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## **National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21\***

### **United States of America**

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## I. Introduction

1. The United States of America is a “compound” federal republic, in which the power entrusted to government by our people “is first divided between two distinct governments [federal and state], and then the portion allotted to each subdivided among distinct and separate departments.”<sup>1</sup> The rights of persons in the United States are thus doubly protected: first, by the constitutions of their respective states, and also by the Constitution of the United States. The state constitutions – and the many state and local laws and judicial decisions protecting the rights of individuals and associations – are thus an integral component of American constitutionalism.<sup>2</sup>

2. The United States Constitution was ratified by the States on June 21, 1788 and came into force on March 4, 1789. Amended twenty-seven times since ratification, it establishes the structure of the federal government and defines the nature and extent of federal authority. It also imposes significant limitations on the powers of the states, thus protecting all persons from the arbitrary exercise of state power. State constitutions establish the structure of the state governments and define the nature and extent of state and local authority. Because every state includes a declaration or bill of rights in its constitution, the states are also important guarantors of the rights of the people.

3. The power and legitimacy of American government rests on the consent of our people. The United States Constitution limits the powers of government first, by dividing it between the federal and state governments. The federal government has only the powers granted by the Constitution. All remaining powers of self-government are explicitly reserved to the States or to the People, respectively.<sup>3</sup> A second level of protection is provided by dividing the powers of the federal and state governments among the legislative, executive, and judicial branches. “Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.”<sup>4</sup> Read together in light of what our Founders called the “self-evident truths” that “all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness,” the structural principles on which our constitutions rest are the foundation of a government of the people, by the people, and for the people throughout U.S. history and a model for people the world over.

4. In addition to the protections for individual rights inherent in the structure of American government, our state and federal constitutions also guarantee that all persons are equal before the law and are equally entitled to protection of their rights and freedoms, including the freedoms of religion, speech, press, assembly, and petition. In addition to the rights recognized by international instruments like the Universal Declaration of Human Rights, individuals within the United States have effective legal means at the local, state, and federal levels to seek policy, administrative, and judicial remedies for human rights violations and abuses, and all levels of government pursue civil and criminal enforcement actions to punish illegal behavior and to redress both individual and systemic grievances. We are proud that our nation has long served as a beacon of human rights for people everywhere.

5. The United States Government is an active participant in the Universal Periodic Review process because we are committed to the principle that leadership in the field of human rights is by example. The United States’ commitment to human rights rests on a firm political and moral commitment to individual and corporate accountability and transparency. Our elections are open and genuinely free and fair; our legislators and elected officials are held accountable in regular election cycles by a free press and a robust civil society; and our state and federal judiciaries are independent of political control. Notwithstanding our political differences with the Human Rights Council and with the views and human rights records of some of its members, we welcome the opportunity to share the story of how our nation’s ongoing commitment to the protection of human rights works in practice.

## II. Methodology and consultation process

6. As noted in the Addendum of the United States of America to the Report of the Working Group on its most recent Universal Periodic Review (“Addendum”), the United States supported in whole or in part 260 of 343 recommendations submitted during its 2015 UPR. We have divided these recommendations into thematic areas and have structured Section III of this report based on those areas. In the preparation of this report, the United States consulted with many different departments and agencies across the U.S. Government, as well as with civil society organizations. Based on their comments and feedback, this report and our response to the recommendations of the 2015 UPR were drafted with intergovernmental concurrence.<sup>5</sup> The below responses do not indicate that the United States necessarily regards the matters addressed as subject to U.S. international human rights obligations.

## III. The human rights situation in the United States

### A. Treaties, international mechanisms, and domestic implementation

#### Treaties ratified

*Recommendations 1–8, 12, 14, 16–42, 45–50, 52–58, 60–62, 70, 72, 88, 105, 106, 110*

7. These recommendations suggest that the United States should ratify several additional human rights treaties to which it is not yet a party. The power to bind the People of the United States to the obligations of a treaty is divided between the President, who has the sole power to negotiate and sign treaties, and the United States Senate, which must give its advice and consent before U.S. ratification of them. U.S. ratification of a treaty proposed by the President requires the concurrence of two-thirds of the Senators present when the vote is taken.<sup>6</sup>

8. The United States is a party to five (5) of the nine (9) human rights treaties described by the Office of the High Commissioner as “Core International Human Rights Instruments.”<sup>7</sup> The United States has also ratified other important human rights instruments, including the Convention on the Prevention and Punishment of the Crime of Genocide; and the Protocol Relating to the Status of Refugees.<sup>8</sup>

9. Among the treaties signed and submitted to the Senate by the President, but not ratified, are: the Convention on the Rights of Persons with Disabilities (submitted May 17, 2012; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, 1958 (International Labour Organisation) (submitted May 18, 1998); and the Convention on the Elimination of All Forms of Discrimination against Women (submitted November 12, 1980). The United States has signed the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child, but the President has not transmitted them to the U.S. Senate for its advice and consent.<sup>9</sup>

#### Domestic implementation of treaty obligations

*Recommendations 80–84, 91–95, 107, 108, 111, 237–238*

10. The legal obligations of the United States under any treaty arise from its consent through ratification pursuant to the constitutionally-prescribed procedure and are limited by the terms of ratification. As the United States has previously stated, it is for each nation state to decide as an exercise of its sovereignty to assume treaty obligations which, once entered into, it has a legal obligation to fulfill. No state, organization, or tribunal, including the committees that monitor implementation of treaties, has any authority to impose, change, or expand through interpretation any treaty obligation to which the United States is a party.

11. The United States is a federal republic in which its international and domestic human rights obligations are implemented through a comprehensive system of laws,

administrative regulations and enforcement actions.<sup>10</sup> Judicial proceedings at all levels of government also provide invaluable interpretive guidance legal precedent.

12. Federal, state and local laws provide for enforcement of human rights obligations in a variety of settings (e.g., workplace, housing, public accommodation, education, and law enforcement) through formal and informal dispute resolution procedures. These laws also permit individuals and groups to file complaints with federal, state, tribal, and local human rights agencies and commissions. These administrative agencies use their investigatory and enforcement powers to enforce the rule of law. State and federal laws also provide access to the courts, where independent judiciaries at the state and federal levels are authorized to award monetary damages, equitable relief and attorneys' fees. Statistics are readily available and widely reported.<sup>11</sup>

13. On July 8, 2019, Secretary of State Michael R. Pompeo announced the formation of a Commission on Unalienable Rights. The Commission, composed of academics, philosophers, and activists, provides advice and recommendations on human rights to the Secretary of State, grounded in U.S. founding principles and the 1948 Universal Declaration of Human Rights. The Commission's charge is not to discover new principles, but to furnish advice to the Secretary for the promotion of individual liberty, human equality, and democracy through U.S. foreign policy.<sup>12</sup>

## **B. Civil rights and non-discrimination**

### **Racial profiling and excessive use of force by police, and establishing improved police-community relations**

*Recommendations: 127–129, 137, 139, 141, 143, 144–146, 148–149, 151, 152, 154, 155, 156, 214, 215, 220, 221, 223, 225, 227, 228, 276, 287*

14. Each of these recommendations assumes – wrongly in our view – that the United States and federal, state and local governments engage in “systemic” racial discrimination, racial profiling, and that federal, state and local law enforcement officers are regularly engaged in excessive uses of force. We reject the notion that law enforcement in the United States is “systemically” racist. Every day in the United States, tens of thousands of police officers respect, protect, and uphold the rule of law and the civil rights of individuals and communities across the country, while carrying out the difficult and dangerous work of keeping our communities safe.

15. That is not to deny that more must be done to ensure fairness to all citizens, particularly members of the African American community, for whom it is understandable given our nation's history and recent events that there is some ambivalence and often distrust of the police. In recognition of this fact, on June 16, 2020, President Trump signed an executive order on “Safe Policing for Safe Communities”<sup>13</sup> 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 use of excessive 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 the Department of Health and Human Services (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.

16. Where there is misconduct by police officers or law enforcement agencies, state and federal laws provide effective remedies.<sup>14</sup> For example, from FY 2016-FY 2019, DOJ charged 256 defendants with willfully violating constitutionally protected rights (or

conspiring to do so) while acting “under color of law” and obtained convictions of 172 defendants for these charges. In FY 2019, alone, DOJ charged 83 defendants with color-of-law offenses, obtaining convictions (by trial or plea) of 46 defendants. As of January 2020, DOJ had opened 70 civil investigations since 1994 into police departments that might be engaging in a pattern or practice of conduct that deprives persons of their rights, such as use of excessive force, improper searches, or improper stopping of persons for questioning.

17. The United States is also dedicated to eliminating racial discrimination and the use of excessive force in policing. The Department of Justice has issued guidance stating unequivocally that racial profiling is wrong, and has prohibited racial profiling in federal law enforcement practices, in many cases imposing more restrictions on the consideration of race and ethnicity than the Constitution requires.<sup>15</sup> Many states have done the same.<sup>16</sup> Furthermore, The Office of Civil Rights and Civil Liberties with the Department of Homeland Security (DHS) works to promote respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners.<sup>17</sup>

18. At the federal level, the Constitution and federal government policy prohibit profiling and all levels of the U.S. Government have laws against and take active measures to prevent excessive use of force.<sup>18</sup> There are more than 18,000 police departments in the United States whose officers’ behavior is governed by the laws of the state, city, county, municipality, or tribal governments they serve. They are also subject to federal law.

19. The United States works to ensure that law enforcement officers are aware of and comply with applicable consular notification rules. The Department of State has published a *Manual on Consular Notification and Access* setting forth the rules for consular notification and provides a number that can be called for assistance.<sup>19</sup>

### **Ending discrimination, including discrimination based on race, sex, and religion; hate crimes**

*Recommendations 113, 118–124, 125, 126, 130, 131, 133–135, 132, 136, 138, 140, 142, 144, 147, 150, 153, 158–163, 224, 226, 229, 308, 321*

20. State and federal laws prohibit all forms of racial discrimination. Discrimination on the basis of sex and religion is forbidden in most employment and education programs, and in all public accommodations and market transactions.<sup>20</sup>

21. It is a crime to cause or to incite violence or injury to persons or property.<sup>21</sup> Government may restrict speech intended to cause, and likely to result in, lawless action, and it can and does forbid “true threats.”<sup>22</sup> Speech-related conduct that constitutes harassment or intimidation is also illegal.<sup>23</sup>

22. The United States federal government and most states have hate crime laws. State hate crime laws vary, but almost all hate crime laws prohibit violence motivated by race, color, religion, and national origin. Federal law, and some state laws, also prohibit violence motivated by gender, disability, sexual orientation, and gender identity. The federal government, like many states, has enacted substantive hate crime laws. Other jurisdictions choose to add a penalty enhancement to the sentence a defendant would otherwise receive, if it can be proved that the defendant was motivated by bias. Hate crimes generally cover violent acts like assault, stalking, murder, sexual assault, arson, robbery and other serious offenses.<sup>24</sup> Hate crime laws also cover threats to commit violent conduct. DOJ aggressively prosecutes cases involving hate crimes, and its annual reports on hate crimes statistics provide law enforcement authorities with important information that assists in combatting such crimes.<sup>25</sup>

23. The United States does not, however, criminalize speech, expressive conduct, or publication that others find extremely offensive or harmful. The rights to speak, publish, associate, and petition for a redress of grievances could not be protected if the government could punish individuals because of differences of opinion, or if government could prohibit speech on the basis of its content or the speaker’s viewpoint. Our state and federal courts have consistently held that government bans on speech are inconsistent with robust protections for individual rights, including freedom of expression and religion for all.

24. U.S. constitutional and statutory law and practice provide strong and effective protections against discrimination based on race, sex, religion, national origin and disability by government agencies at all levels and by private actors. Federal, state, and tribal laws authorize individuals and governments to take active measures to counter violence and discrimination.<sup>26</sup> Federal non-discrimination laws are enforced by DOJ and other federal agencies and by private parties.<sup>27</sup> State antidiscrimination laws are enforced by state attorneys general, by other state and local agencies with law enforcement authorities, and by private parties.

25. Religious freedom is guaranteed by state and federal law, and protecting religious freedom is a high priority. As the President has explained, “Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government,” and “[t]he executive branch will honor and enforce those protections.”<sup>28</sup> In September 2019, the President put religious freedom on center stage at the United Nations and hosted the Global Call to Protect Religious Freedom, calling on the international community, religious, and business leaders to work to protect religious freedom. Consistent with this policy, the federal executive branch has taken several recent actions to protect religious freedom. Pursuant to an Executive Order published on October 6, 2017, the Attorney General released a memorandum on religious-liberty protections in federal law that guides all federal executive departments and agencies as they seek to fulfill their duties in a manner that is consistent with religious-freedom protections.<sup>29</sup> DOJ has also filed briefs and statements of interest in numerous cases to support religious-liberty claims – a practice that has expanded during the past three years.<sup>30</sup> Its vigorous enforcement of federal hate-crimes laws – including its prosecution of defendants who have planned or carried out attacks on synagogues – has protected religious individuals and houses of worship from private threats and violence. Other executive agencies and departments have also taken action to protect religious freedom. The federal executive branch has protected – and continues to protect – the right of Americans to believe and practice their faith.<sup>31</sup> In June 2020, the President signed an Executive Order on Advancing International Religious Freedom, to promote universal respect for this right.<sup>32</sup> Further, the United States created the first ever International Religious Freedom Alliance promoting this most fundamental of all rights with over thirty nations to oppose religious persecution around the world.<sup>33</sup>

## C. Criminal justice, violence against women, and human trafficking

### **The death penalty, life sentences without parole, and juvenile life sentences without parole**

*Recommendations 51, 180, 194, 195–198, 199, 200, 234, 292*

26. There is a robust debate in the United States about the morality of the death penalty and the fairness of the sentencing process. Currently, twenty-eight (28) states and the federal government authorize the death penalty; twenty-two (22) states and the District of Columbia do not authorize the death penalty; and the Governors of three (3) states that authorize the death penalty have placed a moratorium on executions.

27. The death penalty is legal under federal law for specified crimes involving, *inter alia*, murder; for various other violent crimes (such as terrorism, kidnapping, arson, or carjacking) that both result in death and were committed with the requisite mental state; for treason, which, under the Constitution, “consist[s] only in levying war against the [United States], or in adhering to their enemies, giving them aid and comfort;” and espionage in time of war or that results in the death of an agent of the United States or the compromise of major weapons or defensive systems.<sup>34</sup> In the states, the death penalty is reserved for murder or, in some situations, causing death while committing other serious crimes such as kidnapping. In all cases, the court or jury must find the circumstances of the crime to be particularly heinous, and convictions are subject to multiple levels of appellate court review. After judicial review is complete, both federal and state laws provide for review by the executive branch (President or Governor) prior to the execution of any death sentence.<sup>35</sup>

28. In July 2019, the Attorney General directed the Federal Bureau of Prisons (BOP) to schedule the executions of five federal death row inmates, each of whom was convicted of murdering children and each of whom had exhausted their appellate and post-conviction remedies. After last-minute legal proceedings were concluded, three were executed in July 2020: Daniel Lewis Lee, a white supremacist, who murdered a family of three, including an eight-year-old girl; Wesley Ira Purkey, who violently raped and murdered a 16-year-old girl, and then dismembered, burned, and dumped her body in a septic pond; and Dustin Lee Honken, who murdered five people – two men who planned to testify against him in a drug trafficking case, and a single, working mother and her ten-year-old and six-year-old daughters. Lezmond Mitchell is scheduled for execution on August 26, 2020, after being sentenced to death for stabbing to death a 63-year-old grandmother and forcing her nine-year-old granddaughter to sit beside her lifeless body for a 30 to 40-mile drive before slitting the girl's throat, crushing her head with 20-pound rocks and severing and burying both victims' heads and hands. The execution of Keith Dwayne Nelson, who kidnapped a 10-year-old girl rollerblading in front of her home, and in a forest behind a church, raped and strangled her to death with a wire, is scheduled for execution on August 28, 2020.

29. The federal government and the twenty-eight (28) states that permit the death penalty also permit, subject to significant limitations (such as a unanimous jury verdict), the imposition of a life sentence without parole. Of the twenty-two (22) states that do not permit the death penalty, twenty-one (21) and the District of Columbia permit the imposition of life sentences without parole. Alaska does not permit either the death penalty or life imprisonment without parole.

30. Mandatory life sentences without parole for juveniles have been unconstitutional in the United States since the U.S. Supreme Court's 2012 decision in *Miller v. Alabama*.

31. Because the United States is a federal republic, decisions regarding abolition of the death penalty and life sentences without parole are reserved, in the case of federal crimes, for Congress, and in the case of all other crimes, to the state legislatures or to the People themselves.<sup>36</sup> The state and federal courts maintain an active role in assuring that all necessary procedural protections are available to those convicted of capital crimes or sentenced to a life term without parole.<sup>37</sup>

### **Investigations, sentencing, and detention**

*Recommendations 213, 218, 260, 235, 236, 274, 275, 279, 281*

32. The United States seeks to ensure that all levels of the state and federal justice systems operate fairly and effectively for all. In December 2018, President Trump signed into law the First Step Act,<sup>38</sup> the most significant federal criminal justice reform measure in several decades.<sup>39</sup> The President noted in 2019: "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."<sup>40</sup>

33. The Civil Rights of Institutionalized Persons Act (CRIPA) gives DOJ tools to investigate and correct prison conditions and conditions in other public institutions where there is reason to believe that a pattern or practice of deprivation of constitutional rights of individuals may exist. For example, in April 2019, DOJ announced it had found reasonable cause to believe that conditions in Alabama's prisons for men violated the Eighth Amendment of the U.S. Constitution because they did not provide safe conditions and failed to protect prisoners from prisoner-on-prisoner violence and prisoner-on-prisoner sexual abuse. DOJ provided Alabama written notice of the supporting facts for these alleged conditions and the minimum remedial measures necessary to address them.<sup>41</sup> In July 2020, DOJ made similar findings with regard to the use of excessive force in Alabama prisons.<sup>42</sup>



## Gun violence

### *Recommendations 230–233*

34. The Second Amendment to the Constitution of the United States protects the individual right to keep and bear arms, subject to certain long-standing prohibitions such as those forbidding the possession of firearms by felons or restrictions on the carrying of particularly dangerous and unusual weapons.<sup>43</sup> Federal, state, and local governments are all therefore limited in how they may regulate firearms. In addition, the right to keep and bear arms is embodied in forty-four (44) state constitutions, which may further limit official action on a state-by-state basis. At the same time that the United States supports the right of individuals to bear arms lawfully, it is engaged in a variety of efforts to ensure that criminals, especially those who use firearms in the commission of their crimes, are pursued and appropriately punished.

35. Since 2001, DOJ has implemented Project Safe Neighborhoods (PSN), bringing together law enforcement and the communities they serve to reduce violent crime and make neighborhoods safer.<sup>44</sup> DOJ reinvigorated PSN in 2017 as part of its renewed focus on targeting violent criminals, including those committing gun violence, directing all U.S. Attorneys' Offices to work in partnership with federal, state, local, and tribal law enforcement and the local community to develop effective, locally based strategies to reduce violent crime.

36. The Attorney General announced in November 2019 the launch of Project Guardian, a new initiative designed to reduce gun violence and enforce federal firearms laws across the country. Project Guardian's implementation is based on five principles: (1) coordinated prosecution, (2) enforcing the background check system, (3) improved information sharing, (4) coordinated response to mental health denials, and (5) crime gun intelligence coordination.<sup>45</sup>

## Violence against women

### *Recommendation: 255*

37. The United States seeks to safeguard and protect women and girls and strongly supports eliminating violence against them. The United States introduced its Strategy on Women, Peace, and Security (WPS Strategy) in June of 2019.<sup>46</sup> The WPS Strategy responds to the Women, Peace, and Security Act of 2017, which President Trump signed into law on October 6, 2017.<sup>47</sup> The Act is the first legislation of its kind globally, which makes the United States the first country in the world with a comprehensive law to prevent, mitigate, and resolve violence against women internationally. The United States remains a strong defender of women, men, and their children, and is a major funder of programs, both at home and abroad, to improve the health, life, dignity, and well-being of women, their children, and their families.

38. DOJ's Office on Violence Against Women (OVW) provides federal leadership in developing the national capacity to reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking. In 1994, Congress passed the Violence Against Women Act (VAWA) in recognition of the severity of crimes associated with domestic violence, sexual assault, and stalking. Created in 1995, OVW administers financial and technical assistance to communities across the country that are developing programs, policies, and practices aimed at ending domestic violence, dating violence, sexual assault, and stalking. OVW administers both formula-based and discretionary grant programs, established under VAWA and subsequent legislation, that support efforts to provide services to victims and hold perpetrators accountable through promoting a coordinated community response. Funding is awarded to local, state, and tribal governments, courts, non-profit organizations, community-based organizations, secondary schools, institutions of higher education, and state and tribal coalitions. Grants are used to develop effective responses to violence against women through activities that include direct services, crisis intervention, transitional housing, legal assistance to victims, court improvement, and training for law enforcement and courts. Since its inception, OVW has awarded over \$8.1 billion in grants and

cooperative agreements and has launched a multifaceted approach to implementing VAWA. By forging state, local, and tribal partnerships among police, prosecutors, judges, victim advocates, health care providers, faith leaders, and others, OVW grant programs help provide victims with the protection and services they need to pursue safe and healthy lives, while simultaneously enabling communities to hold offenders accountable for their violence.

39. OVW administers the Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence and Stalking on Campus Program, which supports institutions of higher education in implementing comprehensive, coordinated responses to violent crimes on campuses.<sup>48</sup> This federal grant program supports the development and strengthening of effective security and investigation strategies to combat domestic violence, dating violence, sexual assault, and stalking on campuses, development and strengthening of victim services in cases involving such crimes on campuses, which include partnerships with local criminal justice authorities and community-based victim services agencies, and the development and strengthening of prevention education and awareness programs.

40. In 2013, DHS established an agency-wide Council on Combating Violence against Women to coordinate DHS's efforts to stop crimes against women and ensure the effective administration of laws aimed at preventing violence against women. In 2016, the Department approved a grant of \$9.2 million from DOJ and the Department of Housing and Urban (HUD) for stable housing to victims of domestic violence living with HIV/AIDS, and the 2016 launch of a research and evaluation initiative to develop a peer support group model.

41. In 2016, HUD issued guidance on local nuisance ordinances that may lead to discrimination under the Fair Housing Act against survivors of domestic violence and other persons in need of emergency services. HUD also published final rules under VAWA 2013, enhancing housing protections for victims of domestic violence, dating violence, sexual assault, and stalking.<sup>49</sup>

### **Human trafficking**

*Recommendations 262, 264–266, 268–273, 328*

42. The U. S. Government is actively engaged in activities to combat human trafficking in all its forms, including sex and labor trafficking through the President's Interagency Task Force to Monitor and Combat Trafficking in Persons. President Trump has signed nine pieces of anti-trafficking legislation into law, including the Trafficking Victims Protection Reauthorization Act of 2017, the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 and the Stop Enabling Sex Traffickers Act of 2017.

43. The President honored the 20<sup>th</sup> Anniversary of the landmark Trafficking Victims Protection Act (TVPA) at a White House Summit on Human Trafficking on January 31, 2020. During the Summit, the President signed the Executive Order on Combating Human Trafficking and Online Child Exploitation in the United States Strengthening Federal Responsiveness to Human Trafficking.<sup>50</sup>

44. In FY2019, DOJ brought 220 human trafficking prosecutions, charged 343 defendants, and secured federal convictions against 475 traffickers. In FY 2019, OJP's Bureau of Justice Assistance made awards of more than \$100 million for human trafficking programs, including programs that provide a comprehensive range of direct services for victims of human trafficking. In FY 2019, Office for Victims of Crime (OVC) programs served 8,375 victims and trained over 82,000 professionals to better identify and serve victims of trafficking. In FY 2019, OVC, in partnership with Bureau of Justice Assistance (BJA), funded a total of 15 Enhanced Collaborative Model Human Trafficking Task Forces. In FY 2019, DOJ continued investing in research to develop new knowledge and tools to combat human trafficking more effectively.<sup>51</sup>

45. DHS Immigration and Customs Enforcement Homeland Security Investigations (ICE/HSI) identified and assisted 428 human trafficking victims and initiated 1,024 human trafficking criminal cases in FY 2019 and reported 2,197 criminal arrests, 1,113 criminal

counts charged in indictments, and 691 criminal counts in federal, state, and local convictions.<sup>52</sup> HHS continued to fund an NGO to operate the national human trafficking hotline. In FY 2019, the hotline received 136,990 calls, texts, chats, online tips, and emails, identified 11, 852 potential human trafficking cases, and provided resources and referrals to 3,828 potential victims.<sup>53</sup>

46. DOT and DHS/CBP lead the Blue Lightning Initiative (BLI), an element of DHS's Blue Campaign that trains airline personnel to identify potential traffickers and human trafficking victims, and to report their suspicions to federal law enforcement. To date, more than 100,000 personnel in the aviation industry have been trained through the BLI, and actionable tips continue to be reported to law enforcement.<sup>54</sup>

47. In FY 2019, DHS/U.S. Citizenship and Immigration Services (USCIS) approved 500 applications for nonimmigrant status for victims of severe forms of trafficking in persons, and approved 491 applications for their eligible family members.

48. In FY 2018 and 2019, the DHS/Federal Law Enforcement Training Centers (FLETC)<sup>55</sup> trained over 5,500 federal law enforcement officers through its basic training programs on indicators of human trafficking. FLETC has developed a one-day Introductory Human Trafficking Awareness Training Program for federal, state, local, and tribal law enforcement agencies, designed to instill awareness of indicators of human trafficking for the broader law enforcement community.<sup>56</sup>

49. The Department of Interior's Bureau of Indian Affairs (BIA) provided victim services to 13 tribes for detection of and response to human trafficking in Indian Country. The Department of Labor (DOL) funded several projects to combat forced labor, including a \$2 million, four-year project to combat forced labor and human trafficking in the cocoa supply chain and other sectors in Ghana, and a new \$5 million four-year project to combat forced labor and human trafficking on fishing vessels in Indonesia and the Philippines. DOL also released the mobile and web application *Comply Chain: Business Tools for Labor Compliance in Global Supply Chains*, which provides companies and industry groups practical guidance on how to identify risks of forced labor in their supply chains and mitigate or mediate abuses.<sup>57</sup> Companies that implement compliance systems are less likely to risk importing goods made by forced labor and run afoul of U.S. law.

50. The Department of State's Office to Monitor and Combat Trafficking in Persons (TIP) issued its most recent Trafficking in Persons Report in June 2020, where the United States comprehensively assesses what governments around the world are doing to combat this crime.<sup>58</sup> The TIP Report is an invaluable tool the United States uses to arm ourselves with the latest information and guides our actions both domestically and abroad.

### **Human rights education, training, and community engagement**

#### *Recommendations 73, 74*

51. Respect for human rights is reflected in the Constitution, laws, regulations, and policies. Many schools feature human rights education, and some of them have centers focused on the study of human rights. Professional organizations and others have educational programs. Law enforcement and immigration screening personnel receive training on prohibitions against unlawful discrimination and racial and ethnic profiling. In 2019, DOJ/CRD and the U.S. Attorney's Office hosted a roundtable on sexual harassment in housing, while the DOJ Community Relations Service works with communities to address conflict related to discrimination and similar matters.

## **D. Economic, social and cultural rights and measures; indigenous issues; and the environment**

### **Indigenous issues and violence against indigenous women**

*Recommendations 322, 323, 324, 326, 256, 257*

52. Members of indigenous communities who are born or naturalized in the United States are citizens of the United States and residents of the state in which they live. Those who are also members of tribes or villages recognized by federal or state law<sup>59</sup> have additional rights defined by those laws, and by the laws of their respective communities.

53. The U.S. Government has primary responsibility for administering the social programs that provide a variety of education, health care, and social services.<sup>60</sup>

54. Federal and state laws and policy call for consultation with tribes on many issues, and multiple consultations with tribal leaders are held each year on activities and policies affecting tribes or tribal lands.

55. The U.S. Government works aggressively to end violence disproportionately affecting American Indian and Alaska Native communities. On May 3, 2019, President Trump issued a proclamation establishing May 3 as Missing and Murdered American Indians and Alaska Natives Awareness Day and announcing that federal agencies are increasing their efforts to address violent crimes in Indian country.<sup>61</sup> This work includes improving public safety, expanding funding and training opportunities for law enforcement in Indian country, and better equipping law enforcement with needed tools, such as access to databases.

56. On November 26, 2019 the President signed an executive order establishing the Task Force on Missing and Murdered American Indians and Alaska Natives.<sup>62</sup> This order is the culmination of numerous discussions where federal officials heard directly from Indian Country. Attorney General Barr and Interior Secretary Bernhardt serve as co-chairs of the Task Force and members include the FBI Director, DOI Assistant Secretary – Indian Affairs, Director of DOJ’s Office on Violence Against Women, DOI Director of the Office of Justice Services, Chair of the Native American Issues Subcommittee of the Attorney General’s Advisory Committee, and Commissioner of the Administration for Native Americans (ANA) within the Department of Health and Human Services (HHS).

57. In all of this work, the federal government consults with tribes multiple times each year on actions and policies affecting tribes or tribal lands.

### **Homelessness**

*Recommendation 310*

58. The American economic system of free people and free markets has lifted millions of people out of poverty and been a model for other nations. Those who struggle with poverty and other mental, behavioral, and health problems that lead to homelessness have access to a wide variety of social programs sponsored by families, communities, businesses, nonprofit organizations, including faith-based organizations, and federal, state and local government. HUD, HHS, Department of Education (ED), the Department of Veterans Affairs (VA) and other members of the U.S. Interagency Council on Homelessness (USICH) have worked closely with state and local governments to alleviate the personal and social problems that lead to homelessness. In April of 2020, USICH and partner agencies launched a process to develop an updated comprehensive federal strategic plan to prevent and end homelessness using extensive stakeholder and direct provider input.

59. Through its 2019 Continuum of Care Program Competitions,<sup>63</sup> HUD increased local flexibilities and enhanced provider ability to better help our vulnerable homeless populations. In order to increase self-sufficiency among homeless populations, HUD provided new flexibilities for grantees to implement service participation requirements such as employment training, mental health care, substance abuse treatment after a person has been stably housed.<sup>64</sup>

60. HUD estimates homelessness across the United States has declined by 11% since 2010. Homelessness among veterans is half of what was reported in 2010.<sup>65</sup>

61. The Federal Interagency Council on Crime Prevention and Reentry, led by DOJ, has supported efforts to reduce recidivism and prepare individuals for successful reentry into society.<sup>66</sup> USICH also released guidance to reentry service providers, corrections agencies, and state and local governments on removing barriers to housing and services for individuals with criminal records who are experiencing homelessness.<sup>67</sup>

### **Health care and education**

*Recommendations 124, 265, 309, 311–317, 319, 327*

62. There is considerable debate in the United States about the best ways to make quality, affordable health care available to all. HHS' Title V Maternal and Child Health Services Block Grant Program seeks to improve maternal health outcomes, including rates of severe morbidity and maternal mortality.<sup>68</sup> National and state level performance measure data is publicly accessible on the Title V Information System website. In 2019, HHS awarded \$351 million to support families through the Maternal, Infant, and Early Childhood Home Visiting Program, which serves families living in almost one-third of U.S. counties.<sup>69</sup> States and territories can tailor the program to serve the specific needs of their communities, targeting services to communities with concentrations of risk, such as premature birth, low-birth-weight infants, and infant mortality. A multi-pronged evaluation of the program found home visiting services result in positive effects for families. Additionally, results suggest that home visiting may improve maternal health. HHS also supports Tribal Maternal, Infant, and Early Childhood Home Visiting Program development grants.<sup>70</sup> Evaluations are in progress and a release date will be forthcoming.

63. The Preventing Maternal Deaths Act of 2018<sup>71</sup> authorizes, amends, and expands the Safe Motherhood Initiative within the HHS Centers for Disease Control and Prevention, including authorizing support for state and tribal Maternal Mortality Review Committees, and directs HHS to make grants available to states to better track and examine the problem of maternal deaths; to establish maternal mortality review committees; and to ensure that state health departments have plans to educate healthcare providers about the findings of the review committees. CDC is now funding 25 states to conduct Maternal Mortality Review in the United States.<sup>72</sup>

64. The United States remains committed to equal opportunity in education and, working with states and communities, helping students succeed in school and careers. In 2015, Congress enacted the Every Student Succeeds Act (ESSA), which revised and reauthorized the Elementary and Secondary Education Act.<sup>73</sup> Its support for states and communities includes investing in evidence-based and innovative local programs; providing intervention and support for schools and students that need the most help; and preserving protections for economically disadvantaged students, children with disabilities, English learners, and other vulnerable students.<sup>74</sup> Consistent with the commitment to equal access, it is unlawful to deny elementary and secondary-level school children in the United States an education on the basis of actual or perceived immigration status.<sup>75</sup>

65. Corporal punishment is governed by state law. In 2019, as a broader tool to help parents and educators create and maintain safe and positive learning environments in school, ED produced a guide on school climate resources for parents and educators.<sup>76</sup> ED also has two centers that offer free assistance and resources related to school climate for states, school districts, schools, institutions of higher learning, and communities: (1) the National Center of Safe and Supportive Learning Environments, and (2) the Technical Assistance Center on Positive Behavioral Interventions and Supports.

### **Women and health**

*Recommendations 100, 164*

66. As the world's largest bilateral donor to global health programs, the U.S. Government is committed to supporting health programs around the world, including life-

saving services and helping women and children thrive, particularly in countries where the need is greatest. The United States remains resolute in its commitment to preventing conflict-related sexual violence and providing resources and support for survivors to address the trauma and stigma they experience as a step toward healing those afflicted, as well as mending their communities. As the United States has noted on many occasions, there is no international human right to abortion, whether under that name or under other terms like “sexual and reproductive health.” Rather, as President Trump has stated, “our Nation proudly and strongly reaffirms our commitment to protect the precious gift of life at every stage, from conception until natural death.”<sup>77</sup> The United States believes in the sovereign right of nations to make their own laws to protect the unborn, and rejects any interpretation of international human rights to require any State to provide access to abortion.<sup>78</sup> As President Trump has stated, “Every person – the born and the unborn, the poor, the downcast, the disabled, the infirm, and the elderly – has inherent value.”<sup>79</sup>

### **Gender equality in the workplace**

*Recommendations 112, 114, 115, 116, 117*

67. The United States promotes a non-discriminatory, inclusive, and integrated approach to work that ensures that all women and men are treated with human dignity. It is the policy of the United States to support and promote efforts that reinforce respect for the inherent dignity of both women and men, advance women’s equality and promote and protect these rights.

68. Wage discrimination based on sex is illegal under the Equal Pay Act of 1963, 29 U.S.C. § 206(d) and Title VII of the Civil Rights Act of 1964, as amended.<sup>80</sup> The National Security Strategy of the United States clearly identifies women’s equality and empowerment worldwide as integral to our national security and a priority for the United States. We believe that investing in women’s economic empowerment has a cascading effect for women, men, families, and communities, and is a key component to our national security approach.<sup>81</sup>

69. U.S. law allows, but does not require, private employers to offer paid maternity leave. The Family and Medical Leave Act<sup>82</sup> entitles eligible employees to 12 workweeks of unpaid, job-protected leave in a year for the birth and care of newborn or adopted/foster children.<sup>83</sup> On December 20, 2019, President Trump signed into law the Federal Employee Paid Leave Act, which provides up to 12 weeks of paid parental leave for over two million Federal civilian employees.<sup>84</sup> The new law will apply to leave taken for births or adoption/foster placements that occur on or after October 1, 2020.

### **Protections for migrant workers**

*Recommendations 263, 331–333, 338*

70. Alien agricultural workers in the United States are protected by the Migrant and Seasonal Agricultural Worker Protection Act of 1983.<sup>85</sup> This Act requires employers to disclose or make available upon request the terms of employment and to comply with those terms, to confirm that Farm Labor Contracts are registered with and licensed by DOL, to pay each worker when wages are due and provide workers with itemized statements of earnings and deductions, and to post worker protection laws at the worksite. The Act also requires that housing and transportation meet federal and/or state standards.<sup>86</sup> Since 1966, the minimum wage and record-keeping provisions, but not the overtime pay provisions, of the Fair Labor Standards Act (FLSA) have also applied to most agricultural workers and employers.<sup>87</sup>

### **Protection of the environment**

*Recommendations 341–343*

71. The United States and each of the fifty states has strong policies governing the protection of the environment. Federal and state laws create both government and private enforcement mechanisms and significant remedies are available against those who violate

them. The United States advances an approach that balances energy security, economic development, and environmental protection<sup>88</sup> and will remain a global leader in reducing traditional pollution, as well as greenhouse gases, while continuing to expand our economy.

## **E. National security and other matters**

### **Migrants in detention**

*Recommendations 252–254, 306, 329, 330, 332, 333, 338–340*

72. The U.S. Government draws from a wide range of resources to process alien children safely. When alien children are placed in government custody, we ensure they are treated in a safe, dignified, and secure manner. Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRO), unaccompanied alien children generally are transferred from the custody of DHS to that of HHS.

73. Recent years have seen a humanitarian and security crisis caused by a dramatic increase in the number of aliens encountered along or near the U.S. border with Mexico, including unaccompanied children. The majority come from Guatemala, Honduras, and El Salvador, where poor economic conditions and high levels of generalized violence, while not grounds for asylum or protection under the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment or U.S. laws implementing it, are important “push factors.” At the same time, certain U.S. laws, judicial rulings, and policies – including the TVPRO – contribute to “pull factors.”

74. As a result of the crisis, DHS has since 2012 referred an increasing number of unaccompanied alien children to HHS. Since FY 2012, 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 and 52,000 in FY 2019.

75. To address this crisis, on July 1, 2019, the United States enacted the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act,<sup>89</sup> which provides an additional \$4.5 billion in emergency supplemental funding for humanitarian assistance and security at the U.S. southern border. In addition, the U.S. administration has sought legislative changes to address the pull factors and has sought to exercise existing legal authorities to reduce them.<sup>90</sup>

### **Guantanamo Bay**

*Recommendations 239, 240, 242, 244, 246, 249, 251*

76. Executive Order 13823 of January 18, 2018, Protecting America through Lawful Detention of Terrorists, requires detention operations at U.S. Naval Station Guantanamo Bay to continue to be conducted consistent with all applicable U.S. and international law. The United States has no plans to close the detention facilities at Guantanamo Bay.

77. Currently 40 individuals are detained in U.S. detention facilities at Guantanamo Bay. Since 2015, 68 individuals have been transferred from Guantanamo Bay to other countries, including Cabo Verde, Ghana, Italy, Kuwait, Mauritania, Montenegro, Oman, Senegal, Serbia, the Kingdom of Saudi Arabia, and the United Arab Emirates.

78. The detainees at Guantanamo are held and treated humanely and 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.

## Torture

*Recommendations 203, 210, 211, 212, 217, 247, 248, 283, 284, 286, 288, 290*

79. Federal and State laws prohibit torture or cruel, inhuman or degrading treatment or punishment and related misconduct. The Eighth Amendment to the U.S. Constitution prohibits cruel and unusual punishment for individuals convicted of crimes. What constitutes cruel and unusual punishment is a fact-specific determination that may include uncivilized and inhumane punishments, punishments that fail to comport with human dignity, and punishments that include physical suffering, including torture.<sup>91</sup> The Fifth and Fourteenth Amendment Due Process Clauses prohibit, *inter alia*, governmental action that “shocks the conscience,” including acts of torture and cruel treatment,<sup>92</sup> as well as punishing persons without first convicting them under appropriate standards. It also includes the intentional use of objectively unreasonable force against those detained while awaiting trial.<sup>93</sup> The Fourteenth Amendment applies both of these Amendments to the conduct of state officials.<sup>94</sup>

80. Coincident with the entry into force of the Convention Against Torture, the United States enacted the Torture Convention Implementation Act, 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 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.

81. In the context of military commissions against alien unprivileged enemy belligerents, the Military Commissions Act (MCA) of 2009, codifies, *inter alia*, the offenses of torture and cruel or inhuman treatment as crimes triable by military commission.<sup>95</sup> In addition, the MCA of 2009 prohibits the admission of any statement obtained by the use of torture or by cruel, inhuman, or degrading treatment, as defined by the Detainee Treatment Act of 2005, in a military commission proceeding, except against a person accused of torture or such treatment as evidence that the statement was made.<sup>96</sup> This prohibition is also incorporated into Rule 304(a)(1) of the Military Commission Rules of Evidence.

82. Consistent with international obligations and domestic law, the United States has conducted and will continue to conduct thorough, independent investigations of credible allegations of torture, and to prosecute persons where appropriate.

## Privacy

*Recommendations 293, 294, 295, 296–299, 304, 305, 307*

83. The United States collects, maintains, uses, and disseminates information in accordance with the U.S. Constitution and U.S. laws, regulations, and policies, consistent with applicable international obligations. Presidential Policy Directive 28, which applies to signals intelligence activities, states that all persons should be treated with dignity and respect, regardless of nationality or place of residence, and that all persons have legitimate privacy interests in the handling of their personal information.<sup>97</sup> The United States has multiple layers of oversight, ranging from individual privacy officers embedded in agency operations, to congressional committees, and offices of inspector general, to independent oversight agencies such as the Privacy and Civil Liberties Oversight Board (PCLOB). PCLOB is an independent agency within the Executive Branch established by the Implementing Recommendations of the 9/11 Commission Act of 2007 to ensure that the federal government’s efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties.<sup>98</sup>

84. Our foreign intelligence oversight system is robust and transparent, and includes executive, legislative, and judicial bodies. The foreign intelligence activities of the U.S. Government are conducted in accordance with applicable legal authorities.<sup>99</sup>

85. In January 2017, the CIA Office of Privacy and Civil Liberties (OPCL) published revised E.O. 12333 Attorney General Guidelines designed to ensure that the CIA continues



to handle information appropriately in the digital age.<sup>100</sup> The review sought to ensure that the Guidelines appropriately incorporated the protection of privacy and civil liberties in the conduct of the CIA's authorized intelligence activities, with improvements that included protections for unevaluated information, restrictions on queries, exceptional handling requirements for electronic communications and other similarly sensitive information, and compliance and oversight. OPCL conducts reviews to ensure compliance with the Privacy Act and other requirements related to the protection of personal information from unauthorized use, access, or disclosure. Complaints may be filed for alleged violations of civil liberties in the administration of CIA programs and operations.<sup>101</sup>

86. Privacy and digital freedom issues raised by the conduct of non-state actors, such as Google and Facebook, are addressed through the U.S. legal and regulatory systems, including by the DOJ, the Federal Trade Commission (FTC), state attorneys general, and private litigation. Some states have enacted or are considering state privacy laws, and the FTC provides annual updates on its privacy and data security work with regard to non-state actors.<sup>102</sup>

### **Sexual violence in the military**

#### *Recommendations 258, 289*

87. The United States is committed to preventing sexual violence. The United States issues an annual report that provides updates on programs and efforts at the Department of Defense (DoD) to combat sexual violence in the military. DoD's programs focus on preventing sexual assault, promoting advocacy and assistance, and addressing sexual-assault-related retaliation.<sup>103</sup>

88. DoD's FY 2018 Annual Report on Sexual Assault in the Military,<sup>104</sup> issued in April 2019, estimates that 20,500 service members,<sup>105</sup> experienced some kind of sexual assault in 2018. Over the past decade, reporting rates have quadrupled, allowing the Department to connect a greater share of victimized service members with restorative care and services.

89. In April 2019, DoD established the Sexual Assault Accountability and Investigation Task Force (SAAIT) to identify, evaluate, and recommend immediate and significant actions to improve further the accountability process and ensure due process for both victims and accusers. The Task Force published a, first-of-its-kind, comprehensive set of recommendations to help commanders, further enhance victim support, and ensure fair and just support for the accused.<sup>106</sup>

90. To address this issue further, DoD issued a Prevention Plan of Action (PPOA) in April 2019, providing a coordinated approach to optimize the Department's prevention system with targeted efforts towards the youngest military members and others at increased risk for victimization.<sup>107</sup> In addition, DoD is committed to training supervisors of junior enlisted personnel to ensure better promotion of respectful workplace conduct. The Secretary of Defense is committed to justice for victims of sexual assault and is doing everything within his authority to eliminate sexual harassment and assault in the military. The Secretary thus directed the Department to implement the recommendations of the SAAITF Report, develop new assessment tools, launch a new program to catch serial offenders, and execute the DoD Sexual Assault PPOA.<sup>108</sup>

### **Migration policies and treatment of migrant adults and children**

#### *Recommendations 252–254, 306, 329, 330, 332, 333, 339, 340*

91. In accordance with its law, policy, and international obligations, the United States maintains the sovereign right to detain aliens who violate its laws, pose a danger to the community, or pose a flight risk in order to protect public safety and to ensure their compliance with its immigration procedures. Primary responsibility for the enforcement of immigration law within DHS rests with ICE, Customs and Border Patrol (CBP), and USCIS. CBP enforces immigration laws at and between the ports of entry, ICE is responsible for interior enforcement and for detention and removal operations, and USCIS adjudicates applications and petitions for immigration and naturalization benefits. Under

the TVPRA of 2008, unaccompanied alien children generally are transferred from the custody of DHS to that of HHS. As noted above, the United States is experiencing a crisis along its southern border due to increases in illegal immigration in 2019 and has considered numerous ways to address this situation. Aliens facing removal from the United States receive procedural protections.

92. The United States limits its collection of information in the visa application relevant to a visa adjudication. The questions asked in the visa application process are designed to solicit the information necessary to determine whether an applicant is eligible for the visa applied for under U.S. law. Information obtained from applicants in the visa application process is considered confidential under U.S. law, and with limited exceptions, is to be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other U.S. laws.

## IV. Conclusion

93. The United States was founded on an unwavering commitment to the unalienable rights of all individuals, and our legal and policy framework continues to provide robust protections for human rights. We look forward to engaging constructively with other States and civil society as we seek to improve and strengthen our longstanding commitment to individual and institutional accountability for human rights violations. The United States is and will remain an unwavering ally to the cause of democracy and human freedom. To that end, we will continue to push for the reforms needed to ensure the integrity, legitimacy and accountability of the Human Rights Council. We welcome the chance to engage with all nations that share our commitment to human rights, and will do so in the plentiful fora available.

### Notes

- <sup>1</sup> See James Madison, writing as “Publius,” in *The Federalist* No. 51, “The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.” (February 8, 1788), available at <https://www.ourdocuments.gov/doc.php?flash=true&doc=10&page=transcript>.
- <sup>2</sup> See Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* (Oxford University Press, 2018).
- <sup>3</sup> U.S. Constitution, Amendments IX and X (1791), available at <https://www.archives.gov/founding-docs/constitution-transcript>.
- <sup>4</sup> See Madison, writing as “Publius,” *The Federalist* No. 51.
- <sup>5</sup> This report addresses recommendations even where they do not necessarily reflect U.S. international human rights obligations. Some recommendations urge us to achieve an ideal, some express a different view of human flourishing than we hold, and others request actions not entirely within the power of our federal government. We have supported recommendations when we share the ideals on which they are based, and when we are making serious efforts to achieve their goals and intend to continue to do so. We have also supported recommendations regarding actions we are already taking or have taken and continue taking, as they support our own efforts to address difficult issues. The Executive Branch of the United States Government has no authority under the United States Constitution to make commitments regarding the outcomes of state or federal judicial proceedings, or of the legislative process in Congress or the State legislatures. Where recommendations we supported in whole or in part rested upon inaccurate assumptions, assertions, or factual predicates, we respectfully noted the inaccuracies, looked past the rhetoric of the recommendation and focused on the proposed action or objective.
- <sup>6</sup> The United States Constitution provides that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.” U.S. Constitution, Art. VI, available at <https://www.archives.gov/founding-docs/constitution-transcript>.
- <sup>7</sup> Those treaties are: the International Covenant on Civil and Political Rights (ICCPR); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and two optional protocols to the Convention on the Rights of the Child (CRC). President Obama submitted

The Convention on the Rights of Persons with Disabilities to the Senate on May 17, 2012; President Clinton submitted ILO Convention (No. 111) to the Senate on May 18, 1998; and President Carter submitted The Convention on the Elimination of All Forms of Discrimination against Women to the Senate on November 12, 1980.

- <sup>8</sup> While neither the Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, nor the Convention on Transnational Organized Crime are human rights instruments, both provide important structural protections for vulnerable persons and communities.
- <sup>9</sup> The United States has not signed other treaties referenced in the recommendations, including the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, and the International Convention for the Protection of All Persons from Enforced Disappearance.
- <sup>10</sup> These recommendations propose that the United States create a “national human rights institution” and various “national plans” to advance the cause of human rights. The United States rejects these suggestions because “planning” is no substitute for remedial action.
- <sup>11</sup> See, e.g., Equal Employment Opportunity Commission, Press Release “Fiscal Year 2019 Enforcement and Litigation Data” (January 24, 2020) at <https://www.eeoc.gov/eeoc/newsroom/release/1-24-20.cfm> (reporting detailed breakdowns for 72,675 charges of workplace discrimination).
- <sup>12</sup> On July 16, 2020, the Commission released a draft report of its work. See <https://www.state.gov/draft-report-of-the-commission-on-unalienable-rights/>. For further information about the Commission, including meeting minutes and video recordings of its public hearings, see <https://www.state.gov/commission-on-unalienable-rights>.
- <sup>13</sup> <https://www.whitehouse.gov/presidential-actions/executive-order-safe-policing-safe-communities/>
- <sup>14</sup> See, e.g., 42 U.S.C. §1983, available at <https://www.govinfo.gov/content/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap21-subchapI-sec1983.pdf> (creating federal cause of action for violation of constitutional rights). Literally hundreds of reported cases in state and federal courts attest to the availability of a remedy should a person claim to be a victim of either racial profiling or the use of excessive force; see also 18 U.S.C. §§ 242 (criminal statute punishing willful deprivation of rights by someone acting under color of law) and 241 (criminal statute punishing conspiracies to deprive individuals of constitutional or federally protected rights, including conspiracies by persons acting under color of law), available at <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap13.pdf>
- <sup>15</sup> See, e.g., U.S. Department of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity* (December 2014) at <https://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>
- <sup>16</sup> Arkansas Code § 12-12-1401 (2020) (“As used in this subchapter, ‘racial profiling’ means the practice of a law enforcement officer’s relying to any degree on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity.”).
- <sup>17</sup> See <http://dhsconnect.dhs.gov/offices/CRCL>
- <sup>18</sup> See, e.g., 42 U.S.C. §1983, available at <https://www.govinfo.gov/content/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap21-subchapI-sec1983.pdf> (creating federal cause of action for violation of constitutional rights) and literally hundreds of reported cases in state and federal courts attest to the availability of a remedy should a person claim to be a victim of either racial profiling or the use of excessive force.
- <sup>19</sup> The Department website also features a video on this topic; see <https://travel.state.gov/content/travel/en/consularnotification/consular-notification-streaming-video.html>. Pocket cards are also provided to law enforcement officers, and State Department experts travel throughout the United States to provide training concerning consular notification and access to federal, state, and local law enforcement, corrections and criminal justice officials.
- <sup>20</sup> See, e.g., Equal Credit Opportunity Act, 15 U.S.C. §§ 1691, et seq., available at <https://www.govinfo.gov/app/details/USCODE-2011-title15/USCODE-2011-title15-chap41-subchapIV-sec1691>
- <sup>21</sup> See, e.g., Connecticut General Statutes §§53a-179a (making inciting injury to person or property a Class C felony); Nevada Revised Statutes § 203.040 (“Publishing matter inciting breach of peace or other crime”).
- <sup>22</sup> See 18 U.S.C. §1875 (forbidding interstate “communication containing any threat” to injure the person, property or reputation of another). See also, e.g., California Penal Code §422 (threat to commit a crime).
- <sup>23</sup> See, e.g., Indiana Code §35-45-2-1 (defining “intimidation” as a felony); Massachusetts Statutes §43A (criminal harassment).

- <sup>24</sup> See, e.g., 18 U.S.C. §249 (“Hate crime acts”), available at <https://www.govinfo.gov/content/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap13-sec249.pdf>; California Penal Code §422.86 (“Sentencing Goals”); § N.Y. Penal Law §§ 485.05 (Hate Crimes).
- <sup>25</sup> See U.S. Department of Justice, “Hate Crimes Examples” at: <https://www.justice.gov/hatecrimes/hate-crimes-case-examples> (accessed April 16, 2020). Since January 2017, DOJ has indicted more than 65 defendants alleged to have been involved in committing hate crimes and has obtained convictions of more than 50 defendants involved in committing hate crimes.
- <sup>26</sup> State and federal laws against discrimination apply in many contexts: employment, housing, credit, access to public places and facilities and to public accommodations, access to healthcare and equal educational opportunities, and access to programs that receive federal assistance.
- <sup>27</sup> Other agencies include the Department of Labor (DOL), the Department of Housing and Urban Development (HUD), the Equal Employment Opportunity Commission (EEOC), the Department of Health and Human Services (HHS), the Department of Education (ED), and the Department of Homeland Security (DHS).
- <sup>28</sup> Executive Order 13798 (May 4, 2017), available at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-free-speech-religious-liberty/>
- <sup>29</sup> See <https://www.justice.gov/opa/press-release/file/1001891/download>
- <sup>30</sup> For example, DOJ has supported students declared ineligible for scholarships because they attend religious schools and a baker’s right to operate his business in accordance with his religious beliefs, and a Native American group’s right to conduct religious ceremonies on its ancestral land. DOJ’s Place to Worship Initiative, launched on June 13, 2018, has increased enforcement of a federal law that protects places of worship and other religious uses of property from unjustifiable burdens and discrimination by local governments. For more, see <https://www.justice.gov/crt/place-worship-initiative> and <https://www.justice.gov/opa/pr/justice-department-celebrates-strong-support-religious-freedom-one-year-mark-place-worship>
- <sup>31</sup> Recent cases recognizing protections against religious discrimination include *Holt v. Hobbs*, (574 U.S. 353 (2015)), which struck down a prison policy prohibiting inmates from growing beards in accordance with religious beliefs; and *EEOC v. Abercrombie & Fitch Stores*, 575 U.S. 768 (2015), which held that a plaintiff need not prove that an employer had actual knowledge of the plaintiff’s need for a religious accommodation.
- <sup>32</sup> See <https://www.whitehouse.gov/presidential-actions/executive-order-advancing-international-religious-freedom/>
- <sup>33</sup> See <https://share.america.gov/u-s-launches-international-religious-freedom-alliance/>
- <sup>34</sup> 18 U.S.C. §794, available at <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap37-sec794.pdf>
- <sup>35</sup> See, e.g., 28 C.F.R. §§ 1.1-1.10 at <https://ecfr.io/Title-28/pt28.1.1> (federal); Texas Board of Pardons and Paroles at [https://www.tdcj.texas.gov/bpp/exec\\_clem/exec\\_clem.html](https://www.tdcj.texas.gov/bpp/exec_clem/exec_clem.html)
- <sup>36</sup> The Nebraska State Legislature voted to abolish the death penalty in 2015, but it was reinstated in a statewide vote of the people in November 2016. See Revised Official Report of the Board of State, p. 60 at <https://sos.nebraska.gov/sites/sos.nebraska.gov/files/doc/elections/2016/2016-canvass-book.pdf>
- <sup>37</sup> In July 2019, the U.S. Attorney General directed the Federal Bureau of Prisons to resume federal executions. See <https://www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse>. On April 7, 2020, a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit rejected the prisoners’ claim that the Attorney General’s order violated the federal Death Penalty Act, 18 U.S.C. § 3596(a), and on June 29, 2020, the Supreme Court of the United States declined to hear their appeal.
- <sup>38</sup> Formerly known as the Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act.
- <sup>39</sup> The Act includes reforms of the federal prison system to better promote reentry for federal prisoners; changes to mandatory minimum sentences for certain drug offenses; retroactive application of the Fair Sentencing Act of 2010; and expanded authority for courts to sentence low-level, nonviolent drug offenders to less than the mandatory minimum that would otherwise apply. For more, see <https://www.bop.gov/inmates/fsa/overview.jsp>
- <sup>40</sup> President Donald J. Trump’s State of the Union Address (Feb. 5, 2019), available at <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-state-union-address-2/>. One example of efforts to aid reentry is the Department of Education’s Second Chance Pell Experimental Sites Initiative, which provides 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 educational institutions participating in this initiative. In 2020, ED more than doubled the size of the project by inviting 67 new educational institutions to participate in a second cohort under

- the experiment. There are now Second Chance Pell sites in more 40 states. For further information, see <https://www.ed.gov/news/press-releases/secretary-devos-expands-second-chance-pell-experiment-more-doubling-opportunities-incarcerated-students-gain-job-skills-and-earn-postsecondary-credentials>.
- <sup>41</sup> See <https://www.justice.gov/opa/pr/justice-department-alleges-conditions-alabama-mens-prisons-violate-constitution> and <https://www.justice.gov/opa/press-release/file/1150276/download>. As of December 2019, DOJ had 12 open investigations of adult jails and prisons, and was enforcing 12 agreements with state and local governments concerning adult jails and prisons.
- <sup>42</sup> <https://www.justice.gov/opa/pr/justice-department-alleges-excessive-force-alabama-s-prisons-men-violates-constitution>
- <sup>43</sup> See *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010).
- <sup>44</sup> See <https://www.justice.gov/psn>
- <sup>45</sup> See <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-launch-project-guardian-nationwide-strategic-plan>
- <sup>46</sup> See United States Strategy on Women, Peace and Security at <https://www.whitehouse.gov/wp-content/uploads/2019/06/WPS-Strategy-FINAL-PDF-6.11.19.pdf>
- <sup>47</sup> See <https://www.congress.gov/115/plaws/publ68/PLAW-115publ68.pdf>
- <sup>48</sup> In FY 2019, OVW awarded over \$15 million to 50 institutions of higher education through grant awards.
- <sup>49</sup> See [https://www.hud.gov/program\\_offices/housing/mfh/violence\\_against\\_women\\_act](https://www.hud.gov/program_offices/housing/mfh/violence_against_women_act)
- <sup>50</sup> This order strengthens the federal government’s efforts to prosecute traffickers and protect victims of human trafficking through several measures, such as establishing an internal working group at HHS to identify more housing for survivors. It also directs the Attorney General, in collaboration with DOL and DHS, to improve interagency coordination with respect to targeting traffickers, determining threat assessments, and sharing law enforcement intelligence and coordinate activities, as appropriate, with the Task Force on Missing and Murdered American Indians and Alaska Natives. For more, see <https://www.whitehouse.gov/presidential-actions/executive-order-combating-human-trafficking-online-child-exploitation-united-states/>
- <sup>51</sup> See Trafficking in Persons Report, 20<sup>th</sup> Edition, U.S. Department of State (June 2020) at 520, available at <https://www.state.gov/trafficking-in-persons-report-2020/>. DOJ’s National Institute of Justice made \$2.3 million in research grant awards 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) understanding how traffickers are groomed.
- <sup>52</sup> For FY 2019, ICE/HSI’s Child Exploitation Investigations Unit reported the identification and/or rescue of 1,069 child victims and initiated 4,474 child exploitation cases, resulting in 3,957 criminal arrests, 2,332 indictments, and 1,796 convictions.
- <sup>53</sup> See Trafficking in Persons Report, 20<sup>th</sup> Edition, U.S. Department of State (June 2020), available at <https://www.state.gov/trafficking-in-persons-report-2020/>
- <sup>54</sup> <https://www.dhs.gov/blue-campaign/blue-lightning-initiative>
- <sup>55</sup> See <https://www.fletc.gov/>
- <sup>56</sup> See <https://www.fletc.gov/press-release/2020/01/23/fletc-human-trafficking-awareness-training-program-combats-human>
- <sup>57</sup> See <https://www.dol.gov/ilab/complychain/> and <https://www.dol.gov/general/apps/ilab-comply-chain>
- <sup>58</sup> See Trafficking in Persons Report, 20<sup>th</sup> Edition, U.S. Department of State (June 2020), available at <https://www.state.gov/trafficking-in-persons-report-2020/>
- <sup>59</sup> See National Council of State Legislatures, “Federal and State Recognized Tribes”, at <https://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx> (updated March 2020).
- <sup>60</sup> See Major Crimes Act, 18 U.S.C. §§ 1153, available at <https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partI-chap53-sec1153>. See also generally U.S. Department of Justice, Major Crimes Act at <https://www.justice.gov/archives/jm/criminal-resource-manual-679-major-crimes-act-18-usc-1153>; Tribal Court Clearinghouse, General Guide to Criminal Jurisdiction in Indian Country at <https://www.tribal-institute.org/lists/jurisdiction.htm>
- <sup>61</sup> See <https://www.federalregister.gov/documents/2019/05/09/2019-09761/missing-and-murdered-american-indians-and-alaska-natives-awareness-day-2019>
- <sup>62</sup> See <https://www.whitehouse.gov/presidential-actions/executive-order-establishing-task-force-missing-murdered-american-indians-alaska-natives/>
- <sup>63</sup> See [https://www.hud.gov/program\\_offices/spm/gmomgmt/grantsinfo/fundingopps/fy19\\_coc](https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps/fy19_coc)
- <sup>64</sup> HUD also provides new scoring to incentivize local “Continuum of Care” consortiums seeking a

- share of \$2.3 billion in homelessness assistance funding to work with local employment agencies and employers to prioritize training and employment opportunities. The competitions also reward grantees who demonstrate increased earned income among individuals served. HUD provides more than \$37.9 million in rental assistance annually to help prevent low-income residents from becoming homeless.
- <sup>65</sup> U.S. Department of Veterans Affairs, Overarching Accomplishments, at <https://www.va.gov/HOMELESS/accomplishments/accomplishments.asp>
- <sup>66</sup> See <https://www.federalregister.gov/documents/2018/03/12/2018-05113/federal-interagency-council-on-crime-prevention-and-improving-reentry>
- <sup>67</sup> In 2016, HUD and DOJ launched an \$8.7 million demonstration grant pilot program to expand permanent supportive housing models for the reentry population. DOJ's OVW administers the Transitional Housing Assistance Grants for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking (Transitional Housing Program), which supports projects that provide transitional housing with support services for victims who are homeless or in need of transitional housing due to domestic violence. DOJ also administers the Second Chance Act program, which funds state, local and tribal governments in their work to reduce recidivism for people returning from incarceration.
- <sup>68</sup> Four of the National Performance Measures now address maternal health and each state must select at least one of these measures to address with Title V funds.
- <sup>69</sup> See <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>
- <sup>70</sup> See <https://www.acf.hhs.gov/ecd/home-visiting/tribal-home-visiting>
- <sup>71</sup> Pub. L. 115-344, available at <https://www.congress.gov/115/plaws/publ344/PLAW-115publ344.pdf>
- <sup>72</sup> Data from 13 state Maternal Mortality Review Committees determined that each pregnancy-related death was associated with multiple contributing factors, including access to appropriate and high-quality care, missed or delayed diagnoses, and lack of knowledge among patients and providers around warning signs. Review Committee data also suggest the majority of deaths – 66% or more – could have been prevented by addressing these factors at multiple levels, and further the proportion that are preventable does not differ by race/ethnicity. Internationally, the CDC is involved in numerous projects to improve maternal and newborn health outcomes, largely through improved surveillance activities. A novel 5-year project, Saving Mothers Giving Life (SMGL) in Uganda and Zambia, has resulted in significant reductions in overall maternal mortality (41-44%) and perinatal mortality (13-36%). SMGL was designed within the U.S. Global Health Initiative to demonstrate that rapid public health gains in maternal and child care could be achieved through district health systems strengthening and a robust community and facility surveillance of maternal and perinatal deaths (MPDSR). A similar project, Reducing Maternal Mortality in Tanzania, which aimed to save women's lives through improved emergency obstetric and neonatal care (EmONC) services in Western Tanzania, led to a 43% decline in maternal mortality and a 45% decline in perinatal mortality in health facilities between 2013–2018. MPDSR also led to improve quality of care of vulnerable populations. In Rohingya refugee camps in Bangladesh, MPDSR is currently implemented in all (34) camps, and information collected from maternal death reviews have been used by the MCH partners to improve emergency obstetric care, human resources capacity, and strengthen the referral communication systems within camps.
- <sup>73</sup> Public Law No. 114-95, available at <https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf>. See also <https://www.ed.gov/essa?src=rn>
- <sup>74</sup> Grants, scholarships, internships and other types of educational assistance are available for American Indian students at all levels of education from the Bureau of Indian Affairs, Bureau of Indian Education, the Indian Health Service, and other governmental and non-governmental entities. In 2018, HHS, Interior, and ED revised and re-signed a Memorandum of Agreement through which they collaborate on programs and projects involving instruction in and preservation of Native American languages.
- <sup>75</sup> See *Plyler v. Doe*, 457 U.S. 202 (1982).
- <sup>76</sup> Available at [https://www2.ed.gov/policy/elsec/leg/essa/essaguidetoschoolclimate041019.pdf?utm\\_content=&utm\\_medium=](https://www2.ed.gov/policy/elsec/leg/essa/essaguidetoschoolclimate041019.pdf?utm_content=&utm_medium=)
- <sup>77</sup> Proclamation on National Sanctity of Human Life Day, 2020 at <https://www.whitehouse.gov/presidential-actions/proclamation-national-sanctity-human-life-day-2020/>
- <sup>78</sup> The U.S. policy, "Protecting Life in Global Health Assistance" (PLGHP) implemented the President's directive that no U.S. global health funds will be provided to foreign NGOs that perform or actively promote abortion as a method of family planning.
- <sup>79</sup> See <https://www.whitehouse.gov/presidential-actions/proclamation-national-sanctity-human-life-day-2020/#:~:text=Every%20person%20%E2%80%94%20the%20born%20and,all%20people%20must%20be%20defended>

- <sup>80</sup> 42 U.S.C. § 2000e, et seq., *available at* <https://www.govinfo.gov/app/details/USCODE-2010-title42/USCODE-2010-title42-chap21-subchapVI-sec2000e-2>
- <sup>81</sup> See <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>
- <sup>82</sup> 29 U.S.C. §§ 2601 et seq., *available at* <http://www.gpo.gov/fdsys/pkg/USCODE-2013-title29/html/USCODE-2013-title29-chap28.htm>
- <sup>83</sup> See 29 CFR § 825.112, 120-121, *available at* <https://www.gpo.gov/fdsys/pkg/CFR-2014-title29-vol3/pdf/CFR-2014-title29-vol3-sec825-112.pdf>; <https://www.gpo.gov/fdsys/pkg/CFR-2012-title29-vol3/pdf/CFR-2012-title29-vol3-sec825-120.pdf>; <https://www.gpo.gov/fdsys/pkg/CFR-2012-title29-vol3/pdf/CFR-2012-title29-vol3-sec825-121.pdf>
- <sup>84</sup> See National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-120, *available at* <https://www.govtrack.us/congress/bills/116/s1790/text>
- <sup>85</sup> 29 U.S.C. §§ 1801-1872, *available at* <https://www.govinfo.gov/content/pkg/USCODE-2009-title29/html/USCODE-2009-title29-chap20.htm>; *see also* <https://www.dol.gov/agencies/whd/agriculture/mspa>
- <sup>86</sup> See generally 20 CFR part 655, subpart B, *available at* <https://www.govinfo.gov/content/pkg/CFR-2019-title20-vol3/xml/CFR-2019-title20-vol3-part655.xml>
- <sup>87</sup> 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.
- <sup>88</sup> For example, the Federal Interagency Working Group on Environmental Justice identifies disproportionately high and adverse human health or environmental effects on minority and low-income populations, and coordinates work relating to these issues. *See, e.g.*, HHS’s 2016 Progress Report, <https://www.hhs.gov/sites/default/files/2016-hhs-ej-progress-report.pdf> and EPA’s Environmental Justice FY 2019 Progress Report, [https://www.epa.gov/sites/production/files/2019-11/documents/11.19.19\\_ej\\_report-final-web-v2s.pdf](https://www.epa.gov/sites/production/files/2019-11/documents/11.19.19_ej_report-final-web-v2s.pdf). EPA’s environmental justice priorities have focused on demonstrating tangible improvements in and protections for health and the environment, including the human environment, for all Americans. Examples of this commitment include developing measures to reduce blood lead levels in children, cleaning up contaminated sites, expanding access to safe drinking water, and implementing the EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples. Additionally, in 2019, at a U.S. Government side event held during the Permanent Forum on Indigenous Issues, the EPA, the Advisory Council on Historic Preservation, and the U.S. Forest Service discussed federal efforts to integrate traditional knowledge.
- <sup>89</sup> Public Law No. 116-26, *available at* <https://www.congress.gov/116/plaws/publ26/PLAW-116publ26.pdf>
- <sup>90</sup> The United States has also reached agreements on migration and border security with Guatemala, El Salvador, and Honduras, including Asylum Cooperation Agreements; the Migrant Protection Protocols, which provides for certain aliens to remain in Mexico while awaiting their immigration court hearings; an Interim Final Rule on Asylum Eligibility and Procedural Modifications, which provides that aliens who cross the U.S. southern border without having sought protection in at least one country en route are ineligible for asylum, with certain limited exceptions; and the Final Rule on Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children.
- <sup>91</sup> See *Furman v. Georgia*, 408 U.S. 238 (1972); *Brown v. Plata*, 131 S. Ct. 1910 (2011).
- <sup>92</sup> *Rochin v. California*, 342 U.S. 165 (1952).
- <sup>93</sup> See *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015).
- <sup>94</sup> Under 18 U.S.C. § 242, *available at* <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap13.pdf>, 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 and from summary punishment or cruel and unusual punishment, and the right not to be deprived of liberty without due process of law. Torture, cruel, inhuman or degrading treatment or punishment are also prohibited under other U.S. 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; state laws that expressly criminalize torture; 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. The Detainee Treatment Act of 2005, 42 U.S.C. § 2000dd, *available at* <https://www.govinfo.gov/app/details/USCODE-2010-title42/USCODE-2010-title42-chap21D-sec2000dd>, 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.”
- <sup>95</sup> 10 U.S.C. § 948r, *available at* <https://www.govinfo.gov/app/details/USCODE-2010->

title10/USCODE-2010-title10-subtitleA-partII-chap47A-subchapIII-sec948r

- <sup>96</sup> 10 U.S.C. § 948r, *available at* <https://www.govinfo.gov/app/details/USCODE-2010-title10/USCODE-2010-title10-subtitleA-partII-chap47A-subchapIII-sec948r>
- <sup>97</sup> *See* <https://obamawhitehouse.archives.gov/the-press-office/2014/01/17/presidential-policy-directive-signals-intelligence-activities>
- <sup>98</sup> For further information, including reports issued by PCLOB, *see* <https://www.pclob.gov/>
- <sup>99</sup> For example, on January 19, 2018, the President signed the FISA Amendments Reauthorization Act of 2017, preserving and extending until December 31, 2023, with amendment, the authority of § 702 of the Foreign Intelligence Surveillance Act (FISA), which section allows the Intelligence Community of the United States Government, under robust oversight by all three branches of Government, to collect critical intelligence on international terrorists, weapons proliferators, and other important foreign intelligence targets located outside the United States. U.S. courts that have considered § 702 have found it to be legal and consistent with the Fourth Amendment to the U.S. Constitution. The FISA Amendments Reauthorization Act of 2017 establishes additional procedures to further protect 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 obtain an order from the Foreign Intelligence Surveillance Court before accessing the contents of § 702-acquired communications that were retrieved using certain U.S. person “query” terms, unless the FBI has a reasonable belief that such contents could assist in mitigating or eliminating a threat to life or serious bodily harm. In order to open such a predicated investigation, the FBI must have information or an allegation indicating the existence of an activity constituting a federal crime. 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.
- <sup>100</sup> For the first time, the Guidelines were released to the public in full, without redaction or classified appendix. *See* <https://www.cia.gov/about-cia/privacy-and-civil-liberties/Detailed-Overview-CIA-AG-Guidelines.pdf>; [https://www.dni.gov/files/CLPT/documents/Chart-of-EO-12333-AG-approved-Guidelines\\_May-2017.pdf](https://www.dni.gov/files/CLPT/documents/Chart-of-EO-12333-AG-approved-Guidelines_May-2017.pdf)
- <sup>101</sup> *See* <https://www.cia.gov/about-cia/privacy-and-civil-liberties>
- <sup>102</sup> Please see the 2020 report at <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-releases-2019-privacy-data-security-update>. In addition, several states have enacted or are considering state privacy laws. Two states – California and Nevada – have enacted comprehensive laws governing the use of personal information, and state legislatures in approximately 15 other states have comprehensive laws under consideration. According to the National Conference of State Legislatures, as of May 2019, a number of states had laws regulating privacy in more specific contexts. For more, *see* <https://iapp.org/news/a/us-state-comprehensive-privacy-law-comparison/>
- <sup>103</sup> *See* <https://www.defense.gov/Explore/News/Article/Article/1831742/dod-sexual-assault-prevention-and-response-what-you-need-to-know/>
- <sup>104</sup> *See* <https://www.defense.gov/Explore/News/Article/Article/1831742/dod-sexual-assault-prevention-and-response-what-you-need-to-know/>
- <sup>105</sup> This figure represents about 13,000 women and 7,500 men.
- <sup>106</sup> *See* [https://media.defense.gov/2019/May/02/2002127159/-1/-1/1/SAAITF\\_REPORT.PDF](https://media.defense.gov/2019/May/02/2002127159/-1/-1/1/SAAITF_REPORT.PDF)
- <sup>107</sup> *See* [https://www.sapr.mil/sites/default/files/20190426\\_PPoA\\_FULL.pdf](https://www.sapr.mil/sites/default/files/20190426_PPoA_FULL.pdf)
- <sup>108</sup> *See* <https://media.defense.gov/2019/May/02/2002126804/-1/-1/1/ACTIONS-TO-ADDRESS-AND-PREVENT-SEXUAL-ASSAULT-IN-THE-MILITARY.PDF>
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