



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Fifth periodic report submitted by the United States of
America under article 40 of the Covenant pursuant to the
optional reporting procedure, due in 2020* ****

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* The present document is being issued without formal editing.
** The annexes to the present document may be accessed from the web page of the Committee.



1. The United States of America (“United States”) is pleased to present to the United Nations Human Rights Committee (“Committee”) its Fifth Periodic Report concerning the implementation of its obligations under the International Covenant on Civil and Political Rights (“Covenant,” “Convention” or “ICCPR”) in accordance with Article 40 of the Convention. The substance and organization of this report is based on the April 2, 2019, List of Issues received from the Committee.

2. This report was prepared by the United States Department of State (DOS), with assistance from the Department of Justice (DOJ), the Department of Defense (DoD), the Department of Homeland Security (DHS), the Department of Health and Human Services (HHS), the Department of Education (ED), the U.S. Agency for International Development (USAID) and other relevant components of the U.S. government. Representatives of U.S. government departments and agencies involved in implementation of the Convention also met with representatives of non-government organizations as part of outreach efforts in connection with drafting the report. Except where otherwise noted, the report covers the time period from 2015 to 2020.

3. This report responds to the 29 questions in the List of Issues (LOI) of April 2, 2019, prepared by the Committee and transmitted to the United States pursuant to the reporting procedure. The information in our responses supplements information included in the U.S. Initial Report (CCPR/C/81/Add.4), the Second and Third Periodic Reports (CCPR/C/USA/3), and the Fourth Periodic Report (CCPR/C/USA/4), as well as other information provided by the United States in connection with Committee meetings and communications. It takes into account prior Concluding Observations of the Committee. Throughout the report, the United States has considered carefully the views expressed by the Committee in its written communications and in its public sessions with the United States. A list of acronyms used in the report, and the full name of each, is attached as Annex A.

4. The United States observes that some of the questions posed by the Committee appear to request information regarding the U.S. legal framework with respect to the private actions of non-state actors. For example, Questions 14 and 18 concerning victims of gun violence, including in the context of domestic violence, and human trafficking appear to primarily relate to the conduct of persons or groups acting in a private rather than an official capacity. Similarly, questions on actions the U.S. Government has taken to combat interference with privacy by entities including Facebook (Paragraph 22) appear largely to concern the conduct of non-state actors.¹ The United States reiterates its longstanding view that Article 2 of the Covenant contains no language stating that its obligations extend to private, non-governmental acts, and no such obligations can be inferred from Article 2.² Moreover, neither the text nor the negotiating history of the Covenant support any obligation on the part of States Parties to take “reasonable positive measures” and to exercise “due diligence” to respond to foreseeable threats by private persons and entities.³

5. The United States also expresses its concern that the Committee’s questions on a range of topics—including climate change, access to safe drinking water, homelessness, and access to health care, including reproductive health care—focus on issues that are beyond the scope of the Covenant. As the United States noted in its Observations on the Committee’s Draft General Comment 36, it is unclear on what basis the Committee would suggest an implied duty under Article 6 (or any other article under the Covenant) to address the general conditions in society that may or may not eventually give rise to direct threats to life or other health-related measures.

6. The United States disagrees with any suggestion that access to health care, to housing, or to safe drinking water and sanitation is inextricably related to or otherwise essential to the enjoyment of the right to life as properly understood under the Covenant. State Party obligations with respect to health-related rights and to the right to an adequate standard of living are set forth in the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which the United States is not a party. Given that the ICESCR was negotiated

¹ Question 22 recognizes that Facebook is a non-State actor.

² US Observations on General Comment 31, para. 11.

³ US Observations on General Comment 36, para. 33.

and concluded in parallel with the ICCPR specifically to address such rights separately and that States party to the ICESCR agreed, pursuant to Article 2 of the ICESCR, to take steps “with a view to achieving progressively the full realization” of such rights, there is no basis to infer that the negotiators would have considered such measures to be required or necessary to also give effect to the Covenant’s Article 6 right to life or other rights enshrined in the Covenant. The United States does not believe that a State’s obligation under Article 6 of the Covenant to protect the right to life by law would extend to addressing general conditions in society or nature that may or may not eventually threaten life or prevent individuals from enjoying an adequate standard of living or the highest attainable standard of mental and physical health.

7. Further, the United States rejects any suggestion that States Parties to the Covenant are required by its terms to promote or provide access to abortion (Paragraph 9). As the United States has clearly stated on many occasions, there is no international human right to abortion, nor is there any duty on the part of States to finance, promote, facilitate, or provide abortion. Each nation has the sovereign right to implement health-related programs and activities consistent with its own laws and policies. The United States defends human dignity and supports access to high-quality health care for all, in particular women and girls, across their lifespans.

8. As discussed in more detail below, the United States also reaffirms its longstanding view that Article 2(1) of the ICCPR does not create obligations for a State Party with respect to individuals outside its territory and that international humanitarian law is the *lex specialis* with respect to armed conflict and, as such, is the controlling body of law in armed conflict with regard to the conduct of hostilities and the protection of war victims.

9. Finally, the United States rejects any suggestion that the rights enshrined in the Covenant encompass the enjoyment of particular environmental conditions, including those related to climate change and its effects, or that the Covenant implies obligations on States Parties to take steps to address environmental conditions. Such an interpretation would be beyond the text of the Covenant and the intent of the negotiators that created the Covenant.

10. The United States publicly welcomed the Committee’s decision of July 2019 reforming its procedures to make State Party reviews more efficient, predictable, and less burdensome for both the Committee and the State in question. Among other reforms, we have held up as a model the Committee’s universalization of simplified reporting, which focuses the discussion on the most critical and relevant human rights issues occurring in the State at the time of the periodic review. Simplified reporting also makes it feasible for States to keep their reports within the word limit imposed under General Assembly Resolution 68/268. But simplified reporting only works if the Committee keeps the LOI limited and focused on issues within the scope of State Parties’ obligations under the ICCPR. The Committee’s very lengthy LOI, with 29 detailed questions and several sub-questions, belies its stated commitment to simplified reporting, and indeed it has been impossible to address all the questions within the word limit. In a spirit of cooperation with the Committee, and as an exceptional measure, the United States has endeavored to provide certain information responsive to questions outside the scope of the Covenant in Annex B as well as certain supplementary information in Annex C. The United States fully expects that, in the future, the Committee will stand by its commitment to simplified reporting by keeping LOIs focused on the most pressing human rights concerns falling within the scope of the United States’ obligations under the Covenant, rather than on other issues.

Replies to the list of issues prior to reporting CCPR/C/USA/QPR/5

A. General information

Reply to paragraphs 1 and 2 of the list of issues

11. Information on measures taken to implement the recommendations in the Committee’s previous concluding observations and information on other significant

developments is contained in this report. The United States is not considering acceding to the Optional Protocol providing for an individual communication procedure.

B. Specific Information on Implementation of Articles 1–27

Constitutional and Legal Framework (Art. 2)

Reply to paragraph 3 of the list of issues – Covenant in U.S. Law

12. With regard to the Committee’s concluding observations concerning applicability of the Covenant at the national level, at the time it became a party to the ICCPR, the United States carefully assessed U.S. laws and regulations to ensure that it could implement the obligations it would assume under the Covenant. Those laws and regulations continue to provide the framework within which the United States meets its ICCPR obligations.

13. With regard to increasing awareness of the ICCPR, U.S. officials have sought to improve coordination at all levels. The DOS website, <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/>, contains considerable information on U.S. human rights treaty obligations, including copies of the U.S. reports and the conclusions and observations adopted by the human rights treaty bodies. In addition, agencies of the federal government include information on civil rights programs on their websites and in other outreach mechanisms.

Reply to paragraph 4 of the list of issues – Scope of Applicability

14. With respect to the scope of applicability of the Covenant to individuals under its jurisdiction but outside its territory, Article 2(1) of the Covenant states that “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind.” The United States has not changed its position that Article 2(1) creates obligations for a State Party only with respect to individuals who are both within the territory of the State Party and within that State Party’s jurisdiction.⁴ Thus, we do not agree that Article 2(1) creates obligations for a State Party with respect to individuals on State Party-registered ships located beyond that State Party’s territorial sea, or on State Party-registered aircraft flying in international airspace or in another State’s airspace. Merely being on a ship or aircraft registered in a State (and thereby being generally subject to its exclusive jurisdiction on the high seas, for example) does not constitute being in a State’s territory for the purposes of Article 2(1) of the Covenant.

Reply to paragraph 5 of the list of issues – Reservations, understandings and declarations

15. The United States has provided in its prior reports the text and explanations for the reservations, understandings, and declarations it undertook at the time it became a State Party to the Covenant. For purposes of brevity, those descriptions and explanations are not repeated in this report. No changes to those reservations, understandings and declarations are under consideration. As noted in the Fourth Periodic Report (para.151), the U.S. Supreme Court has further narrowed the categories of defendants against whom the death penalty may be applied under the U.S. Constitution. *Roper v. Simmons*, 543 U.S. 551 (2005), invalidated application of the death penalty in cases involving criminal defendants who were under the age of eighteen at the time of the crime. As a consequence of the Supreme Court’s holding in *Roper*, the United States now implements Article 6(5) in full, though the United States maintains the reservation with respect to juvenile offenders that it submitted at the time of ratification.

⁴ See Fourth Periodic Report, CCPR/C/USA/4, para. 505.

Use of lethal force in military contexts (Arts. 2, 6, 7, 9, 10 and 14)**Reply to paragraph 6 of the list of issues – Use of force and safeguards against civilian harm**

16. The United States respectfully recalls that Article 2(1) of the ICCPR does not create obligations for a State Party with respect to individuals outside its territory and that international humanitarian law is the *lex specialis* with respect to armed conflict and, as such, is the controlling body of law in armed conflict with regard to the conduct of hostilities and the protection of war victims. However, in the spirit of cooperation, the United States has provided factual information related to this matter in Annex B.

Non-discrimination and equal rights of men and women (Arts. 2, 3 and 26)**Reply to paragraph 7 of the list of issues – Justice System**

17. The United States takes seriously addressing racial discrimination, including in our criminal justice system, and seeks to ensure that the justice system operates fairly and effectively for all. In 2010, the Fair Sentencing Act (Pub. L. No. 111–220) reduced the sentencing disparity between offenses involving powder cocaine and crack cocaine. It did not, however, apply retroactively, and thus did not ameliorate certain racial and ethnic disparities that had arisen among those sentenced before 2010 for cocaine offenses carrying a mandatory minimum sentence. In December 2018, Congress passed, and the President signed into law, the First Step Act (Pub. L. 115–391), which authorized retroactive application of the Fair Sentencing Act of 2010. It also shortened mandatory minimum sentences for some non-violent drug offenses and firearm offenses and expanded the “drug safety valve” provision, thereby increasing opportunities for judges to deviate from mandatory minimums when sentencing for non-violent drug offenses. President Trump noted in his 2019 State of the Union Address: *“This legislation reformed sentencing laws that have wrongly and disproportionately harmed the African-American community. The First Step Act gives non-violent offenders the chance to reenter society as productive, law-abiding citizens. Now states across the country are following our lead.”*

18. The First Step Act also addresses issues affecting incarcerated offenders by requiring federal prisons to offer programs shown to reduce recidivism, prohibiting the shackling of pregnant women except in specifically delineated situations, expanding the availability of feminine healthcare products, increasing the effective cap on credit prisoners may receive for good behavior from 47 to 54 days per year, allowing inmates to earn time credits by participating in more vocational and rehabilitative programs, and calling for the placement of low-risk prisoners in home confinement to the extent permitted and the placement of prisoners in facilities closer to their families.

19. The First Step Act requires the Attorney General to develop a risk and needs assessment system to be used by the Federal Bureau of Prisons (BOP) to assess the recidivism risk and criminogenic needs of all federal prisoners and to place prisoners in recidivism reducing programs and productive activities to address their needs and reduce this risk. Under the Act, the system provides guidance on the type, amount, and intensity of recidivism reduction programming and productive activities to which each prisoner is assigned, including information on which programs prisoners should participate in based on their criminogenic needs. The system also provides guidance on how to group, to the extent practicable, prisoners with similar risk levels together in recidivism reduction programming and housing assignments. As required by the Act, the National Institute of Justice, the research, development, and evaluation agency of DOJ, supported the development of a risk assessment tool, the Prisoner Assessment Tool Targeting Estimated Risk and Needs, or PATTERN. PATTERN is designed to predict the likelihood of inmate recidivism. The PATTERN assessment instrument contains static risk factors as well as dynamic items that are associated with either an increase or a reduction in risk. PATTERN was found to achieve a high level of predictive performance and surpasses what is commonly found for risk assessment tools in the United States. An important feature of PATTERN was to ensure that it was predictive across all races and ethnic groups. Subsequent analyses of PATTERN show

it is a neutral assessment tool. Overall, PATTERN does not over-predict risk of recidivism for racial or ethnic minorities incarcerated in BOP facilities.

20. The federal government recognizes that education can be an important tool and resource for incarcerated and formerly incarcerated individuals. To support transition efforts, the Department of Education (ED) launched the Second Chance Pell Experimental Sites Initiative in 2015 to provide need-based Pell grant financial aid to individuals in state and federal prisons. By 2018–2019, more than 10,000 students had received Federal Pell Grant funds from more than 60 educational institutions participating in this initiative. In 2020, ED more than doubled the size of the project by inviting 67 new institutions to participate in a second cohort under the experiment. As a result of this expansion, there are Second Chance Pell sites in more than 40 states. In December 2020, Congress restored eligibility for Federal Pell Grants for incarcerated students in State and Federal correctional institutions. In 2018, DOJ released a reentry toolkit for youth ages 18 and under that offers guidance on steps youth can take in juvenile corrections and treatment programs and when returning to their communities to ensure successful connections for education, employment, housing, and other support services. In 2016, ED released a Reentry Education Toolkit to support a successful reentry system for youth and adults and updated it in 2018 with additional tools to support successful reentry. In 2017, ED, in partnership with DOJ, funded an initiative to help 16 state and local partnerships provide justice-involved young adults 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 sites grants under the Juvenile Justice Reentry Education Program to improve career and technical education and employment outcomes for youth returning to their communities after incarceration. Also, with the support of grants administered by ED and DOJ, juvenile justice residential facilities provide educational services to thousands of students each year. The Department of Labor (DOL) Re-entry Employment Opportunities (REO) program also helps justice-involved individuals obtain employment and/or occupational skills training in industries that offer high wages and opportunities for advancement. In June 2018, DOL awarded \$84.4 million in REO grants to 41 nonprofits and local and state governments. These grants will serve either young adults between the ages of 18 to 24 who have been involved in the juvenile or adult justice system, or adults ages 25 and older formerly incarcerated in the adult criminal justice system. The United States notes further that the federal prison population has dropped to its lowest level since 2000, declining more than 29 percent since 2013.

21. Cases involving racial discrimination in the administration of justice at the state level have occurred. In *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019) the defendant, a black man named Curtis Flowers, had been tried six times in Mississippi state court for the murder of four persons at a furniture store. Three of the victims were white; one was black. In at least five of those trials, the prosecution engaged in documented racial discrimination or conduct that strongly suggested racial discrimination by seeking to exclude prospective black jurors from the jury, in violation of Mr. Flowers' right to a fair trial. The Mississippi Supreme Court reversed three of Mr. Flowers' convictions, one due to racial discrimination and the other two for other forms of prosecutorial misconduct. Two other trials ended in mistrials. In the last case, the Mississippi Supreme Court affirmed the conviction and resulting death sentence, but the Supreme Court of the United States reversed, holding that the racially discriminatory misconduct of the prosecutors requires a new trial. In September 2020, after Mr. Flowers had spent 23 years in prison, the Mississippi Attorney General dropped all charges against Flowers and a motion to that effect was granted, bringing the case to an end.

Reply to paragraph 8 of the list of issues – Foreign Nationals

22. The United States respectfully finds the Committee's questions about foreign nationals' eligibility for U.S. visas generally to fall outside the scope of the Covenant. However, in the spirit of cooperation, the United States has provided factual information related to this matter in Annex B.

Reply to paragraph 9 of the list of issues – Homelessness

23. The Committee's question does not define "everyday activities associated with homelessness." It also assumes – wrongly in our view – that local, state and federal law

“criminalizes everyday activities associated with homelessness.” In doing so, we submit, the Committee does a disservice to its own process and to the homeless. Furthermore, our position that actions to address conditions such as homelessness and poverty do not fall within the scope of the inherent right to life and the obligations of States Parties under the ICCPR was made clear in our comments on Draft General Comment No. 36. Additional factual information on this issue can be found in Annex B.

Reply to paragraph 10 of the list of issues – Sexual Violence

24. The United States strongly condemns sexual misconduct, including sexual violence. With regard to education programs or activities, the federal government vigorously enforces Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs receiving federal financial assistance. In 2020, the Department of Education issued final Title IX regulations that took effect in August. The revised regulations help ensure that all students are safe to learn and achieve, providing new and meaningful protections for victims of sexual harassment. For the first time, the regulations expressly define sexual harassment—including sexual assault, dating violence, domestic violence, and stalking—as unlawful sex discrimination. The regulations require schools to offer supportive measures to alleged victims, investigate every formal complaint of Title IX sexual harassment, ensure that due process protections are in place for all students during sexual harassment investigations and adjudications, and provide remedies for sexual harassment victims. Supportive measures and remedies must be designed to preserve or restore equal access to education. In addition, in February 2020, ED launched a new Title IX enforcement initiative to enhance the enforcement of Title IX in elementary and secondary public schools and strengthen the ability of schools to respond to all incidents of sexual harassment and assault.

25. With regard to sexual assault in the military, the fiscal year 2018 Annual Report on Sexual Assault in the Military, issued in April 2019, estimates that 20,500 service members, representing about 13,000 women and 7,500 men, experienced unwanted sexual contact or penetrative sexual assault in 2018, up from an estimated 14,900 in 2016. DoD estimates that about one in three service members who are the victims of a sexual assault make a report to a DoD authority. Since 2005, DoD has fielded a comprehensive suite of recovery and consultative services to further promote reporting and empower participation in the military justice system. Over the past decade, estimated reporting rates have quadrupled, allowing DoD to connect a greater share of victimized service members with restorative care and services. However, as in prior years, active duty female victims in fiscal year 2018 reported at a higher rate (38 percent) than active duty male victims (17 percent).

26. DoD’s response system aims to advocate for all military service members and their adult dependents by encouraging sexual assault reporting, promoting recovery, facilitating treatment, and improving military readiness. DoD continues efforts to enhance the capabilities of Sexual Assault Response Coordinators and Victim Advocates through a Sexual Assault Advocate Certification Program. In addition, representatives from the DoD Sexual Assault Prevention and Response Office traveled worldwide in fiscal year (FY) 2018 to help military communities understand and employ services available by telephone through the Safe Helpline and online through the Safe HelpRoom and the Safe Helpline mobile application.

27. To further address this issue, DoD recently issued a Prevention Plan of Action, a coordinated approach to optimize the Department prevention system with targeted efforts toward the youngest military members and others at increased risk for sexual assault perpetration or victimization. In addition, DoD will ensure that supervisors of junior enlisted personnel receive improved preparation to better promote and sustain respectful workplaces. DoD also will conduct focus groups with 17 to 24-year-old members to identify actions and initiatives that may more effectively shift behavior among this group, and has launched the Catch A Serial Offender Program, allowing service members making Restricted Reports to confidentially provide information about the alleged offender and incident to certain investigators. Should investigators discover a match with other reported incidents, the Restricted reporter will be notified and provided an opportunity to convert his or her report from Restricted to Unrestricted and participate in the military justice process.

Reply to paragraph 11 of the list of issues – LGBT Individuals

28. Issues concerning protection of LGBT individuals are actively being addressed in the U.S. judicial system. On June 15, 2020, the U.S. Supreme Court decided *Bostock v. Clayton County*, which addressed whether the prohibition of sex discrimination in employment under Title VII of the Civil Rights Act of 1964 encompasses discrimination based on sexual orientation and gender identity. The Court held that it does: “*The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.*” 140 S. Ct. 1731, 1737 (2020). In education, Title IX of the Education Amendments of 1972 protects all students, including LGBT students, from sex discrimination, and encompasses discrimination based on a student’s failure to conform to sex-based stereotypes.

29. Some state and local governments have elected to provide specific statutory protections for discrimination on the basis of sexual orientation or gender identity in employment and public accommodations. The Supreme Court has recognized, however, that such laws must be applied consistent with the First Amendment. Thus, in *Masterpiece Cakeshop Ltd v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2017), the Court ruled that a Colorado baker could not be forced to make a wedding cake for a same-sex wedding where doing so violated his religious views and where the state’s actions toward him had shown hostility to those religious views.

30. DoD’s policy on Military Service by Transgender Persons and Persons with Gender Dysphoria, DoD Instruction 130028, of September 4, 2020, provides that service in the military is open to all persons who can meet the high standards for military service and readiness without special accommodations. All Service members and applicants are to be treated with dignity and respect. Except where the policy has granted an exception, transgender service members or applicants for accession to Military Services are subject to the same standards as all other persons. When a standard, requirement, or policy depends on whether the individual is a male or a female (e.g., medical fitness for duty, physical fitness and body fat standards; berthing, bathroom, and shower facilities; and uniform and grooming standards), all persons are subject to the standard, requirement, or policy associated with their biological sex. Transgender persons may seek waivers or exceptions to the requirements on the same terms as any other person.

31. The Fair Housing Act, which prohibits housing discrimination on the basis of race, color, national origin, religion, sex, familial status, and disability, applies to all Americans regardless of their sexual identity or orientation. Persons who identify as LGBTQ who have experienced discrimination on any of these bases may file a complaint with HUD, and HUD is committed to investigating such violations. HUD also has an Equal Access Rule, which requires that all HUD-funded housing services must be provided without discrimination based on sexual orientation or gender identity. The Equal Access Rule was updated in July 2020 to uphold the Department’s commitment to fair treatment of all individuals while allowing shelter providers to establish admissions policies that best serve their unique communities.

Maternal mortality, termination of pregnancy, and reproductive rights (Arts. 2, 3, 6, 7 and 26)**Reply to paragraph 12 of the list of issues – Maternal Health Issues**

32. The United States expresses its view that Paragraph 12, relating to “*mortality, termination of pregnancy and reproductive rights,*” contains a number of questions concerning issues outside the scope of the Covenant. The United States defends human dignity and life and supports access to high-quality health care for all women and girls across their lifespans. However, the United States rejects any interpretation of international human rights to require any State Party to provide access to abortion. In particular, the United States strongly opposes any interpretation of the Article 6 inherent right to life that purports to require State Parties to provide access to abortion. There is no international right to abortion, nor is there any duty on the part of States to finance or facilitate abortion.

33. Moreover, the United States reiterates its considered view that the Committee’s views regarding the meaning of the ICCPR in its Draft General Comment No. 36 is unsupported “with any treaty analysis grounded in VCLT Articles 31 and 32.” In particular, the United States reiterates that “*State Parties to the ICCPR have not given authority to the Human Rights Committee or to any other entity to fashion or otherwise determine their treaty obligations,*” and the Committee has improperly attempted “*to fill what it may consider to be gaps in the reach and coverage of*” the ICCPR by interpreting Article 6 “*in ways that were proposed and debated by various negotiating delegations, but were excluded from the final text when agreement could not be reached,*” and by improperly “*importing requirements from other human rights treaties.*” In short, it remains the United States’ view that “any issues concerning access to abortion ... are outside the scope of Article 6” of the ICCPR. Some factual information related to the questions in paragraphs 12(b), (c) and (d) can be found in Annex B.

34. (a) Executive Order 13798 is designed to protect religious freedom consistent with the United States Constitution and existing law. By its terms, and as more fully explained by the Attorney General in his October 6, 2017, Memorandum for All Executive Departments and Agencies, “Federal Law Protections for Religious Liberty,” the order is to be implemented consistent with U.S. law. As the memorandum notes, recognizing the centrality of religious liberty to our nation, Congress has buttressed these constitutional rights to the free exercise of religion with statutory protections for religious observance and practice. These protections can be found in, among other statutes, the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb et seq.; the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.; and the American Indian Religious Freedom Act, 42 U.S.C. § 1996. Such protections ensure not only that the government tolerates religious observance and practice, but that it embraces religious adherents as full members of society, able to contribute through employment, use of public accommodations, and participation in government programs. The considered judgment of the United States is that we are stronger when we protect accommodation of religion than when we segregate or isolate religion. E.O. 13798 is to be applied to the greatest extent practicable and permitted by law, religious observance and practice. The HHS Office of Civil Rights has created a new Conscience and Religious Freedom Division to assist in application of the Executive Order in accordance with applicable law.

35. (e) Shackling of detained pregnant women. BOP announced in October 2008 that it would no longer engage in the practice of shackling pregnant female prisoners in the federal system during transportation, labor, and delivery, except in the most extreme circumstances. As noted above, the First Step Act, enacted in December 2018, codified into federal law BOP’s pre-existing prohibition on the use of shackling for pregnant women in all but the most extreme circumstances. Specifically, Section 301 of the Act prohibits the use of restraints on pregnant women in federal prisons unless the woman “*is an immediate and credible flight risk that cannot reasonably be prevented by other means*” or “*poses an immediate and serious threat of harm to herself or others that cannot reasonably be prevented by other means*” or “*a healthcare professional responsible for the health and safety of the prisoner determines that the use of restraints is appropriate for the medical safety of the prisoner.*” For those situations in which restraints are used, the law mandates the use of the least restrictive restraints necessary. Approximately 20 states also restrict the use of restraints on pregnant women who are incarcerated or detained.

Right to life, including the death penalty and excessive use of force by law enforcement agents (Art. 6)

Reply to paragraph 13 of the list of issues – Death Penalty

36. (a) Death sentences imposed. The Supreme Court has ruled that the death penalty does not violate the Eighth Amendment’s ban on cruel and unusual punishment, but that the Eighth Amendment does shape certain procedural aspects regarding when the death penalty may be used and how it must be carried out, see, e.g., *Gregg v. Georgia*, 428 U.S. 153 (1976), *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Baze v. Rees*, 553 U.S. 35 (2008). In the United States, the death sentence is primarily imposed for murder or participation in a murder.

Offenses other than murder that could lead to the death penalty under federal law include: various other violent crimes (such as terrorism, kidnapping, arson, or carjacking) that both result in death and were committed with the requisite mental state; certain drug-related crimes; treason; and espionage. The Supreme Court has held that the Constitution does not permit the death penalty for an individual who raped but did not kill a child and who did not intend to assist another in killing the child. *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008).⁵

37. (b) Racial bias in death penalty convictions. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution guarantees that no state can deny an individual in the United States equal protection of the laws. Criminal defendants in the United States, especially those in potential capital cases, enjoy numerous procedural guarantees, which are respected and enforced by the courts. These include, among others, the right to a fair hearing by an independent tribunal; the presumption of innocence; the right against compelled self-incrimination; the right to access evidence used against the defendant; the right to effective assistance of counsel; the right to access all exculpatory evidence available to the prosecution; the right to challenge and seek exclusion of evidence; the right to review by a higher tribunal, often with a publicly funded lawyer; the right to trial by jury; and the right to challenge the makeup of the jury.

38. With respect to the death penalty, the U.S. judicial system provides an exhaustive system of protections at both the federal and state levels to ensure that the death penalty is not applied in a summary, arbitrary, or discriminatory manner, and that its implementation is undertaken with exacting procedural safeguards, after access to multiple layers of judicial review, in conformity with the U.S. Constitution and U.S. international obligations. In federal cases, procedural safeguards include the appointment of two attorneys, at least one of whom must be “*learned in the law applicable to capital cases.*” In state cases, any criminal defendant who alleges that the application of the death penalty was racially motivated in his or her particular case may challenge such sentencing not only in state courts, but also in U.S. federal courts.

39. (c) and (d) Execution methods used and review of those methods. Lethal injection is the primary method of execution in all states that have the death penalty. In 2016 and 2017, all executions were by lethal injection. In both 2018 and 2019, all executions were by lethal injection except two, which were by electrocution. In view of recent challenges that certain lethal injection protocols inflict unconstitutionally cruel pain, see, e.g., *Glossip v. Gross*, 576 U.S. 863 (2015), and *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019), states continue to evaluate the drugs used in lethal injection. In July 2019, the Attorney General directed BOP to adopt a proposed lethal injection protocol. The Protocol replaces the three-drug protocol previously used in federal executions with a single drug—pentobarbital. Since 2010, at least five states have used pentobarbital in a single drug protocol in over 100 executions, and federal courts, including the Supreme Court, have repeatedly upheld the use of pentobarbital as consistent with the Eighth Amendment to the U.S. Constitution.

40. (e) Wrongful convictions. The U.S. criminal justice system is designed to minimize the risk of wrongful convictions. Procedural safeguards include the presumption of innocence, the proof beyond a reasonable doubt standard, the requirement of a unanimous jury,

⁵ Persons executed nationwide in 2016 and 2017 fell into the following age ranges according to age at time of arrest:

| Age at arrest | 2016 | 2017 |
|---------------|------|------|
| 18-19 | 3 | 2 |
| 20-24 | 6 | 11 |
| 25-29 | 5 | 5 |
| 30-34 | 0 | 3 |
| 35-39 | 3 | 1 |
| 40-44 | 2 | 1 |
| 50+ | 1 | 0 |

In 2016, 16 of the 20 persons executed were White, two were Black and two Latino (who may be of various races). In 2017, 13 of 23 executed were White, eight Black, and two Latino. In 2018, 14 of 25 persons executed were White, six Black, and five Latino, and in 2019, 14 of 22 persons executed were White, seven Black, and one Latino.

appointment of counsel for indigent defendants, discovery and due process rules, and appellate and post-conviction review.

41. (f) Consular assistance issues. The United States takes seriously its international obligations with respect to consular notification and access, and continues to take steps to achieve compliance with the International Court of Justice decision in the *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (March 31). Since 2011, legislation that would implement the *Avena* judgment has been introduced in Congress a number of times, and consular notification compliance legislation was included in the President's Fiscal Year 2019, 2020 and 2021 budget requests, but Congress has not acted on it. In addition, DOS has engaged directly with the State of Texas on cases of *Avena* defendants in that state, urging authorities to take steps to give effect to the *Avena* decision. In August 2019, the U.S. Court of Appeals for the Ninth Circuit overturned the death sentence of Carlos Avena on grounds of ineffective assistance of counsel at the penalty phase of his trial.

42. In December 2014, the Federal Rules of Criminal Procedure were updated to facilitate consular notification and access. Pursuant to these changes, a defendant who is not a United States citizen and who has been charged with a federal crime shall be informed by a federal magistrate judge at the initial appearance that he or she may “*request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant's country of nationality that the defendant has been arrested.*”

43. DOS also continues to undertake a strong and active role in education and outreach to promote consular notification and access in accordance with the Vienna Convention on Consular Relations. A fifth revised edition of the Consular Notification and Access Manual was published in September 2018 (see https://travel.state.gov/content/dam/travel/CNA/trainingresources/CNA%20Manual%205th%20Edition_September%202018.pdf). The Manual provides comprehensive guidance for law enforcement officials at all levels (federal, state, and local), practitioners and academics. It is practical in focus, e.g., including suggested statements translated into 28 languages, that law enforcement can provide to a detained non-U.S. citizen regarding consular notification and communication. Further, the Bureau of Consular Affairs conducts training seminars on consular notification and access throughout the United States, and makes a practice of attending multiple law enforcement conferences with diverse audiences (including, inter alia, university campus law enforcement, jail and prison staff, and police chiefs and officers, et al.) to discuss consular notification and access.

44. As of January 2021, the death penalty is authorized in 28 states plus the U.S. military and the U.S. government, but in three of those states executions are subject to gubernatorial moratoria: California (2019), Pennsylvania (2015), and Oregon (2011). Twenty-two states do not currently authorize the death penalty. In 2016, the Delaware Supreme Court ruled that the then-current state death penalty statute violated the Sixth Amendment role of the jury. In 2018, the Washington Supreme Court ruled that the death penalty, as administered in the state, violated the state constitution. In March 2020, Colorado enacted legislation that prospectively repealed the state's death penalty statute, and the governor commuted the sentences of the state's three prisoners on death row.

45. The United States is not currently considering establishing a federal moratorium on executions with a view to abolishing the death penalty. In July 2019, the Attorney General directed BOP to adopt a proposed lethal injection protocol. BOP adopted a single-drug protocol and has employed that protocol in the execution of ten federal death row inmates between July and December 2020. Each of the inmates had exhausted their appellate and post-conviction remedies.

Reply to paragraph 14 of the list of issues – Gun Violence and Use of Force

46. With regard to the concluding observations concerning gun violence, according to the Centers for Disease Control and Prevention, there were 36,252 firearm-related deaths in the United States in 2015, 38,658 in 2016, 39,773 in 2017, and 39,740 in 2018. The United States provides the following information regarding its efforts to address gun violence. The U.S. government is concerned about, and responds aggressively to, gun violence. At the same time, the United States must pursue solutions to gun violence that do not infringe upon the Second

Amendment guarantee that citizens may keep and bear arms, and we interpret nothing in the ICCPR to infringe upon that right. In December 2018, DOJ amended a regulation clarifying that bump stocks, which effectively turn semiautomatic firearms into automatic weapons, fall within the definition of “machine gun” under federal law, restricting possession of such devices, <https://www.justice.gov/opa/pr/departments-justice-announces-bump-stock-type-devices-final-rule>.

47. In December 2020, the Attorney General announced the results of Operation Legend, which was launched in Kansas City, Missouri, in July 2020 and then expanded to other cities in the United States. The initiative removed violent criminals, domestic abusers, carjackers, and drug traffickers from nine cities that were experiencing stubbornly high crime and took illegal firearms, illegal narcotics, and illicit monies off the streets. More than 6,000 arrests—including approximately 467 for homicide—were made; more than 2,600 firearms were seized; and more than 32 kilos of heroin, more than 17 kilos of fentanyl, more than 300 kilos of methamphetamine, more than 135 kilos of cocaine, and more than \$11 million in drug and other illicit proceeds were seized. Of the more than 6,000 individuals arrested, approximately 1,500 have been charged with federal offenses. Approximately 815 of those defendants have been charged with firearms offenses, while approximately 566 have been charged with drug-related crimes. The remaining defendants have been charged with various offenses.

48. 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. DOJ reinvigorated PSN in 2017 as part of its renewed focus on targeting violent criminals, including those committing gun violence, directing all U.S. Attorney’s Offices to work in partnership with federal, state, local, and tribal law enforcement agencies and the local community to develop effective, locally based strategies to reduce violent crime.

49. With regard to excessive use of force by law enforcement officials against civilians, particularly racial minorities, on June 16, 2020, President Trump signed an executive order on “Safe Policing for Safe Communities” to develop and incentivize critical policing reforms. The order directs the Attorney General to create a credentialing process on which police departments’ eligibility for federal grants will depend. Credentialing will depend on having policies and training regarding use-of-force and de-escalation techniques; performance management tools, such as early warning systems that help to identify officers who may require intervention; and best practices regarding community engagement. The order also directs the Attorney General to create an information sharing database to track information related to excessive use of force, including such information as the termination or decertification of law enforcement officers, criminal convictions of law enforcement officers, and instances in which an officer under investigation related to the use of force resigns or retires. Finally, the Attorney General is directed to consult with the Secretary of HHS to develop strategies for law enforcement encounters with persons who suffer from mental health issues, including strategies to incorporate social workers or mental health professionals when responding to such situations.

50. With respect to the killing of George Floyd in Minnesota, the United States notes that this matter is being pursued by both the state and the federal government. The government in the state of Minnesota has filed second-degree murder and second-degree manslaughter charges against one officer, and aiding and abetting charges against three other officers. As it typically does in cases such as this, DOJ is conducting an independent investigation into whether the death of Mr. Floyd involved violations of federal civil rights laws.

51. Officers are held accountable for use of excessive force through a number of mechanisms. The first is administrative action by the applicable law enforcement agency. For example, officers may be fired, placed on leave, or otherwise punished for use of excessive force, whether or not criminal charges are filed. Officers may also face criminal charges under state law such as assault with bodily injury, abuse of official capacity, or official misconduct. Applicable laws vary from state to state.

52. In addition to violation of state laws, the use of excessive force by a law enforcement officer in the United States may also violate the Fourth Amendment to the U.S. Constitution, *Graham v. Connor*, 490 U.S. 386, 394 (1989); *City of Los Angeles, Calif. v. Mendez*, 137 S.

Ct. 1539, 1546–50 (2017). “*In determining whether police used excessive force under the Fourth Amendment, the relevant inquiry is ‘whether the officers’ actions [were] objectively reasonable in light of the totality of the circumstances.’* *Flournoy v. City of Chicago*, 829 F.3d 869, 874 (7th Cir. 2016) (citations omitted); *Fitzgerald v. Santoro*, 707 F.3d 725, 733 (7th Cir. 2013) (citing *Graham*, 490 U.S. at 396-97). In determining whether force used by a law enforcement officer is reasonable, courts look to the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396. Whether a particular use of force is reasonable is “*judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.*” *Id.* Courts are mindful that “*police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.*” *Id.* at 396-97. “*An officer’s use of force is unreasonable if, judging from the totality of the circumstances at the time of the arrest, the officer uses greater force than was reasonably necessary to effectuate the arrest.*” *Phillips v. Community Insurance Corp.*, 678 F.3d 513, 519 (7th Cir. 2012) (citing *Gonzalez v. City of Elgin*, 578 F.3d 526, 539 (7th Cir. 2009)).

53. The legal system in the United States provides for the possibility of federal investigation of state and local law enforcement officers and agencies under certain circumstances. DOJ may bring a federal criminal prosecution under 18 U.S.C. § 242 against any law enforcement officer who is alleged to have willfully deprived any person of his or her constitutional or federal statutory rights under color of law, *United States v. Lanier*, 520 U.S. 259, 264 (1997). This includes claims of excessive force. To prove a violation of § 242, the government must prove each of the following elements beyond a reasonable doubt: (1) that the defendant deprived a victim of a right protected by the U.S. Constitution or laws of the United States; (2) that the defendant acted willfully; and (3) that the defendant was acting under color of law. A violation of § 242 is a felony if one of the following conditions is met: the defendant used, attempted to use, or threatened to use a dangerous weapon, explosive or fire; the victim suffered bodily injury as a result of the offense; the defendant’s actions included an attempt to kill, kidnapping or attempted kidnapping, aggravated sexual abuse or attempted aggravated sexual abuse, or the crime resulted in death. Otherwise, the violation is a misdemeanor. Establishing the intent behind a constitutional violation requires that the law enforcement officer knew what he or she was doing was wrong and decided to do it anyway. Therefore, even if the government can prove beyond a reasonable doubt that an individual’s constitutional right was violated, § 242 requires that the government also prove that the law enforcement officer intended to engage in the unlawful conduct and that he or she did so knowing that it was wrong to do so. *Screws v. United States*, 325 U.S. 91, 101-107 (1945). Mistake, fear, misperception, or even poor judgment does not constitute willful conduct prosecutable under the statute. In 2019 and 2020, DOJ successfully prosecuted correctional officers for physically assaulting inmates in Massachusetts, Missouri, Louisiana and Kentucky. The Department also convicted a transit officer for sexually assaulting a restrained woman in his custody during transport from Kentucky to New Mexico.

54. Other federal criminal violations that may be brought against law enforcement officers include the federal conspiracy against rights statute, 18 U.S.C. § 241, which applies where officers conspire to violate established constitutional or federally protected rights. Officers who lie, file false reports, or mislead or intimidate witnesses to cover up their crimes may be prosecuted under federal obstruction statutes such as 18 U.S.C. §§ 1512 and 1519. If officers lie to federal investigators, they may be prosecuted under 18 U.S.C. § 1001.⁶ Officers who lie before a grand jury may be prosecuted for perjury. 18 U.S.C. § 1621. Officers who use their position to extort money or property may be charged with violation of 18 U.S.C. § 1951. Additionally, DOJ may investigate state and local law enforcement agencies pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (re-codified at 34 U.S.C. § 12601). This federal civil law allows DOJ to investigate and bring suit in federal court where there is an alleged pattern or practice by a state or local law enforcement agency of deprivation of constitutional or other federal rights of persons. This frequently involves

⁶ Provided the matter under investigation was within federal jurisdiction, the lie was knowing and willful, and the fact lied about was material.

questions such as excessive force, improper searches, or improper stopping of persons for questioning. DOJ may act if it finds a pattern or practice by the law enforcement agency that systematically violates the rights of persons. To establish a pattern or practice of violations, the United States must prove “more than the mere occurrence of isolated or ‘accidental’ or sporadic discriminatory acts.” See *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1977). It must “establish by a preponderance of the evidence that [violating federal law] was ... the regular rather than the unusual practice.” *Id.* See also *Equal Employment Opportunity Comm’n v. Am. Nat’l Bank*, 652 F.2d 1176, 1188 (4th Cir. 1981) (explaining that a “cumulation of evidence, including statistics, patterns, practices, general policies, or specific instances of discrimination” can be used to prove a pattern or practice). As of January 2020, DOJ had opened 70 civil investigations into law enforcement agencies that might be engaging in a pattern or practice of conduct that deprives persons of their rights since the statute was enacted in 1994.

55. Individuals alleging police misconduct may bring civil actions under the federal civil rights statute, 42 U.S.C. § 1983, directly against state or local officials for money damages or injunctive relief. They may also file lawsuits against federal officials directly for damages under provisions of the U.S. Constitution for certain constitutional torts, see *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971); *Davis v. Passman*, 442 U.S. 228 (1979).

56. Use of force, including lethal force, by state officials is subject to the U.S. Constitution and federal laws, as discussed above. Some individual states in the United States have their own specific laws on the use of force, but all law enforcement agencies in the United States are subject to the constitutional standard for the use of deadly force. If a law enforcement agency’s policy or the statute in that state is more protective of individual rights than the Constitution, the agency also would be required to meet the standards set out in its policy or the applicable state law. As to the Committee’s reference to the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the United States notes that those principles are non-binding recommendations and vary from U.S. law, policy, and practices. Law enforcement agencies in the United States are not required to use the Basic Principles as a standard for conducting operations, and the U.S. government does not advise them to do so.

57. Regarding police-community relations, in January 2020, the Attorney General established the President’s Commission on Law Enforcement and the Administration of Justice, which served the important function of studying ways to make American law enforcement the most trusted and effective guardians of communities in the United States. In so doing, the Attorney General stated, “*Nobody wins when law enforcement do not have the trust of the people they protect.*” Part of the Commission’s work was to explore increasing respect for law enforcement and improving community relations. The Commission issued its Final Report in December 2020, <https://www.justice.gov/file/1347866/download>. In addition, DOJ’s Office of Community Oriented Policing Services, which advances the practice of community policing by the nation’s state, local, territorial, and tribal law enforcement agencies through information and grant resources, funds several programs aimed at addressing these issues. For example, it supported the National Organization of Black Law Enforcement Executives in developing a program for youth ages 13–18 to improve their understanding of citizenship, law literacy, and the job of law enforcement. The Law and Your Community program has reached more than 50,000 youth across the country, https://cops.usdoj.gov/html/dispatch/03-2020/law_and_community.html.

Reply to paragraph 15 of the list of issues – Safe Drinking Water and Climate Change

58. As indicated above, the United States notes that the right to safe drinking water and sanitation, as derived from the right to an adequate standard of living in Article 11 of the ICESCR, and matters related to climate change, are outside the scope of the Covenant. In the spirit of cooperation, some factual information on these matters in response to the questions posed by the Committee is provided in Annex B.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, and treatment of persons deprived of their liberty (Arts. 7, 9, 10 and 14)

Reply to paragraph 16 of the list of issues – Prohibition of Torture

59. With regard to the Committee’s concluding observations concerning legislation prohibiting torture, a range of federal and state laws prohibits conduct constituting torture or cruel, inhuman or degrading treatment or punishment. The Eighth Amendment to the U.S. Constitution prohibits cruel and unusual punishment for convicted inmates. What constitutes cruel and unusual punishment is a fact-specific determination that may include uncivilized and inhuman punishments, punishments that fail to comport with human dignity, and punishments that include physical suffering, including torture. *Furman v. Georgia*, 408 U.S. 238 (1972); *Brown v. Plata*, 563 U.S. 493 (2011). The Fifth and Fourteenth Amendment’s Due Process Clauses prohibit, *inter alia*, governmental action that “shocks the conscience,” including acts of torture and cruel treatment, *Rochin v. California*, 342 U.S. 165 (1952), as well as punishing persons without first convicting them under appropriate standards. The Due Process clause also extends to the intentional use of objectively unreasonable force against those detained while awaiting trial. See *Kingsley v. Hendrickson*, 576 U.S. 389, 397-98 (2015). The Eighth Amendment applies to the states through the Fourteenth Amendment.

60. Under 18 U.S.C. § 242, individuals who act under color of law may be prosecuted for willful deprivations of constitutional rights, such as the right to be free from unreasonable seizure, the right to be free from cruel and unusual punishment, and the right not to be deprived of life, liberty or property without due process of law. Violations of 18 U.S.C. § 242 can occur for conduct less severe than conduct that falls within the scope of “cruel, inhuman or degrading treatment or punishment” under Article 7 of the ICCPR. Violations of the international prohibition on torture or cruel, inhuman, or degrading treatment or punishment are also prohibited under other federal and state laws, and could be prosecuted, for instance, as aggravated assault or battery or mayhem; homicide, murder or manslaughter; kidnapping; false imprisonment or abduction; rape, sodomy or molestation; or as part of an attempt, a conspiracy, or a criminal violation of an individual’s civil rights. Civil actions may also be brought in federal or state court under the federal civil rights statute, 42 U.S.C. § 1983, directly against state or local officials for money damages or injunctive relief.

61. The Detainee Treatment Act of 2005 also prohibits cruel, inhuman, or degrading treatment or punishment of any “*individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location,*” codified at 42 U.S.C. § 2000dd.

62. Coincident with the entry into force of the Convention Against Torture, the United States enacted the Torture Convention Implementation Act, codified at 18 U.S.C. § 2340A, which helps implement U.S. obligations under Article 5 of the Convention Against Torture. As provided in the statute, whoever commits or attempts or conspires to commit torture outside the United States (as those terms are defined in the statute) can be subject to federal criminal prosecution if the alleged offender is a national of the United States or the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

63. With regard to solitary confinement, federal prisons are under the jurisdiction of the U.S. Attorney General, who oversees BOP. BOP places inmates in facilities commensurate with their security and program needs through a system of classification that allows the use of professional judgment within specific guidelines. In January 2016, DOJ announced the results of a review of use of restrictive housing in American prisons. The study concluded that there are occasions when correctional officials have no choice but to segregate inmates from the general population, typically when it is the only way to ensure the safety of inmates, staff, and the public. But as a matter of policy, the study noted that this practice should be used rarely, applied fairly, and subjected to reasonable constraints. As of December 31, 2020, out of the 123,530 inmates in BOP custody, approximately 6.6 percent were housed in special housing units. For additional information regarding this study and other issues related to restrictive housing, please see Annex C.

Reply to paragraph 17 of the list of issues – Guantanamo Bay

64. Recalling its views regarding Article 2(1) of the ICCPR and international humanitarian law, the United States nonetheless provides the following information in the spirit of cooperation. E.O. 13823 of January 30, 2018, Protecting America through Lawful Detention of Terrorists, revoked section 3 of E.O. 13492, which ordered the closure of the detention facilities at U.S. Naval Station Guantanamo Bay. The United States has no plans to close the detention facilities at Guantanamo Bay. Detention operations at Guantanamo are conducted consistent with all applicable U.S. and international law.

65. There are currently 40 individuals detained in U.S. detention facilities at Guantanamo Bay. Of these detainees, seven are being prosecuted in the military commissions established at Guantanamo Bay; one is awaiting sentencing by a military commission; one is serving a life sentence following conviction by a military commission; 25 are designated for continued law-of-war detention and subject to periodic review under the procedures established in E.O. 13567 of March 7, 2011, and reaffirmed in E.O. 13823 of January 30, 2018; and six are deemed eligible for transfer. No new detainees have been transferred to Guantanamo during the reporting period.

66. Since the United States' 2015 One-Year Follow-up Response to the Committee's Recommendations, 68 individuals have been transferred from Guantanamo to other countries. Most recently, Ahmed Mohammed Ahmed Haza al Darbi was transferred to the Kingdom of Saudi Arabia, as announced by DoD on May 2, 2018. In addition, 67 other detainees left Guantanamo for countries including: Cape Verde, Ghana, Italy, Kuwait, Mauritania, Montenegro, Oman, Senegal, Serbia, the Kingdom of Saudi Arabia, and the United Arab Emirates. Prior to transferring these detainees, the United States received assurances from the receiving governments that the detainees would be treated humanely following transfer.

67. Currently, seven detainees are being prosecuted through military commissions at Guantanamo Bay. The military commission proceedings incorporate fundamental procedural guarantees that meet or exceed the fair trial safeguards articulated in Common Article 3 of the 1949 Geneva Conventions, Article 15 of the Convention Against Torture, and Additional Protocol II of the 1949 Geneva Conventions, although the United States is not a party to Additional Protocol II. Military commission proceedings are governed by the 2009 Military Commissions Act (MCA). The safeguards contained in the MCA include the presumption of innocence for the accused; the requirement that guilt be established by legal and competent evidence beyond a reasonable doubt; the right to counsel at the government's expense; the right, to the greatest extent practicable, to additional counsel "learned" in applicable law relating to capital cases when the military commission is one empowered to adjudge the death penalty; the right to confront the evidence and those witnesses who testify at trial; the right of discovery; and the right to appeal final judgments rendered by a military commission to the U.S. Court of Military Commission Review (USCMCR). A defendant also has a right to appeal a USCMCR decision to the U.S. Court of Appeals for the District of Columbia Circuit and may ultimately seek review from the U.S. Supreme Court. The MCA prohibits the use of statements obtained by either torture or cruel, inhuman, or degrading treatment (10 U.S.C. § 948r(a)), except as evidence against a person accused of torture or such treatment as evidence that the statement was made.

68. The United States is fully committed to ensuring that detainees at Guantanamo are treated humanely and held in accordance with applicable law. All U.S. military detention operations, including those at Guantanamo Bay, comply with all applicable international and domestic laws, and the United States takes very seriously its responsibility to provide for the safe and humane care of detainees at Guantanamo Bay.

69. The ICRC is provided with access to detainees at Guantanamo, and DoD has worked closely with the ICRC to facilitate increased opportunities for Guantanamo detainees to communicate with their families. The addition of near real-time communication is another step in DoD's efforts to assess continually and, where practicable and consistent with security requirements, improve conditions of detention for detainees in its custody. Detainees are given the opportunity to send and receive letters, facilitated by the ICRC, and are able to talk to their families periodically via phone or video teleconference.

70. The Periodic Review Board (PRB) process established under E.O. 13567, March 7, 2011, continues to operate. E.O. 13823, January 30, 2018, extends the PRB process to any new detainees transferred to Guantanamo Bay after the date of the order, unless the detainees have been charged in or are subject to a judgment of conviction by a military commission.

Elimination of slavery and servitude (Art. 8)

Reply to paragraph 18 of the list of issues – Human Trafficking

71. With regard to the Committee's concluding observations concerning trafficking and forced labor, the U.S. government is actively engaged in activities to combat human trafficking in all its forms, including sex trafficking and labor trafficking.

72. In FY 2019, DOJ brought 220 human trafficking prosecutions, charged 343 defendants, and secured federal convictions against 475 traffickers. In FY 2019, DOJ focused on developing and advancing complex, high-impact prosecutions aimed at dismantling transnational human trafficking enterprises in connection with the U.S.-Mexico Bilateral Human Trafficking Enforcement Initiative. In FY 2019, DOJ's Office of Justice Programs (OJP) made awards of more than \$103 million for human trafficking programs, including programs that provide a comprehensive range of direct services for victims of human trafficking. In FY 2019, OJP's Office for Victims of Crime (OVC) programs served 8,376 victims and trained more than 82,000 professionals to better identify and serve victims of trafficking. In FY 2019, OVC, in partnership with OJP's Bureau of Justice Assistance, funded 15 Enhanced Comprehensive Model Human Trafficking Task Forces, bringing the total of task forces to 35. OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) awarded more than \$4 million in FY 2019 to nine organizations to support child and youth victims of sexual exploitation and sex trafficking and girls involved in the juvenile justice system. In addition, OJJDP awarded \$3.5 million to the National Center for Missing and Exploited Children, under an interagency agreement with OVC, to help review CyberTipline reports of child sex trafficking, respond to information regarding the location of missing children at high risk of or involved in trafficking, and provide training and technical assistance on trauma-informed responses to victims.

73. During FY 2019, the FBI initiated 607 human trafficking investigations. DOJ's National Institute of Justice made \$2.3 million in research grant awards in FY 2019 that seek to (1) improve identification, prevalence estimation, and earlier intervention for trafficking victims; (2) assess innovative anti-trafficking and trafficking victims' services programs; (3) understand child labor trafficking; and (4) understand how traffickers are groomed. For additional information regarding anti-trafficking efforts by federal departments and agencies, please see Annex C.

74. With regard to steps to address criminal consequences that may flow to sex trafficking victims, including child victims, some U.S. states have enacted laws that provide survivors the ability to seek a court order vacating or expunging criminal convictions entered against them for conduct that resulted from their trafficking situations, or laws that provide that trafficking victims, including minor victims, will not be prosecuted for certain crimes for activities engaged in that resulted from their trafficking situations. Federal prosecutions of minors are rare and require approval, making it unlikely that underage trafficking victims would be prosecuted by federal authorities. Federal law is also narrower in scope than state law, and does not include crimes commonly charged against trafficking victims, such as prostitution.

Reply to paragraph 19 of the list of issues – Child and Forced Labor

75. The United States has stepped up its fight against forced labor, emphasizing the need to fight much more aggressively against trade in goods made by forced labor. The 2016 Trade Facilitation and Trade Enforcement Act repealed the "consumptive demand" exception to the ban on importation of goods produced by forced labor (including forced child labor), which had allowed goods into the United States despite their production by forced labor if the domestically produced supply of the goods was not sufficient to meet domestic demand for the goods. As a result of this change in the law, DHS U.S. Customs and Border Protection (CBP) increased its enforcement actions, issuing withhold release orders against specific

companies producing bone black (Brazil); soda ash, calcium chloride, and caustic sodas (China); potassium products (China); Stevia (China); peeled garlic (China); toys (China); garments (China); gold (Democratic Republic of the Congo); tobacco (Malawi); disposable rubber gloves and palm oil (Malaysia); cotton (Turkmenistan); artisanal rough cut diamonds (Zimbabwe); and seafood (fishing vessel Tunago 61, Yu Long No 2 and Da Wang).

76. ILAB actively promotes a fair global playing field for workers and businesses in the United States and around the world through research in child labor and forced labor in over 150 countries, partnerships with more than 95 governments and 80 organizations to strengthen legal frameworks, enforcement actions, policies, and programs, engagement with businesses and trade associations, and technical cooperation initiatives and projects. These efforts have contributed to the global reduction of nearly 94 million children engaged in child labor between 2000 and 2017.

77. In 2019, ILAB released the 18th edition of its *Findings on the Worst Forms of Child Labor* report, which documents sectors around the world in which child labor, including forced child labor and trafficking, persists. This report is publicly available on the Internet and through ILAB's free Sweat & Toil smartphone app. Of the 131 countries assessed in the Findings Report, 9 percent had made a significant advancement in their efforts to eradicate the worst forms of child labor, 51 percent had made a moderate advancement, 32 percent had made minimal to no advancement, and 7 percent had made no advancement (one percent were not assessed).

78. DOL enforces those labor standards protections of the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), and the Immigration and Nationality Act (INA) applicable to employment of aliens authorized to work temporarily in the United States under certain nonimmigrant visa programs. For example, H-2A workers, who perform temporary agricultural labor or services, must be paid the highest of several applicable wage rates, are generally entitled to employer-provided housing and transportation between the housing and worksites, and are guaranteed an offer of employment for a total number of hours equal to at least 75 percent of the workdays in the contract period. Under the H-2B visa program, which permits employers to temporarily hire nonimmigrants to perform nonagricultural labor or services, workers are entitled to a wage that equals or exceeds the highest of several applicable wage rates during the entire period of the approved H-2B temporary labor certification. Both the H-2A and H-2B visa programs require that nonimmigrant workers receive the same wages and working conditions as similarly employed domestic workers. In September 2018, DOL began an education and enforcement initiative focused on two of the largest users of the H-2B visa program – landscapers and hotels. This initiative is designed to educate employers about the rules, and increase enforcement and investigations in order to safeguard American jobs, protect guest workers, and level the playing field for law-abiding employers.

79. Under the H-1B program, which permits U.S. employers to hire nonimmigrants in specialty occupations (i.e. those requiring highly specialized knowledge and at least a bachelor's degree in a specific specialty or its equivalent) or as fashion models of distinguished merit and ability, employers must pay wages that are at least equal to the actual wage paid by the employer to other similarly-employed workers, or the prevailing wage for the occupation in the area of intended employment – whichever is greater.

80. In addition to DOL, U.S. Citizenship and Immigration Services (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, <https://www.uscis.gov/working-united-states/information-employers-employees/report-labor-abuses>.

Treatment of foreign nationals, including refugees and asylum seekers (Arts. 2, 9, 10, 13, 14, 17, 23, 24 and 26)**Reply to paragraph 20 of the list of issues – Zero Tolerance Policy and treatment of children**

81. On June 20, 2018, President Trump issued Executive Order (E.O.) 13841, Affording Congress an Opportunity to Address Family Separation. E.O. 13841 directs the Executive Branch to continue to enforce immigration laws, while simultaneously maintaining family unity. Consistent with the executive order, as well as with applicable law and court orders, including court orders in the case of *Ms. L*, DHS works in conjunction with HHS to ensure that family units, if ever separated, are reunified as appropriate.

82. Improvements are continuously being made to aid in the tracking of children who have been separated from his or her parents and there are several mechanisms in place for tracking children who have been separated from their parent or legal guardian. DHS continues to share information related to separated parents and legal guardians and children with HHS. DHS and HHS each have dedicated personnel who review data and share information to identify all family separations. Separation data is shared, reviewed, and updated frequently. The general process is managed through internal data tracking, and system updates occur anytime new information is discovered. Once separations are identified and shared between DHS and HHS, the interagency effort for reunification, if appropriate, begins. The DHS Office for Civil Rights and Civil Liberties (DHS/CRCL) regularly investigates the conditions under which families are held in ICE and CBP custody and under which unaccompanied alien children are held in CBP custody prior to their referral and transfer to HHS/ORR. During the reporting period CRCL conducted a number of inspections of ICE family residential centers and CBP facilities along the southwest U.S. Border which resulted in recommendations to ICE and CBP to make improvements in areas such as medical and mental health care, language access, and environmental health and safety. The DHS Office of Inspector General (DHS/OIG) also actively investigates conditions in short-term immigration holding facilities, often based on unannounced visits.

83. On December 14, 2018, the DHS Office of Inspector General (OIG) announced that the office would investigate the death of a 7-year-old alien child in Border Patrol custody, with the final report provided to the Secretary of DHS, the Congress, and the public. DHS OIG recently completed this investigation and found no misconduct or malfeasance by DHS personnel. For additional information on recent funding and activities concerning border operations, see Annex C.

Reply to paragraph 21 of the list of issues – Conditions in immigrant detention facilities

84. The DHS OIG actively investigates conditions in immigration detention facilities, often based on unannounced visits. For example, a DHS OIG report issued on June 3, 2019, set forth the results of investigations of conditions at four detention facilities: the Adelanto ICE Processing Center in California, the Essex County, New Jersey Correctional Facility, the LaSalle Processing Center in Louisiana, and the Aurora Center in Colorado. Pursuant to ICE's 2011 Performance-Based National Detention Standards, the Inspector General recommended that ICE improve its oversight of detention facility management and operations. In response, ICE concurred with the OIG's recommendation and took corrective action to address the issues. ICE subsequently provided documentation confirming the completion of follow-up inspections at all four facilities identified in the report and provided supporting documentation showing that all four facilities completed corrective actions related to the follow-up inspections. On September 28, 2020, the OIG closed the recommendation in response to receiving documentation from ICE that showed that all four facilities had completed the corrective actions.

85. A further DHS OIG report issued on July 2, 2019, entitled Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley, found urgent issues that required immediate attention and action as a result of an inspection of CBP short-term holding facilities in the Rio Grande Valley during the week of June 10, 2019. The team found that apprehensions in the first 8 months

of 2019 had been 124 percent higher than from the same period in 2018, and that CBP, which is responsible for short-term custody for initial processing prior to transfer to another agency, was unable to transfer individuals out of its facilities because ICE did not have space for detention for single adults and some families, and HHS was limited in its ability to accept custody of unaccompanied alien children. The inspectors found overcrowding at 4 of the 5 CBP facilities visited; found that 31 percent of unaccompanied alien children had been held longer than the 72 hours required by the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA); and found that both children and adults lacked adequate access to sanitation and laundry facilities, changes of clothing, and appropriate meal service, creating the possibility of security incidents. DHS/CBP responded that it had added space for 500 persons and planned to add further space for single adults by July 29. DHS also indicated that the number of unaccompanied alien children in CBP custody had been reduced from nearly 2,800 on June 7 to less than 1,000 on June 25, 2019.

86. Pursuant to the TVPRA, unaccompanied alien children (UACs) must be transferred from DHS's custody to the custody of HHS within 72 hours of being identified as unaccompanied alien children, absent exceptional circumstances. Due to the crisis at the southern border, in 2019, ORR faced a dramatic spike in referrals of such children. For ORR's first nine years of operation, it received fewer than 8,000 referrals of UACs annually. Since FY 2012, however, this number has jumped dramatically, with 13,625 referrals in FY 2012, 24,668 in FY 2013, 57,496 in FY 2014, 33,726 in FY 2015, 59,170 in FY 2016, 40,810 in FY 2017, and 49,100 in FY 2018. As of June 10, 2019, DHS had referred over 52,000 unaccompanied alien children to HHS in FY 2019, an increase of over 60 percent from the same time period in FY 2018. Because of the large fluctuations in arrivals throughout the year, ORR maintains a mix of "standard" beds that are available year-round, as well as "temporary" beds that can be added or reduced as needed. This bed management strategy provides the ability to accommodate changing flows. HHS expanded its bed capacity to the degree possible in 2019 and then sought additional funding to care for the extraordinary numbers of unaccompanied alien children arriving at its facilities.

87. In response to the need for additional resources to address this serious situation at the border, Congress enacted, and on July 1, 2019, the President signed, the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, which provides an additional \$4.5 billion in emergency supplemental funding for humanitarian assistance and security at the southern border. The Act includes approximately \$2.88 billion in funds, over and above those already appropriated, for HHS for assistance for children housed in its custody. HHS is to prioritize use of community-based residential care, including long-term and transitional foster care and small group houses and shelter care other than large-scale institutional shelter facilities to house unaccompanied alien children in its custody. In addition, more than \$1 billion was appropriated to DHS/CBP – \$708 million for establishment and operation of migrant care and processing facilities, \$112 million for consumables and medical care, \$35 million for transportation, and \$110.5 million for temporary duty and overtime costs. The law also includes \$39.5 million for DHS/ICE for transportation of unaccompanied alien children, \$20 million for alternatives to detention, and \$45 million for detainee medical care.

88. In September 2018, DHS issued a Department-wide policy on the Use of Force. The policy articulates Department-wide standards and guidelines related to the 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, CBP issued a new CBP Use of Force Policy, Guidelines, and Procedures Handbook (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. In February 2016, CBP launched a new Assaults and Use of Force Reporting System (AUFERS) to better inform its responses to these incidents. 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 the incorporation of vehicle pursuit reporting capabilities. CBP has completed a six-month evaluation and final report regarding the use of Incident Driven Video Recording Systems

(IDVRS), which includes body worn, vehicle mounted, and other video recording technologies. The release of the final report is contingent upon a final briefing and signature of the Commissioner of CBP. The final IDVRS report will be released as soon as practicable immediately following the aforementioned briefing.

89. In May 2017, CBP began tracking and publicly reporting assaults and uses of force using two different metrics: the overall number of incidents and the singular actions (assaults and uses of force) within those incidents. The number of incidents demonstrates the frequency with which CBP officers and agents are involved in encounters involving an 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 percent lower than FY 2017; however, incidents involving uses of force were 16.3 percent higher. Incidents involving assaults on CBP Officers and Agents increased 22 percent from FY 2017 to FY 2018; however, singular assaults decreased 6.3 percent. Singular uses of force in FY 2019 were 9.3 percent higher than FY 2018 and use of force incidents were 11.1 percent higher. Incidents involving assaults on CBP Officers and Agents increased 7.6 percent from FY 2018 to FY 2019 and singular assaults increased 11.2 percent.

90. 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 a CBP officer or agent. As part of that response plan, a CBP cross-component Use of Force Incident Team (UFIT) was created to respond to use of force incidents that result in serious physical injury or death. The CBP UFIT reviews the E-STAR system and opens cases on all incidents that report the use or deployment of tear gas, smoke and pepper spray on any subject regardless of their immigration status. The cases are then investigated by the local UFIT. Once that investigation is complete the findings are presented at the Local Use of Force Review Board (LUFRRB). The LUFRRB reviews each incident and application of force for three concerns: first, whether the application of force was within the CBP Use of Force Policy; second, whether there were any other misconduct or policy violations not related to the use of force that need to be referred for further investigation and administrative processing; and third, whether there were any training or equipment issues or needs that could have changed the outcome of the incident.

91. In addition to the LUFRRB, a National Use of Force Review Board (NUFRB) was created to review use of force incidents resulting in serious physical injury or death, or any incident involving the discharge of a firearm. The Board reviews each incident and application of force using the same three criteria used by the LUFRRB, noted above. As of January 2020, there had been 16 meetings of the NUFRB that had reviewed 57 incidents involving the use of deadly force or the discharge of a firearm. The LUFRRB reviews use of force incidents that did not meet the threshold of the NUFRB, but are still reported as a use of force. Every law enforcement agency, including the CBP, is part of the ongoing national discussion about how, when, where, and why officers and agents should use force.

Right to be Free from Arbitrary or Unlawful Interference with Privacy (Art. 17)

Reply to paragraph 22 of the list of issues – Privacy

92. With regard to the right to be free from arbitrary or unlawful interference with privacy, the United States refers the Committee to the discussion of Article 17 in its Fourth Periodic Report and its One-year Follow-up Responses to the Committee's Priority Recommendations. On January 19, 2018, the President signed the FISA Amendments Reauthorization Act of 2017, which preserves and extends § 702, with amendment, until December 31, 2023. U.S. courts that have considered § 702 have found it to be legal and consistent with the Fourth Amendment to the U.S. Constitution. Also, the FISA Reauthorization Amendments Act of 2017 establishes additional procedures to protect further the privacy of Americans whose communications are incidentally collected under § 702. Among these is a new requirement that in a predicated criminal investigation unrelated to national security, the FBI must generally apply for and obtain an order from the Foreign Intelligence Surveillance Court before accessing the contents of § 702-acquired communications that were retrieved using certain United States person "query" terms (the court order requirement does not apply with respect to a query if the FBI determines there is a reasonable belief that such contents could

assist in mitigating or eliminating a threat to life or serious bodily harm). By applying this provision only to certain queries in criminal investigations, the Act preserves the FBI's ability to "connect the dots" and look for national security-related threats, especially during the critical pre-investigation phase where a factual foundation has not necessarily been established yet and when it often does not yet have enough information to know whether a suspected threat relates to national security. Although the Fourth Amendment does not require a court order to query information lawfully collected under § 702 – information already lawfully in the Government's possession – this new procedure, along with the Act's other oversight and transparency requirements, provides further privacy safeguards, while preserving the operational effectiveness of foreign intelligence collection efforts. Discussion of privacy issues related to non-state actors, which fall outside the scope of the Covenant, can be found in Annex B.

93. A number of states have enacted or are considering state laws on privacy. Three states – California, Nevada, and Maine – have enacted laws that establish comprehensive approaches to governing the use of personal information, and state legislatures in other states have such comprehensive laws under consideration, <https://iapp.org/resources/article/state-comparison-table/>. In addition, according to the National Conference on State Legislatures, as of January 2020, a number of states had laws regulating privacy in more specific contexts: laws regulating consumer data privacy in California, Nevada, and Vermont; laws regulating children's online privacy in California and Delaware; laws providing for e-reader privacy in Arizona, California, Delaware, and Missouri; laws regulating privacy policies and practices for websites or online services in California, Connecticut, Delaware, Nevada, and Oregon; laws concerning disclosure or sharing of personal information in California and Utah; laws providing for privacy of personal information held by Internet service providers in Maine, Minnesota and Nevada; laws relating to false and misleading statements in privacy policies in Nebraska, Oregon, and Pennsylvania; laws requiring notice of monitoring of employee email communications and Internet access in Connecticut, Delaware, Colorado and Tennessee; and laws requiring that government websites establish privacy policies and procedures in Arizona, Arkansas, California, Colorado, Delaware, Iowa, Illinois, Maine, Maryland, Minnesota, Montana, New York, South Carolina, Texas, Utah and Virginia. <https://www.ncsl.org/research/telecommunications-and-information-technology/state-laws-related-to-internet-privacy.aspx>. All 50 states, as well as U.S. territories, have security breach notification laws, an innovation first implemented in California and now a part of privacy laws throughout the world. See <https://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx>.

Freedom of expression (Art. 19)

Reply to paragraph 23 of the list of issues – Freedom of expression

94. The First Amendment to the U.S. Constitution provides that "*Congress shall make no law ... abridging the freedom of speech, or of the press.*" Paragraphs 580-88 of our Initial Report and paragraphs 327-29 of our Second and Third Periodic Report describe how freedom of opinion and expression are zealously guarded in the United States as well as the limitations on freedom of expression permissible under the Constitution. This basic legal framework has not changed, and the Supreme Court has made clear that First Amendment protections for free speech extend to speech online. See, e.g., *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017).

95. The United States takes seriously the protection of journalists and the protection of a free press. Violence and threats against journalists are generally addressed by local rather than federal law enforcement. In response to the tragic attack against and murder of five journalists and media workers at the Capital Gazette in Annapolis, Maryland, the suspect was quickly apprehended and charged by the Maryland Office of the State's Attorney for Anne Arundel County with 23 counts related to the June 28, 2018, shooting. When a reporter in Florida was attacked and had her camera damaged on November 28, 2019, law enforcement officers arrived and arrested the suspect, who has since been charged with battery, damaging property, and criminal mischief. Law enforcement is also committed to addressing threats faced specifically by female journalists. When a female Kentucky reporter was harassed and kissed on live television on September 20, 2019, the perpetrator was charged by the Jefferson

County attorney with harassment with physical contact. Local law enforcement in Savannah, Georgia charged a suspect with misdemeanor sexual battery in response to an assault against a female reporter on live television on December 7, 2019. These are just a few examples of law enforcement's commitment to protecting journalists from violence and harassment. Further, journalists and media organizations—like all individuals in the United States—may only be liable in a defamation lawsuit under certain narrow circumstances. This was addressed in paragraphs 541-543 and 591 of the United States' Initial Report. Specifically, under the Supreme Court's interpretation of the First Amendment in *New York Times, v. Sullivan*, 376 U.S. 254 (1964) and its progeny, "*public officials and figures may recover for defamatory statements – at least those relating to public controversies – only if it is proven that the defamatory statement was made with knowledge of or reckless disregard for its falsity.*" At the same time, criticism of and disagreement with journalists, including by government authorities, is not a crime and does not constitute a threat to the press or to freedom of expression. The media in the United States remains fiercely independent with multiple points of view represented. As an open society, we encourage people to scrutinize all information they receive and come to informed judgments.

96. With respect to boycott protections, the Supreme Court has "*recognized that some forms of symbolic speech [a]re deserving of First Amendment protection*" but has "*rejected the view that conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea. ... First Amendment protection [extends] only to conduct that is inherently expressive.*" *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 65-66 (2006) (internal citations omitted). Legislation at both the federal and state level has been introduced or adopted regarding boycotts or boycott-related activity in a variety of contexts. To the extent any of this legislation raises constitutional issues, such issues may be addressed through judicial processes.

97. The Trump Administration's strong opposition to boycotts, divestiture and sanctions of the State of Israel and the movement that seeks to isolate and de-legitimize Israel is well known. The United States values freedom of expression, even in cases where we do not agree with the political views espoused.

Reply to paragraph 24 of the list of issues – Freedom of expression and hate crimes

98. With regard to freedom of expression generally, as reflected in paragraphs 596 – 598 of our Initial Report, in the United States opinions and speech receive strong protections, generally without regard to content or viewpoint under the First Amendment to the U.S. Constitution. Thus, the right to engage in the advocacy of hatred is as protected as the advocacy of respect, friendship, or peace. The U.S. government has long believed there are methods short of prohibiting speech that can mitigate the effects of hate speech and that are more effective than government bans on speech. These include robust protections for human rights, including freedom of expression for all (including minority individuals), robust anti-discrimination laws and enforcement of these laws, and governmental outreach to members of minority communities.

99. Speech intended to and likely to cause imminent lawless action and true threats may constitutionally be restricted, as may certain speech-related conduct that constitutes harassment or intimidation. DOJ enforces several criminal statutes that prohibit acts of violence or intimidation motivated by race, religion, color, ethnicity, gender, sexual orientation, gender identity, or disability, as well as statutes that prohibit violence or intimidation directed against those participating in certain protected activities such as housing, employment, voting, and the use of public services. In addition, conspiracies to deprive persons of rights granted by statute or the Constitution may be prosecuted as separate crimes.

100. Collection of accurate data on hate crimes is crucial. Reporting hate crime allows the public, researchers, community leaders, and local government to raise awareness of the issue and gain a more accurate picture of hate crimes. It also allows law enforcement agencies to develop data-focused strategies and preventative measures. According to the most recent FBI statistics, the number of hate crimes reported to the FBI increased slightly between 2018 and 2019. In 2019, there were 7,103 single-bias incidents involving 8,552 victims – 57.6 percent were targeted because of the offenders' race/ethnicity/ancestry bias; 20.1 percent were targeted because of the offenders' religious bias; 16.7 percent were victimized because of the

offenders' sexual-orientation bias; 2.7 percent were targeted because of the offenders' gender identity bias; 2 percent were victimized because of the offenders' disability bias; and 0.9 percent were victimized because of the offenders' gender bias.

101. Between January 2017 and December 2020, DOJ has charged more than 95 defendants alleged to have been involved in committing bias-motivated crimes. During that same time period, DOJ has obtained convictions of over 80 defendants involved in committing bias-motivated crimes, either through plea or trial. In August 2020, DOJ's Hate Crimes Enforcement and Prevention Initiative issued a comprehensive report setting forth key recommendations and action steps to combat hate crime. The Roundtable Report highlights the results of a problem-solving and action-planning session by representatives of diverse law enforcement agencies, national policing organizations, and federal government leaders in October 2018. The report also incorporates stakeholder feedback received throughout the life of the Hate Crimes Initiative. The result is a valuable roadmap for change. In July 2019, DOJ held a Summit on Combating Anti-Semitism, hosted by the Attorney General with participation from the FBI Director and the Secretaries of Education, Treasury, and Housing and Urban Development, as well as faith and community leaders. In October 2018, DOJ launched a comprehensive hate crimes website that provides a centralized portal for the Department's hate crimes resources for law enforcement, media, researchers, victims, advocacy groups, and other related organizations and individuals. DOJ also awarded an \$840,000 grant for a research study on hate crimes data collection. In addition, DOJ announced the development of a hate crimes training curriculum for law enforcement through its Collaborative Reform Initiative that will provide actionable strategies to improve identification of and response to hate crimes. The Initiative also announced the development of a new outreach and engagement program to support law enforcement efforts to develop strong community bonds.

Freedom of assembly and association (Arts. 21 and 22)

Reply to paragraph 25 of the list of issues – Demonstrations

102. We respectfully question the Committee's assumption that "*state laws on demonstrations are increasingly restrictive.*" The Attorney General has said, "*the Constitution protects the right to speak and assemble freely, but it provides no right to commit violence or defy the law.*" Many recent protests and demonstrations held in the United States in the wake of George Floyd's tragic death have been peaceful. Unfortunately, with respect to the rioting occurring in many of our cities around the country, peaceful protests have been hijacked by violent elements. In many places, rioters and anarchists have engaged in violence, looting, arson, and assaults. Violence and destruction of property endangers the lives and livelihood of others, and it interferes with the rights of peaceful protestors. It also undercuts the urgent work that needs to be done—through constructive engagement between affected communities and law enforcement leaders—to address legitimate grievances. As a society, we cannot tolerate the continued violence and destruction of property or the endangerment of lives. The most basic responsibility of government is to ensure the rule of law, so that people can live their lives safely and without fear.

103. A number of states in the United States have enacted laws in the last several years restricting certain activities related to demonstrations and protests. These include additional penalties for protesters who conceal their identities; mandatory sanctions for campus protesters; new or heightened penalties for protests near critical infrastructure, such as oil and gas pipelines; limitations on public employees' ability to picket; heightened penalties for riot offences; heightened penalties for protestors who trespass on private property; expanded civil liability for protesters and protest funders; new penalties for protesters who block traffic; temporary bans on protests near certain sites; and limitations on police liability for deaths while dispersing riots and unlawful assemblies. To the extent that any of these laws raises legal or constitutional issues under federal or state laws or constitutions, those issues may be (and in some cases are being) addressed in the judicial system.

104. With respect to the 1033 Program, the National Defense Authorization Act for FY 1990 and 1991 authorized the transfer of excess DoD supplies and equipment to federal and state agencies for use in counter-drug activities. Section 1033 of the National Defense

Authorization Act for FY 1997 amended Title 10, U.S. Code, by adding Section 2576a, which authorizes DoD to transfer equipment to any law enforcement agency for *bona fide* law enforcement purposes that assist in its arrest and apprehension missions. In September 2017, President Trump issued an Executive Order reversing some previous limits on the ability of law enforcement agencies to obtain certain vitally important equipment to fight terrorism and crime. Law enforcement agencies report that they use the equipment in a variety of ways (e.g., four-wheel drive vehicles are used to interrupt drug harvesting, haul away marijuana, patrol streets, and conduct surveillance). Preference is given to counter-drug and counter-terrorism requests. The 1033 Program also helps with the agencies' general equipment needs, such as file cabinets and copiers that agencies need but perhaps are unable to afford.

105. More than 8,000 federal and state law enforcement agencies from all 50 states and U.S. territories participate in the 1033 program. Each participating state must have a Memorandum of Agreement with the Defense Logistics Agency (DLA), and each state's Governor is required to appoint a State Coordinator to ensure that participating law enforcement agencies comply with the requirements of the program. State Coordinators are expected to maintain property accountability records, to investigate any alleged misuse of property, and, in certain cases, to report violations to DLA. State Coordinators are aggressive in suspending law enforcement agencies that abuse the program. Uses of the equipment in performing duties in counter-drug and counter-terrorism situations, protests, and all other law enforcement matters are, of course, subject to the rules and regulations of each law enforcement agency and to applicable state and federal law, including the U.S. Constitution.

Reply to paragraph 26 of the list of issues – Labor

106. The National Labor Relations Act forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, or from working together to improve terms and conditions of employment, or refraining from any such activity. Similarly, labor organizations may not restrain or coerce employees in the exercise of these rights. Employees who believe their rights or the rights of others have been violated may file charges with the National Labor Relations Board (NLRB), which hears claims and awards remedial relief where rights have been violated by an employer or a union. Members of the public filed approximately 18,500 unfair labor practice charges with the NLRB in FY 2019. In December 2018, the NLRB released its strategic plan for FY 2019–2022, which seeks to achieve a 20 percent increase in the timeliness of case processing, including increasing the percentage of cases resolved within 100 days following the filing of a charge. In one relatively recent case related to union organizing, on May 9, 2019, the NLRB announced a settlement agreement in which GRI Texas Towers, Inc., a wind turbine manufacturer in Texas, agreed to pay more than \$135,000 to ten workers and to reinstate eight workers who were fired during a union organizing campaign. The company also agreed to recognize and bargain with Plumbers and Pipefitters Local Union 404 as part of the settlement.

107. Since 1966, the minimum wage and record-keeping provisions, but not the overtime pay provisions, of the Fair Labor Standards Act (FLSA) have applied to most agricultural workers and employers. Agricultural workers paid on a piecework basis rather than an hourly basis are also generally entitled to receive the minimum wage, i.e., their average earnings should be sufficient to yield an average hourly wage at least equivalent to the minimum wage. Workers on small farms employing roughly seven or fewer workers in a calendar quarter, however, are not covered. The Migrant and Seasonal Agricultural Worker Protection Act of 1983 does not grant farmworkers the right to join labor unions or access to collective bargaining, but does contain some important protections. For example, employers must disclose or make available upon request the terms of employment and comply with those terms; employers must confirm that Farm Labor Contractors are registered with and licensed by DOL; and the Act requires that housing and transportation meet federal and/or state standards.

108. The FLSA was amended in 1974 to provide minimum wage and overtime compensation coverage for domestic service workers. As amended, the Act covers domestic service workers with three exceptions: domestic service live-in workers are excluded from the overtime compensation requirement, although they are subject to the minimum wage

requirement; those employed on a casual basis to provide babysitting services are excluded from both the minimum wage and overtime requirements; and employees providing companionship services for individuals who are unable to care for themselves are excluded from both the minimum wage and overtime requirements. Under DOL regulations, however, live-in domestic service employees or domestic service employees providing companionship services who are employed by third-party employers (any employer other than the individual or family for whom the employee works) are not exempt from minimum wage and overtime pay. In addition, many states extend state minimum wage or overtime compensation protection to some or all domestic service employees.

109. Employees who strike for a lawful objective fall into two classes: “economic strikers” and “unfair labor practice strikers.” Both classes continue as employees, but unfair labor practice strikers have greater rights of reinstatement to their jobs. If the object of a strike is to obtain from the employer some economic concession such as higher wages, shorter hours, or better working conditions, the striking employees are called economic strikers. They retain their status as employees and cannot be discharged, but they can be replaced by their employers. If the employer has hired *bona fide* permanent replacements who are filling the jobs of the economic strikers when the strikers apply unconditionally to go back to work, the strikers are not entitled to reinstatement at that time. However, if the strikers do not obtain regular and substantially equivalent employment, they are entitled to be recalled to jobs for which they are qualified when openings in such jobs occur if they, or their bargaining representative, have made an unconditional request for their reinstatement. Employees who strike to protest an unfair labor practice committed by their employer are called unfair labor practice strikers. Such strikers can be neither discharged nor permanently replaced. When the strike ends, unfair labor practice strikers, absent serious misconduct on their part, are entitled to have their jobs back even if employees hired to do their work have to be discharged. If the NLRB finds that economic strikers or unfair labor practice strikers who have made an unconditional request for reinstatement have been unlawfully denied reinstatement by their employer, the Board may award such strikers back pay starting at the time they should have been reinstated.

Right to political participation (Arts. 25 and 26)

Reply to paragraph 27 of the list of issues – Felony disenfranchisement and other topics

110. With regard to the Committee’s concluding observations concerning felony disenfranchisement, we can report that in 2015, Wyoming authorized rights restoration for persons convicted of first-time non-violent felony offenses who applied and received a certificate of voting rights restoration. That application process was later removed in 2017, and voting rights were automatically restored to persons convicted of first-time non-violent felony offenses who had completed their community supervision. In 2016, Virginia restored voting rights post-sentence, by Virginia Executive Order. Also in 2016, Maryland restored voting rights to persons on probation and parole, and California restored voting rights to persons convicted of a felony offense housed in jail, but not in prison. In 2017, Alabama codified the list of felony offenses that result in disenfranchisement (this matter remains in litigation). In 2018, Louisiana authorized voting for residents who had not been incarcerated for five years, including persons on felony probation or parole; in 2018 voters in Florida passed a ballot initiative to restore voting rights for persons convicted of felonies other than murder or felony sex offenses, as long as they had completed all terms of their sentences (implementation of this provision remains in litigation); and New York restored voting rights to persons on parole, by New York Executive Order. As a result of these changes, two U.S. states have no disenfranchisement for persons with criminal convictions; 16 states and the District of Columbia restore voting rights automatically after release from prison; three states restore voting rights after release from prison and discharge from parole; 18 states restore voting rights upon completion of sentences, including prison, parole, and probation; nine states have permanent disenfranchisement for at least some persons with criminal convictions; and two states have permanent disenfranchisement for all persons with felony convictions.

111. According to the National Conference on State Legislatures (NCSL), as of 2020, 36 states had laws requesting or requiring voters to show some form of identification at the polls

of which 35 were in force. The remaining 14 states use other methods to verify the identity of voters. Most frequently, other identifying information provided at the polling place, such as a signature, is checked against information on file, <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>. Some states request or require voters to show an identification document that has a photo on it, such as a driver's license, state-issued identification (ID) card, military ID card, tribal ID card, or other forms of ID. Other states accept non-photo identification such as a bank statement with name and address or other document that does not necessarily have a photo. In 2020, 18 states asked for a photo ID and 16 states also accepted non-photo IDs. If a voter fails to show the identification that is requested by law, states take different approaches. Some allow at least some voters without acceptable identification to cast a ballot that would be counted without further action on the part of the voter. Others require voters without acceptable identification to cast a provisional ballot and to take additional steps after election day for their votes to be counted. Most such states also allow some exceptions.

112. The legality of laws relating to elections and voting is routinely tested in federal court. With respect to voter ID laws, the U.S. Supreme Court upheld an Indiana law requiring voters to present government-issued photo identification (provided free of charge to voters who need them) to cast a ballot, finding that the law served relevant and legitimate state interests (including, inter alia, deterring and detecting voter fraud) and that petitioners had failed to establish that the law imposed excessively burdensome requirements on any class of voters. *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008). In *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016), *cert. denied*, 137 S. Ct. 1399 (2017), the Court of Appeals for the Fourth Circuit struck down North Carolina's voter ID law, finding that the law at issue had been enacted with racially discriminatory intent. In 2018, the Court of Appeals for the Fifth Circuit upheld a Texas voter ID law, which allowed voters without one of seven accepted forms of ID to sign an affidavit confirming their identity and swearing that a "reasonable impediment" kept them from obtaining an approved form of ID, *Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018).

113. The drawing of electoral boundaries in U.S. states can be challenged in litigation filed under the U.S. Constitution or state constitutions or under the federal Voting Rights Act or state statutory law. Over the years, the Supreme Court has heard and decided redistricting cases relating to population, race, and the use of redistricting commissions to draw electoral boundaries. In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015), the Court held that the creation of a redistricting commission for congressional districts via ballot initiative does not violate the Elections Clause of the Constitution. *Evenwel v. Abbott*, 576 U.S. 787 (2016), held that total population was a permissible metric for calculating one person, one vote in the redistricting process in Texas, and *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015), held that an equal population goal for districts is not one factor among many to be weighed against the use of race to determine under the Equal Protection Clause whether race was the predominant motivating factor in creating the districts. *Cooper v. Harris*, 137 S. Ct. 1455 (2017), held that where race and politics provide competing explanations for a challenged district's lines, the party challenging the district as an unconstitutional racial gerrymander need not necessarily provide as evidence an alternative map showing that the legislature's political objectives can be achieved with different racial demographics. The Court found that even if the underlying intent of the legislature in drawing maps was for partisan purposes and not with racial intent, the predominant use of race as a proxy for partisanship nonetheless constituted racial gerrymandering. *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788 (2017), held that a conflict between an enacted redistricting plan and traditional redistricting criteria is not a threshold requirement for a racial gerrymandering claim, and that a court's analysis of a racial gerrymandering claim should focus on the challenged district as a whole and not be confined to portions of district lines that conflict with traditional redistricting criteria. The United States filed briefs in all of these cases.

114. In *Rucho et al. v. Common Cause et al.*, 139 S. Ct. 2484 (2019), the Supreme Court held that partisan gerrymandering claims present political questions beyond the reach of federal courts, as there are no legal standards discernible in the Constitution for making such judgments. In so holding, the Court made clear that its conclusion that partisan gerrymandering claims are not justiciable neither condones nor condemns partisan

gerrymandering, as numerous states are actively addressing the issue through state constitutional amendments or legislation. In 2015, the Supreme Court of Florida struck down that state's congressional districting plan as a violation of the Fair District amendments to the Florida constitution. Numerous other states have restricted partisan considerations through legislation. Some states have placed the power to draw electoral districts in the hands of non-partisan commissions. In November 2018, voters in Colorado and Michigan approved constitutional amendments creating multimember commissions responsible in whole or in part for creating and approving district maps for congressional and state legislative districts. In Missouri, voters approved creation of a new position of state demographer to draw state legislative district lines. Other states have mandated at least some districting criteria, and some have outright prohibited partisan favoritism in redistricting (Florida, Missouri, Iowa, and Delaware). In addition, bills setting standards for redistricting have been introduced in the U.S. Congress.

Reply to paragraph 28 of the list of issues – Undue influence in elections

115. The United States has taken significant measures to counter foreign interference in our elections. First, we have provided our state and local governments, which are primarily responsible for administering U.S. elections under our Constitution, with unprecedented levels of support to protect the security and integrity of their election infrastructure, including systems used to register voters, generate ballots, and audit results. This support includes federal grants for election security improvements; no-cost cybersecurity assessments from DHS's Cybersecurity and Infrastructure Security Agency (CISA); and timely, actionable threat information from the U.S. Intelligence Community.

116. Second, the United States has assisted candidates and social media companies in hardening their networks and platforms against foreign malign influence operations. For example, CISA, the Federal Bureau of Investigation (FBI), and the U.S. Intelligence Community have developed joint briefings to provide candidates with steps they can undertake to fend off possible attempts to infiltrate their cyber infrastructure. Primarily through the FBI, the United States has also developed strategic relationships with social media providers, which are responsible for securing their own platforms from foreign malign influence threats. By sharing information with them, the FBI can help providers with their own initiatives to track foreign malign influence activity and enforce terms of service that prohibit the use of their platforms for such activities.

117. Third, the United States has stepped up efforts to enforce the Foreign Agents Registration Act (FARA), a disclosure statute designed to ensure that the American public and lawmakers know the source of information provided at the behest of foreign principals, where that information may be intended to influence U.S. elections, policy, laws, and public opinion. FARA helps to ensure transparency in foreign influence activities and enhances the public's ability to evaluate such information by requiring persons who engage in certain conduct as agents of foreign principals to disclose their activities with DOJ. Transparency laws such as FARA are an important alternative to censorship and are one way to respect freedom of expression while countering foreign malign influence. Instead of suppressing content, FARA ensures that the public is fully cognizant of the true source of the messages broadcast in the United States. Armed with full information, citizens can better evaluate the value of the speech they hear. Transparency is a fundamental tool in efforts to defend democracy against foreign malign influence.

118. Fourth, the United States has refined frameworks for notifying targets and the public of covert foreign malign influence activities to ensure that the federal government leans forward in providing defensive information where it can be actioned but that it does so with analysis of the facts and consideration of relevant, nonpartisan, national security factors. The United States has also engaged in unprecedented information sharing with foreign partners to help us identify and respond to foreign malign influence activity.

119. Fifth, the United States has taken action against those who threaten election security, including through financial, law enforcement, diplomatic, and other tools. In September 2018, the President issued E.O. 13848, Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election, which authorizes financial sanctions against any country that attempts to interfere in U.S. elections. The Treasury Department imposed

sanctions under this authority in September 2019 against Russian actors who attempted to interfere in the 2018 U.S. Congressional midterm elections, following sanctions imposed in 2018 against Russian actors who interfered in the 2016 U.S. Presidential election. DOJ has criminally charged Russian actors in several cases for unlawful malign influence activity, including conduct arising out of interference in the 2016 and 2018 elections. The United States works with other nations to obtain custody of foreign defendants whenever possible, and those who seek to avoid justice in U.S. courts will find their freedom of travel significantly restricted. DOS has also maintained the closure of two Russian compounds and the expulsion of diplomats in response to Russian interference in the 2016 election. The United States will not tolerate foreign interference in our electoral processes and will respond accordingly.

120. Because administration of elections in the United States is decentralized and entrusted primarily to state and local governments, rules governing campaign funding are set forth not only in the Federal Election Campaign Act and the Presidential Election Campaign Fund Act, but also in State campaign finance laws. In general, campaign finance laws establish rules in three broad areas: public disclosure of funds raised and spent to influence federal and state elections; restrictions on contributions and expenditures made to influence federal and state elections; and the public financing of presidential campaigns. For a more thorough description of applicable rules, see: <https://transition.fec.gov/pages/brochures/fecfeca.shtml> (federal rules) and <https://www.ncsl.org/research/elections-and-campaigns/campaign-finance-an-overview.aspx> (state rules). Several Supreme Court cases on political speech as it relates to elections are described in paragraphs 355, 356, and 466 of our Fourth Periodic Report.

Rights of Indigenous Peoples (Art. 27)

Reply to paragraph 29 of the list of issues – Indigenous peoples

121. With regard to the Committee's concluding observations concerning indigenous peoples, in recent years considerable attention has been focused on consultation with indigenous communities concerning infrastructure projects. In January 2017, the Department of the Interior (DOI), DOJ, and the Department of the Army released a report entitled *Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions*. This report made recommendations for federal agencies, including that they act consistently with the government-to-government trust relationship and treaty rights and understand the historical context for tribal interests; establish staff-level and leadership-level relationships with tribes; initiate consultation at the earliest point possible and provide sufficient information in the invitation; make good-faith efforts to obtain responses from the tribe and be cognizant of the limits of tribal resources; ensure that federal decision-makers actively participate; and seek to fully understand tribal concerns and reach a consensus where possible.

122. In April 2019, the Government Accountability Office (GAO) issued a report, entitled *Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects*. The study made recommendations to the Federal Permitting Improvement Steering Council (FPISC). Measures available to indigenous communities adversely affected by development projects include the courts, congressional action, and public pressure.

123. The U.S. government is working aggressively to end the violence that disproportionately affects American Indian and Alaska Native communities. On May 5, 2019, the President issued a proclamation establishing that day as Missing and Murdered American Indians and Alaska Natives Awareness Day and announcing that federal agencies are working comprehensively and collaboratively to address violent crimes in Indian country, to recover the American Indian and Alaska Native women and children who have gone missing, and to find justice for those who have been murdered. This work includes improving public safety, expanding funding and training opportunities for law enforcement in Indian country, and better equipping law enforcement with tools like access to databases and improved protocols based on the government-to-government relationship with tribes.

124. On November 22, 2019, the Attorney General launched the National Initiative to Address Missing and Murdered Indigenous Persons (MMIP). This Initiative, which involves a coordinated effort by more than 50 U.S. Attorneys, the FBI, the Office of Tribal Justice,

with support from OJP and the Office on Violence Against Women (OVW), has placed MMIP coordinators in 11 U.S. Attorneys' Offices to develop protocols for more coordinated law enforcement response to cases of missing persons, and will bring needed tools and resources to deploy the FBI's most advanced response capabilities when needed, including in-depth analysis of federally supported databases and data collection practices. Further, on November 26, 2019, the President signed an Executive Order establishing the Presidential Task Force on Missing and Murdered American Indians and Alaska Natives, known as Operation Lady Justice – an interagency task force charged with developing an aggressive, government-wide strategy to address the crisis of missing and murdered American Indians and Alaska Natives. The task force has conducted tribal consultations and listening sessions to hear from tribes about the issues, established multi-disciplinary teams of tribal and federal law enforcement to review cold cases, is promoting greater cooperation among federal, local, state, and tribal law enforcement agencies in responding to cases, and is undertaking efforts to increase public awareness of the issue.

125. The DOI Assistant Secretary–Indian Affairs, who heads the Bureau of Indian Affairs (BIA), has made domestic violence prevention, solutions to missing and murdered Native Americans, and reinvigorating examination of unsolved cold cases a priority. The BIA and DOJ have partnered to capture tribal data through new data fields in the National Missing and Unidentified Persons System. DOJ has also expanded the Tribal Access Program (TAP) and Amber Alert in Indian country to make law enforcement more aware of missing persons and to enhance their ability to respond to missing persons reports and Sexual Offender Registration and Notification Act registrants in the area. TAP enables tribal law enforcement officials to enter missing persons reports into national law enforcement databases. In addition, BIA's Tribal Justice Support Directorate funds the training of tribal attorneys in prosecuting domestic violence and partner abuse crimes as part of implementing the Violence against Women Act.

126. In FY 2018 and 2019, DOJ allocated historic amounts of funding to combat violent crime in Indian country, including funding for the MMIP efforts of OVW. In fiscal years 2018-2020, OVW awarded over \$189 million to tribes and tribal entities to combat violence against American Indian and Alaska Native women. In FYs 2018 and 2020, OVW expanded its Tribal Special Assistant United States Attorney initiative, which is aimed at reducing violence against women in Indian country and building important partnerships between federal and tribal agencies. In FYs 2018 and 2019, Congress provided close to \$300 million from the Crime Victims Fund over two years to assist victims of crime in Indian country. DOJ also funds the National Indian Country Training Initiative (NICTI), which continues to provide training at the National Advocacy Center and in the field for federal, state, and tribal criminal justice and social service professionals.

127. In 2019, the BIA held multiple listening sessions with tribal partners on reclaiming Native Communities. The discussions focused on cold cases, violent crimes, and missing and murdered Native Americans. Stopping the escalating cycle of violence for Native communities is a priority for the U. S. government. The HHS Administration for Children and Families (ACF) has also been working with the Office on Trafficking in Persons, the Children's Bureau, and the Family and Youth Services Bureau to address this important issue. One area of focus is legislation to give tribal law enforcement additional tools through expanding access to federal criminal databases, streamlining recruitment and retention procedures, and supporting best practices for investigating and prosecuting cases. Several states, including Arizona, New Mexico, Montana, Minnesota, California, Wisconsin, Oregon, Wyoming and Nebraska, have created task forces to investigate and gather data about missing and murdered indigenous persons.
