of counsel at no cost in such cases; and accord victims rights that are similar to those described in the federal Crime Victims’ Rights Act, consistent with tribal law and custom. In addition, to help more tribes and tribal courts meet the requirements for exercise of the special domestic violence criminal jurisdiction, BIA/OJS has created a Violence Against Women Act Training Series. To date, training has been provided to over 500 tribal justice personnel. BIA/OJS also has provided funding for tribal court personnel focused specifically on domestic violence in Indian Country. In addition, OVW supports a working group for tribes implementing special domestic violence criminal jurisdiction to share best practices with one another.

107. In 2013, DHS established an agency-wide Council on Combating Violence against Women (CCVAW) to coordinate efforts to stop crimes against women and ensure the effective administration of laws aimed at preventing violence against women. In 2019, the CCVAW oversaw the revision and release of new DHS-wide training on the increased vulnerability to domestic violence of non-citizens without status; the immigration benefits provided to

non-citizen victims of crime, including domestic violence, under U.S. immigration laws; and the special confidentiality laws that protect victims' information. From 2016-2020, the CCVAW also produced annual reports on DHS compliance with mandatory CCVAW training and the number of confidentiality incidents occurring each year.

108. Other federal agencies have worked together on services for victims, including 2016 funding by DOJ and HUD of \$9.2 million for stable housing to victims of domestic violence, dating violence, sexual assault, and stalking who are living with HIV/AIDS. DOJ has also funded the Wraparound Victim Legal Assistance Network Demonstration Project, which provides comprehensive legal services to all victims of crime, including survivors of domestic violence. Since 2015, DOJ has implemented the Tribal Access Program, which provides federally recognized tribes direct access to federal criminal information databases, enabling tribes to submit criminal history information that may disqualify domestic violence offenders from receiving firearms.

109. As noted above, perpetrators of violence against women, including Native American women, are aggressively investigated and prosecuted. For example, in January 2020, a South Dakota man was sentenced to 54 months in prison for severely beating his domestic partner, giving her several facial fractures. The assault took place on the Cheyenne River Sioux Indian Reservation. Both the man and his domestic partner are enrolled members of the Cheyenne River Sioux Tribe. In 2019, a member of the Navajo Nation was sentenced to 252 months in prison for extensively beating two women and strangling them in his home on the Navajo Reservation. In 2017, a member of the McDermitt Paiute-Shoshone Tribe of Nevada was sentenced to 120 months in prison for stabbing his wife to death at their home on the Fort McDermitt Indian Reservation.

110. The Presidential Task Force on Missing and Murdered American Indians and Alaska Natives was established by EO 13898 on November 26, 2019 to enhance the operation of the criminal justice system and address the legitimate concerns of AI/AN communities regarding missing and murdered persons, particularly missing and murdered women and girls. Co-chaired by the Attorney General and the Secretary of the Interior, with members from DOJ, DOI, and HHS, the Task Force is charged with activities including tribal consultation, development of protocols and procedures, improvement in data collection and sharing, and use of existing databases. As part of the Task Force, the BIA is leading seven multi-disciplinary cold case team offices throughout the United States that will focus on analyzing and solving active missing and murdered cold cases involving AI/AN persons. In addition, DOJ launched a strategy that includes establishment of missing persons coordinators in eleven districts within Indian Country, use of specialized FBI Rapid Deployment Teams in appropriate cases, and comprehensive analysis of current systems of data collection. In its first year, the Task Force conducted five tribal listening sessions and established seven working groups. Projects have included: drafting fact sheets on missing persons cases and murder cases; restarting the "Volunteers in Police Service" program to help utilize community volunteers in missing persons cases; establishing a "Justice Connect" section within the Law Enforcement Enterprise Portal in the FBI Criminal Justice Information Services databases; compiling ideas for legislation to solve identified gaps or legal issues; and meeting with law enforcement, victim services programs, domestic violence coalitions and others to hear about field

experiences in AI/AN communities. The Task Force also coordinates efforts with other relevant Federal Commissions and Task Forces. <https://operationladyjustice.usdoj.gov/>.

111. In 2016, HUD issued guidance on the effects of local nuisance ordinances that may lead to discrimination under the FHA against survivors of domestic violence and other persons in need of emergency services. HUD also published its final rule implementing the requirements of VAWA 2013 in HUD's regulations in 2016 and in its implementation guidance in 2017. VAWA 2013 expanded VAWA housing protections to HUD programs beyond HUD's public housing program and HUD's tenant-based and project-based Section 8 programs that were covered by the 2005 reauthorization. It also provided enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking. For example, it amended the definition of domestic violence to include violence committed by intimate partners of victims; provided that tenants cannot be denied assistance because an affiliated individual is or was a victim of domestic violence, dating violence, sexual assault, or stalking; and expanded remedies by requiring covered housing providers to have emergency transfer plans.

112. To highlight the issue of violence against women internationally, the United States worked with Canada and Mexico in 2016, 2017, and 2018 as part of the Trilateral Working Group on Violence Against Indigenous Women and Girls. In 2018, the Working Group consulted with indigenous women from all three countries to share best practices and lessons learned. Additionally, DOI and DOJ are working to establish the Joint Commission on Reducing Violent Crimes Against Indians under the Not Invisible Act, which became law in October 2020. The Act is intended to "increase intergovernmental coordination to identify and combat violent crime within Indian lands and of Indians." The Commission will recommend best practices to identify, report, and respond to instances of missing persons, murder, trafficking, and other violent crimes against AI/AN persons.

113. The U.S. government has also worked actively to support local, state, national and international efforts to combat female genital mutilation/cutting (FGM). On January 5, 2021, the STOP FGM Act 2020 was signed into law, expanding the scope of punishable acts and increasing the statutory maximum term of imprisonment for violating the law from five to ten years. On January 13, 2021, DOJ [obtained an indictment](#) of a Texas woman for allegedly transporting a minor for FGM. Charged under the prior version of the law due to the timing of the alleged criminal activity, the indictment is the first under section (d) of the statute, which prohibits taking a girl out of the United States for the purpose of FGM. FGM survivors or those who fear being forced to undergo FGM may be eligible for certain immigration benefits, including asylum, under U.S. immigration laws. During the reporting period, USCIS raised awareness and educated communities about FGM, including publishing and maintaining a webpage dedicated to FGM, presenting on FGM at immigration roundtables and stakeholder outreach engagements, and providing training, outreach, and informational resources to USCIS staff who may encounter populations traditionally at risk of FGM. In 2017, ICE Homeland Security Investigations (HSI) launched Operation Limelight USA to educate and provide outreach to the traveling public at international airports located in or near large diaspora communities in the U.S. that practice FGM, and to develop leads relating to children traveling from the U.S. to have FGM performed. ICE/HSI is the primary U.S. government entity charged with responding to allegations of FGM. In

January 2017, DHS finalized its Female Genital Mutilation or Cutting Outreach Strategy and is working to implement it government-wide.

114. **Criminal justice system (¶ 20 of the Concluding Observations)**. Noting its views described in ¶ 4 above regarding matters involving disparate impact, the United States notes that the federal prison population has dropped to its lowest level since 2000, declining almost 31% since 2013. In December 2018, Congress enacted the First Step Act, the most significant federal criminal justice reform measure in several decades. The Act authorized reforms of the federal prison system to promote reentry for federal prisoners, including a requirement that DOJ develop a risk and needs assessment system for the Bureau of Prisons to assess the recidivism risk of federal prisoners and place them in programs to reduce that risk; changes to mandatory minimum sentences for certain drug offenses; retroactive application of the Fair Sentencing Act of 2010 for incarcerated offenders who received longer sentences for possession of crack cocaine than they would have for powder cocaine; and an expansion of courts' ability to sentence low-level, nonviolent drug offenders to less than the required mandatory minimum. These reforms helped to address racial disparities in the federal criminal legal system, as 91% of those receiving sentence reductions under Fair Sentencing Act retroactivity provisions were African American.

115. ED launched the Second Chance Pell Experimental Sites Initiative in 2015 and expanded it in 2020 to provide need-based Pell grant financial aid to individuals in state and federal prisons. In 2020, the Free Application for Federal Student Aid Simplification Act included a provision making individuals in state and federal correctional institutions eligible for Title IV student financial aid by July 1, 2023, specifically the Pell grant, for the first time since 1994.

116. The current Administration supports legislatively ending the death penalty at the federal level and encouraging states to follow the federal government's example. Additionally, the U.S. judicial system provides an exhaustive system of protections at both the federal and state levels to ensure the death penalty is not applied in a summary, arbitrary, or discriminatory manner, and that its implementation is undertaken with exacting procedural safeguards, after multiple layers of judicial review, in conformity with the U.S. Constitution and U.S. international obligations. DOJ continues to take great precautions to ensure that decisions to seek the death penalty at the federal level are not based on factors that include race or national origin.

117. **Juvenile justice system (¶ 21 of the Concluding Observations)**. Noting its views described in ¶ 4 above regarding matters involving disparate impact, the United States provides the following information regarding the juvenile justice system. The United States seeks to ensure that the justice system operates fairly and effectively for all juveniles. For example, DOJ/CRD has the authority to conduct investigations and seek relief where there is a reasonable basis to believe that there is a pattern or practice of deprivation of the constitutional or statutory rights of youth in the juvenile justice system or youth who are incarcerated. In January 2021, CRD announced an investigation into the use of pepper spray at two juvenile facilities in Nevada.

118. The United States also recognizes that education can be an important tool and resource for incarcerated and formerly incarcerated individuals. With the support of grants from ED and DOJ, juvenile justice residential facilities

provide educational services to thousands of students each year. In 2018, DOJ released a Reentry Toolkit offering guidance on steps youth can take while in placement and when returning to their communities to ensure successful connections for education, employment, housing, and other support services. ED released a Reentry Education Toolkit in 2016 and updated it in 2018 with additional tools to support successful reentry for youth and adults. To support transition efforts, DOL awarded approximately \$85.9 million in 2019 and \$91 million in 2020 in Reentry Project grants to non-profit organizations, which, *inter alia*, serve individuals between the ages of 18 and 24 reentering society after incarceration. In 2017, ED, in partnership with DOJ, funded an initiative to help 16 state and local partnerships provide their populations with alternatives to prosecution and/or incarceration, including special education, career and technical education, and other workforce development opportunities. In 2016, DOJ and ED awarded four grants under the Juvenile Justice Reentry Education Program to improve education and employment outcomes for youth returning to their communities after incarceration. In 2015, DOJ and the National Council of Juvenile and Family Court Judges launched the School-Justice Partnership National Resource Center to assist school-justice partnerships in keeping children in school and out of court.

119. With respect to separating juveniles from adults during pre-trial detention and after sentencing, the PREA Youthful Inmate Standards call for persons under 18 to be housed separately in prisons, jails, and lockups. Over the past several years, a number of states have banned the use of solitary confinement in juvenile corrections. The 2018 First Step Act prohibits the use of solitary confinement for juvenile delinquents in federal custody except under limited circumstances.

120. Regarding juvenile life without parole, the U.S. Supreme Court held in Miller v. Alabama, 567 U.S. 460 (2012), that a mandatory term of life without parole is unconstitutional when imposed on a juvenile homicide offender. Montgomery v. Louisiana, 577 U.S. ____ (2016) held that the rule announced in Miller applies retroactively to defendants who were sentenced before Miller was decided. Jones v. Mississippi, ____ U.S. ____ (April 22, 2021), held that Miller and Montgomery do not require a separate factual finding of permanent incorrigibility before a defendant is sentenced to life without parole. State governments have responded to the Miller and Montgomery decisions in several ways, including by extending parole eligibility to juvenile offenders who received life sentences and affording individual defendants the opportunity for resentencing to a lesser term of imprisonment. Most federal prisoners who were serving life-without-parole sentences for murders committed while they were juveniles have been resentenced to terms of imprisonment that will allow them an opportunity for eventual release. In some cases, offenders have been released from prison.

121. **Guantanamo Bay (¶ 22 of the Concluding Observations)**. Subject to its observation in ¶ 3 above, and in the spirit of cooperation, the United State provides the following information regarding Guantanamo Bay. The United States continues to have legal authority to detain Guantanamo detainees until the end of hostilities, consistent with U.S. law and applicable international law, but it has elected, as a policy matter, to ensure it holds individuals no longer than necessary to mitigate the threat they pose. To that end, over 90% of detainees once held at Guantanamo Bay have now been resettled or repatriated. The United States' view remains that in our efforts to protect our national security, both military commissions and federal courts can, depending on the circumstances of the specific

case, provide appropriate processes for criminal prosecution that are both grounded in applicable law and effective. U.S. law currently precludes the transfer of detainees from Guantanamo for prosecution in the United States. All current military commission proceedings at Guantanamo incorporate fundamental procedural guarantees that meet or exceed the fair trial safeguards required by Common Article 3 of the 1949 Geneva Conventions and other applicable law, and are further consistent with those in Additional Protocol II to the 1949 Geneva Conventions. A conviction by a military commission is subject to multiple layers of review, including judicial review by federal civilian courts consisting of life-tenured judges.

122. All Guantanamo detainees have the ability to challenge the lawfulness of their detentions in U.S. federal court through petitions for a writ of *habeas corpus*. Detainees have access to independent legal counsel and to appropriate evidence to mount such challenges. The United States is fully committed to ensuring that individuals it detains in any armed conflict are treated humanely in all circumstances, consistent with applicable U.S. treaty obligations, U.S. domestic law, and U.S. policy.

123. **Access to legal aid (¶ 23 of the Concluding Observations)**. Noting its views, described in ¶ 4 above, regarding matters involving disparate impact, the United States provides the following regarding access to legal aid. Officials at all levels work to ensure that the U.S. legal system efficiently delivers outcomes that are fair and accessible to all, irrespective of race, ethnicity, wealth, or status. Across the federal government, agencies collaborate to strengthen federal programs by identifying opportunities to incorporate legal assistance and to facilitate strategic partnerships with civil legal aid organizations. Federal agencies also collaborate with state and local entities to improve access to justice at all levels of government. On May 18, 2021, President Biden issued a Presidential Memorandum to expand access to legal representation and the courts, and re-commit to the mission of the White House Legal Aid Interagency Roundtable, initially established in 2015 to raise federal agencies’ awareness of how civil legal aid could increase employment, family stability, housing security, consumer protection, and public safety. On that same day, the U.S. Attorney General announced reinvigoration of the Office for Access to Justice, which was formally established in 2016 to “plan, develop, and coordinate the implementation of access to justice policy initiatives ... including in the areas of criminal indigent defense, civil legal aid, and pro bono legal services”

124. DOJ also provides substantial funding for legal service programs for crime victims’ rights enforcement and advocacy on civil legal issues. These services are available to all victims. In 2019, DOJ’s Office for Victims of Crimes (OVC) awarded approximately \$3.5 million to provide crime victims’ rights enforcement and legal assistance. Additionally, OVC currently funds more than 400 grants totaling over \$250 million for services to victims of human trafficking, including, in many instances, legal services. In 2019, OVC awarded over \$7 million in funding to respond to elder abuse and victims of abuse and financial crimes throughout the United States, including enhancing legal services to older victims of abuse. OVC has also funded legal services for survivors for many years, believing that victims’ rights are among the most fundamental services it can provide to those affected by crime. Furthermore, DOJ/BJA makes funding available for provision of legal defense counsel services to eligible defendants in tribal court criminal proceedings, for prosecution and judicial services for tribal courts, or for other

purposes. These resources may include, but are not limited to, juvenile delinquency actions and guardian *ad litem* appointments arising out of criminal or delinquency acts. DOJ/OVW’s Legal Assistance Program strengthens civil and criminal legal assistance programs for adult and youth victims of domestic violence, dating violence, sexual assault, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence; in FY 2020, OVW supported 61 projects for a total of \$36,543,406. Through DOJ/EOIR, certain detained individuals who are found to be mentally incompetent to represent themselves in immigration court proceedings are eligible for government-paid counsel.

125. Since 2014, the Legal Services Corporation (LSC) has worked on ways to use technology to expand access to civil legal aid, with the goal of providing some form of assistance to 100% of persons otherwise unable to afford an attorney for essential legal needs. According to LSC, it distributes “more than 93% of its funding to 132 independent legal aid organizations serving every county in every state and the [U.S.] territories.” Partnering with Microsoft and ProBonoNet, LSC launched a pilot program in 2016 to create statewide justice portals to direct low-income people with civil legal needs to the most appropriate forms of assistance. More states are also establishing Access to Justice Commissions, which bring together key stakeholders in an effort to remove barriers to civil justice, and moving to create comprehensive integrated state systems for the delivery of civil legal assistance. As of 2018, 39 states, plus the District of Columbia, Puerto Rico, and the Virgin Islands, had Access to Justice Commissions. The National Center for State Courts has a Center on Court Access to Justice for All. Congress also created an Access to Civil Legal Services Caucus in 2015.

126. The Sixth Amendment to the U.S. Constitution provides for the right to counsel in federal criminal prosecutions. Through a series of decisions by the U.S. Supreme Court, the right to counsel has been extended to all criminal prosecutions—state or federal, felony or misdemeanor—that carry a potential sentence of imprisonment. By law, counsel is appointed for all individuals charged with crimes punishable by imprisonment who cannot afford an attorney, irrespective of race, gender, ethnicity, or other factors. States and localities use a variety of methods for delivering indigent criminal defense services, including public defender programs, assigned counsel programs, and contract attorneys. The federal system also uses similar programs.

127. DOJ/EOIR established the Office of Legal Access Programs in April 2000 to improve access to legal information and counseling and to increase representation rates for foreign-born individuals appearing before the immigration courts and Board of Immigration Appeals in civil immigration removal proceedings. Since 2003, EOIR has carried out the Legal Orientation Program (LOP) to improve judicial efficiency in immigration courts, and to assist detained individuals and others involved in detained removal proceedings to make timely and informed decisions. As of February 2021, LOP is capable of operation in 43 ICE adult detention facilities, including two of ICE’s family staging centers. Additionally, a LOP Information Line, operational since late 2019, is available via ICE’s Pro Bono Platform at all “over 72-hour” ICE facilities. EOIR launched the National Qualified Representative Program (NQRP) in 2013 to provide Qualified Representatives to certain unrepresented and detained respondents found by an Immigration Judge or the Board of Immigration Appeals to be mentally incompetent to represent themselves in immigration proceedings. NQRP’s fundamental goals are increased efficiency and fairness in

immigration proceedings. EOIR administers NQRP under a contract with a national provider, which uses local subcontracting legal service organizations and law firms to provide representatives where required.

128. **Rights of indigenous peoples (¶ 24 of the Concluding Observations)**. Regarding effective participation in public life based on free, prior, informed consent, as set forth in the UN Declaration on the Right of Indigenous Peoples, the United States understands “free, prior, informed consent” to call for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken. As described in the United States’ announcement of support for the political commitments in the UN Declaration and in ¶¶ 167-169 and 171-176 of the 2013 Report, U.S. laws and policy call for consultation with tribes on many issues. Since the 2013 Report, multiple consultations with tribal leaders have been held at the agency level and through Tribal Nations Conferences. Recently, in accordance with President Biden’s Memorandum on Improving Tribal Consultation and Strengthening Nation-to-Nation Relationships, multiple Federal agencies have been consulting with Tribes to learn how those agencies can improve future consultations. Each agency will submit a detailed plan with improvements to the Office of Management and Budget. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-ndnation-relationships/>

129. With respect to recognition of tribes, in July 2015, DOI reformed the tribal recognition process based on over 330 written comment submissions and input at public meetings and tribal consultation sessions from tribal leaders, states, local governments, and the public. <https://www.bia.gov/cs/groups/xofa/documents/text/idc1-031255.pdf>. The updated rule promotes a more transparent, timely, and consistent process that is flexible enough to account for the unique histories of tribal communities, while maintaining the integrity of the criteria that had been in place for nearly 40 years. Although the new process carries forward the standard of proof and the seven mandatory criteria that petitioners must meet to substantiate claims to tribal identification, community, and political authority, it promotes consistent application by establishing a uniform evaluation period of more than a century (from 1900 to the present), increases public access to petition documentation, expands distribution of notices to include local governments, and increases due process by providing for an administrative judge to conduct a comprehensive hearing and issue a recommended decision for proposed negative findings. <https://www.doi.gov/pressreleases/department-interior-announces-final-federal-recognition-process-acknowledge-indian-tribes>.

130. Regarding protection of sacred sites, in 2012 and again in 2016, five entities (Department of Defense, DOI, Department of Energy, Department of Agriculture, and the Advisory Council on Historic Preservation) entered into an MOU to improve protection of and Indian access to sacred sites. <https://www.fs.fed.us/spf/tribalrelations/sacredsitesmou.shtml>. Since 2013, the MOU participants have created materials and a training to assist federal agencies in fulfilling their trust responsibility to tribes and preserving sacred sites of critical importance to Native peoples. These materials and trainings include a comprehensive review of applicable laws and policies that affect sacred sites; detailed information for state and local governments, industry, academia, and the general public on complex sacred site topics; and a Statement on Confidentiality concerning how

federal agencies can protect culturally sensitive information regarding sacred sites when affected tribes deem such information private. The MOU participants have also held periodic listening sessions with tribes on sacred sites.

131. DHS recognizes the importance of consultation with tribal nations affected by deployment of border security infrastructure and ongoing border security operations. CBP regularly engages leaders from tribes in the border region and tribal members impacted by border security operations. Accordingly, to the extent that additional border barriers will be constructed near tribal lands, DHS and CBP intend to work closely with DOI and BIA and consult with affected tribal authorities as specific projects are designated and funded.

132. With respect to enforcement of the Indian Child Welfare Act (ICWA), in June 2016, after a robust and inclusive consultation process, the BIA issued a rule, 25 C.F.R. 23, to promote consistent and strong enforcement of ICWA, plus a schedule of trainings on application of the rule. The rule clarifies ICWA's requirements, promotes judicial collaboration between tribal and state courts, and incorporates best practices in child welfare. It requires that state courts determine whether ICWA applies in every child custody proceeding, articulates the efforts state courts and agencies must make to provide appropriate family services designed to keep families together, and establishes procedures governing emergency removal of children from their homes. Some states have enacted state law versions of ICWA that provide additional protections for tribes and Indian families. The BIA also issued updated Guidelines for Implementing the ICWA in December 2016. The guidelines explain the statute and regulations and provide examples of best practices for implementation, with the goal of encouraging greater uniformity in the application of ICWA.

133. Regarding Western Shoshone, please see ¶¶ 178 and 179 of the 2013 Report. In July 2014, DOI's Acting Assistant Secretary of Indian Affairs approved the procedures proposed by the Revised Western Shoshone Education Trust Fund Administrative Committees for processing applications for participation in the scholarship program referenced in ¶ 178. Thus, the Western Shoshone Education Committee has been appointed and is receiving and processing applications for scholarships in accordance with the Western Shoshone Judgment Claims Act (P.L. 108-270).

134. In 2016, the EEOC reiterated its position that employment discrimination because an individual is Native American or a member of a particular tribe is covered by Title VII as employment discrimination based on national origin. [Enforcement Guidance on National Origin Discrimination](#).

135. **National action plan to combat racial discrimination (¶ 25 of the Concluding Observations)**.

Mechanisms to ensure a coordinated approach toward the implementation of the Convention at the federal, state, and local levels are important, and numerous such mechanisms exist. The framework within which human rights are protected and promoted in the United States is described in ¶¶ 104-146 of the Common Core Document. DOJ/CRD enforces federal statutes prohibiting discrimination based on race, color, sex (including pregnancy, sexual orientation, and gender identity), disability, religion, familial status, national origin, and citizenship status. Under EO 12250, DOJ is charged with ensuring the consistent and effective implementation of federal civil rights laws "prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance."

This responsibility includes review and clearance of regulations and policy guidance addressing the implementation of a variety of federal nondiscrimination laws and policies. All federal agencies with mandates related to nondiscrimination, including DOJ, EEOC, ED, HUD, DHS, and DOL, coordinate within the federal government, as well as with state and local authorities, human rights commissions, and non-governmental entities. Moreover, as set forth in ¶ 7 above, EO 13985 instructs the entire federal government to pursue a comprehensive approach to affirmatively advance equity for all, including people of color and members of marginalized groups.

136. **Other issues (¶ 26 of the Concluding Observations)**. Regarding implementation of the Convention in the non-autonomous territories (American Samoa, Guam, and the U.S. Virgin Islands), as was made clear in the Common Core Document and Annex A to that Document, territories have been made aware of treaty requirements through communications from the State Department, just as is the case for states and tribes. U.S. territories are governed by federal laws, such as equal employment laws and voting rights laws, which are enforced by the federal government. Territories are also governed by their own territorial laws, which must not contravene federal law. The EEOC's jurisdiction includes Guam, American Samoa, Northern Mariana Islands, Wake Island, the U.S. Virgin Islands, and Puerto Rico. The number of race and national origin discrimination charges that the EEOC received from these U.S. territories is included on the EEOC's website. <https://www.eeoc.gov/statistics/enforcement/charges-by-state>. An example of the enforcement of equal employment laws in U.S. territories is the EEOC's 2019 settlement with a hotel resort and spa in Guam that agreed to pay \$15,871 and provide other relief to settle a pregnancy and disability lawsuit by the EEOC. See <https://www.eeoc.gov/eeoc/newsroom/release/5-13-19.cfm>.

137. Concerning the Committee's questions on prescription of psychotropic drugs and use of non-consensual psychiatric treatment and other restrictive and coercive practices, the United States refers the Committee to its Fourth Periodic ICCPR Report (CCPR/C/USA/4, Dec. 30, 2011), with particular reference to the discussions related to article 10, Treatment of Persons Deprived of Liberty in ¶¶ 224 and 246-247; article 7, Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment in ¶¶ 187, 188, and 194; and Committee Recommendation 31, medical and scientific treatment, in ¶¶ 664-669.

138. **Declaration under article 14 and ratification of amendment to article 8 (¶¶ 27 and 28 of the Concluding Observations)**. The United States has no plans to make an optional declaration under article 14 or to ratify the amendment to article 8.

139. **Ratification of human rights treaties (¶ 29 of the Concluding Observations)**. The United States has signed but not ratified the International Covenant on Economic, Social, and Cultural Rights. The United States has signed the International Convention on the Elimination of All Forms of Discrimination against Women, and the Convention remains before the U.S. Senate for advice and consent, which is required for ratification under our Constitution. The United States has signed the Convention on the Rights of the Child, but has not transmitted it to the U.S. Senate for its advice and consent, which is required for ratification of a treaty under our constitutional system. The United States has neither signed nor ratified the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. The United States has signed the Convention on the Rights of Persons with

Disabilities, and the treaty is before the Senate for advice and consent to ratification. The United States has neither signed nor ratified the International Convention for the Protection of All Persons from Enforced Disappearance.

140. **Durban (¶ 30 of the Concluding Observations)**. The concerns of the United States about the 2001 Durban Declaration and Program of Action and its follow-up are well known and were set forth in ¶ 217 of the 2013 Report.

141. **Dialogue with civil society and efforts to raise public awareness (¶¶ 31 and 32 of the Concluding Observations)**. The United States is acutely aware of the importance of dialogue with civil society and efforts to promote awareness of the Convention and human rights issues generally. In 2016 and 2017, the United States focused, in particular, on our participation in the CERD process and also on a series of consultations with the public and civil society concerning implementation of the recommendations the United States has accepted through the Universal Periodic Review process. The September 2016 opening of the National Museum of African American History and Culture in Washington, D.C. represents an important development in awareness-raising of human rights and civil rights issues in the United States. In December 2020, Congress authorized two new Smithsonian museums: The American Women’s History Museum, and the National Museum of the American Latino.