

BLACK, BROWN and INDIGENOUS PEOPLE)	International Convention on
)	the
RESIDING IN THE UNITED STATES)	Prevention and Punishment
)	of the Crime
Plaintiffs)	of Genocide,
)	General Assembly Resolution
)	260A
v.)	
)	
THE UNITED STATES and STATE and)	18 U.S. Code 1091 -
)	Genocide
LOCAL POLITICAL SUBDIVISIONS)	
Defendants.)	

INDICTMENT

The Black, Brown and Indigenous People of the United States Charge the United States of America with gross violations of International and U.S. domestic laws pertaining to genocide, civil and human rights, torture, and racial discrimination:

Jurisdiction - Under International Criminal Law, the U.S. Law on Genocide, and other specific international conventions violations to be addressed in each count of the indictment.

OPENING STATEMENT

COUNTS:

- I POLICE RACISM AND VIOLENCE
- II MASS INCARCERATION
- III POLITICAL PRISONERS/PRISONERS OF WAR
- IV ENVIRONMENTAL RACISM
- V PUBLIC HEALTH INEQUITIES

DAMAGES/REMEDIES

CLOSING STATEMENT

EXHIBITS

- 1. ENDORSING ORGANIZATIONS
- 2. Witness List
- 3. Appendix
- 4. Resource List

OPENING STATEMENTS

This case calls out the grave harms caused by the THE UNITED STATES government and STATE and LOCAL POLITICAL SUBDIVISIONS (hereinafter “the government”) in their oppressive treatment of THE BLACK and BROWN CITIZENS and RESIDENTS OF THE UNITED STATES (hereinafter “people of color”).

The Government has committed both intentional and grossly negligent criminal and civil patterns and practices of abuse. It has done this through acts and omissions which denied People of Color their rights to life, liberty and the pursuit of freedom and justice.

The charges brought here are not exhaustive, but cover large areas of government liability. The government’s acts and omissions in this charging document are in violation of the US Constitution, as well as federal state and local laws.

In addition to the government acts and omissions which violate its own laws, these acts and omissions also violate international treaties, conventions and protocols. The Government has failed to honor the international treaties, conventions and protocols it has signed and ratified. The Government has also failed to sign and/or ratify other international treaties in order to avoid sanctions or prosecution for non-compliance, and escape resulting liabilities for violations as alleged here. The Government’s failure to sign or ratify does not excuse its guilt for the underlying behavior.

The breadth and depth of government acts and omissions against black and brown peoples of color, and their failure to repair this historic damage amount to Intentional Genocide.

The historic precedent for the filing of the present charges is the petition, We Charge Genocide: The Crime of Government Against the Negro People, filed with the United Nations in Paris by the Civil Rights Congress (CDC) in December 1951. The petition accused the United States government of genocide based on the UN Genocide Convention.

The responses of the US government were to intercept and confiscate copies of the petition William Patterson, leader of the CDC, sent to UN delegates, and to confiscate Patterson’s passport when returned from Paris.

THE LAW - [Cite the provisions of the Genocide Convention, putting the U.S. changes in brackets]

PARTIES Plaintiffs

BLACK, BROWN AND INDIGENOUS PEOPLE, are the class of members of the following racial and national groups:

People of African descent brought to the US by 400 years of chattel slavery, or by immigration from former slave territories, often as a result of additional economic oppression brought upon them post slavery by DEFENDANT US government and co conspirator former colonial powers, following the independence of the lands of their birth.

People of Latinx descent, both natives of territories taken or acquired by the expanding US and those who migrated to US territory, often as a result of further economic oppression brought upon them by the Defendant US government and the former colonial powers following their independence

First Nation Peoples, original to the lands now occupied by Defendant US, mostly taken by force and/or breach of genuine and fraudulent Treaties with Indigenous Nations and/or or interlopers.

PARTIES Defendants

THE UNITED STATES GOVERNMENT and STATE, COUNTY and LOCAL POLITICAL SUBDIVISIONS, are the executive, legislative and judicial branches of all levels of US government.

FACTUAL ALLEGATIONS/CHARGES

NOTE: LIST relevant int laws citations AT END OF EACH SECTION

The charges here are brought in the following areas:

- 1) Police Racism and Violence
- 2) Mass Incarceration
- 3) Political Prisoners/ Prisoners of War
- 4) Environmental Racism
- 5) Public Health Inequity, and, as the overarching allegation to all the above allegations, Genocide.

COUNT 1

I. Police Racism & Violence - Introduction

The Black, Brown and Indigenous People of the United States charge the United States with gross violations of international and U.S. domestic laws pertaining to genocide, civil and human rights, torture, and racial discrimination. Specifically, the United States is accused of inflicting police racism and violence against Black, Brown and Indigenous communities, [insert public health charge], [insert political prisoners charge], and perpetuating a criminal justice system in disregard of the “just requirements of morality, public order, and the general welfare,” as called for in the Universal Declaration of Human Rights, Article 29.

II. The United States is charged with inflicting police racism and violence against Black, Brown and Indigenous communities. Specifically:

A. The United States systemically executes Black, Brown and Indigenous communities through the unchecked practices of Police Brutality.

The United States of America systemically executes Black, Brown and Indigenous communities through the unchecked practices of Police Brutality. Police brutality includes “physical, psychological, and legal abuse that entails ‘more force than is necessary to effect a lawful arrest or search, and/or the wanton use of any degrees of physical force against another by a police officer.’”¹ However, police officers are only authorized to use force “when strictly necessary and to the extent required for the performance of their duty.”² On the one hand, to determine whether the use of force is “strictly necessary,” police officers should only use

¹ *Police Genocide? Evaluating Police Brutality Against Black Americans under International Criminal Law*, Udodilim Nnamdi (2021).

² *Code of Conduct for Law Enforcement Officials*, G.A. Res. 34/169 of 17 (Dec. 17, 1979).

firearms when “a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.”³ To determine the “extent required for the performance of their duty,” a police officer should act “in accordance with a principle of proportionality.”⁴

Even when not strictly necessary, the United States systemically executes Black, Brown and Indigenous communities through the unchecked practices of Police Brutality. In fact, members of the Black community are “over 2.5x more likely than white Americans to be fatally shot by police” regardless of whether the victim posed any threat.⁵ In addition, between 2013-2019, Black people were “more likely to be killed by police, more likely to be unarmed, and less likely to be threatening someone when killed.”⁶ For example, on March 13, 2020, in Louisville, Kentucky, several police officers murdered a sleeping Breonna Taylor by blindly shooting 32 bullets into her apartment at 12:40 a.m.⁷ The killing of Breonna Taylor was not strictly necessary because Breonna Taylor was asleep. Hence, Breonna Taylor was in no position to offer armed resistance or otherwise jeopardize the lives of anyone because she was unconscious. In fact, police officers blindly shot into Breonna Taylor’s apartment, demonstrating that officers did not assess whether the use of their force was “strictly necessary” because an assessment would have required them to at least see Breonna Taylor before shooting.

³ *Id.*

⁴ *Id.*

⁵ *Police Genocide? Evaluating Police Brutality Against Black Americans under International Criminal Law*, Udodilim Nnamdi (2021).

⁶ *Id.*

⁷ *Breonna Taylor is Killed by Police in Botched Raid*, from <https://www.history.com/this-day-in-history/breonna-taylor-is-killed-by-police>.

Accordingly, even when not strictly necessary, the United States systemically executes Black, Brown and Indigenous communities through the unchecked practices of Police Brutality.

Even when beyond the scope of their duty, the United States systemically executes Black, Brown and Indigenous communities through the unchecked practices of Police Brutality. In fact, “one-third of the 14 cities investigated from 2008-2018 were found to use excessive force [against] Black Americans.”⁸ In addition, the UN Committee on the Elimination of Racial Discrimination declared a “disproportionate use of excessive force by law enforcement officers against people of color remains endemic across the United States.”⁹ For example, on May 25, 2020, in Minnesota, Minneapolis, a white police officer, Derek Chauvin, murdered an unarmed Black man, George Floyd.¹⁰ After an arrest for “counterfeit currency,” the world watched a handcuffed George Floyd lose his breath and life after Chauvin knelt on George Floyd’s neck for nine minutes and 29 seconds.¹¹ The killing of George Floyd was beyond the scope of Chauvin’s duty because the killing was not proportional to an arrest for “counterfeit currency.”¹² The killing was not proportional because the penalty for knowingly using counterfeit money less than \$1000 is up to 1 year in prison and a fine of up to \$3000-not death.¹³ Accordingly, even when

⁸ *Police Genocide? Evaluating Police Brutality Against Black Americans under International Criminal Law*, Udodilim Nnamdi (2021).

⁹ *Id.*

¹⁰ *Former Officer Knelt on George Floyd for 9 minutes and 29 seconds-not the infamous 8:46*, Eric Levenson, from <https://www.cnn.com/2021/03/29/us/george-floyd-timing-929-846/index.html>.

¹¹ *Id.*

¹² *Id.*

¹³

beyond the scope of their duty, the United States systemically executes Black, Brown and Indigenous communities through the unchecked practices of Police Brutality.

Of course, some may argue that the United States of America does not systemically execute Black, Brown and Indigenous communities through the unchecked practices of Police Brutality. Specifically, those who share similar sentiments as former United States of America President, Donald Trump, argue that “. . . white people also get killed by law enforcement in the U.S.”¹⁴ However, despite making up only 13% of the population, Black Americans accounted for 28% of the total U.S. police violence victims between 2013-2019.¹⁵ In fact, the American Public Health Association declared the “clear link between racism and Black deaths at the hands of law enforcement” a “public health crisis.”¹⁶ Accordingly, while white people also get killed by law enforcement, Black people are killed at a “far higher rate.”¹⁷

In conclusion, the United States systemically executes Black, Brown and Indigenous communities through the unchecked practices of Police Brutality.

B. The United States perpetuates police racism and violence through the hyper-criminalization and torture of Black, Brown, and Indigenous communities.

The United States of America perpetuates police racism and violence through the hyper-criminalization and torture of Black, Brown, and Indigenous communities. However, police

¹⁴ *Trump twists stats on police brutality: ‘more white people’ are killed*, Joanna Walters, from <https://www.theguardian.com/us-news/2020/jul/14/donald-trump-george-floyd-police-killings>

¹⁵ *Police Genocide? Evaluating Police Brutality Against Black Americans under International Criminal Law*, Udodilim Nnamdi (2021).

¹⁶ *Id.*

¹⁷ *Trump twists stats on police brutality: ‘more white people’ are killed*, Joanna Walters, from <https://www.theguardian.com/us-news/2020/jul/14/donald-trump-george-floyd-police-killings>

officers are required to “ensure the full protection of the health of persons ... take immediate action to secure assistance or medical attention whenever required”¹⁸ This requirement includes securing medical attention even for victims “in violation of law or of accidents occurring in the course of violations of law.”¹⁹

In addition, police officers may not “inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment ... “²⁰ Torture is any physical or mental act intentionally inflicted by a public official for (1) obtaining information or a confession; (2) punishing the suspected offender for an act committed or suspected of committing; or, (3) intimidating a suspected offender.²¹ Furthermore, “cruel, inhuman or degrading treatment or punishment” spans the “widest possible protection” against physical and mental abuses.²² In fact, “grave, long-term disadvantages” resulting from such harms need not be permanent.²³

The United States of America perpetuates police racism and violence through the torture of Black, Brown, and Indigenous communities. The Chicago torture cases covering the investigation of the Chicago Police Department between 1972-1991 revealed there was “an established practice of brutality torturing Black people ...”²⁴ Comparatively, police torture

¹⁸ *Code of Conduct for Law Enforcement Officials*, G.A. Res. 34/169 of 17 (Dec. 17, 1979).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Police Genocide? Evaluating Police Brutality Against Black Americans under International Criminal Law*, Udodilim Nnamdi (2021).

²⁴ *Id.*

continues to persist in cases around the United States today. For example, on August 9, 2014, a white police officer, Darren Wilson, murdered an unarmed Black teenager, Michael Brown Jr.²⁵ The murder and subsequent handling of Michael Brown was torture because a public official, Wilson, intentionally shot Michael Brown to punish him after he was suspected of committing the crime of theft. After Michael Brown's attempt to distance himself from Wilson, Wilson shot the unarmed teenager.²⁶ In addition, the murder and subsequent handling of Michael Brown was torture because it was cruel, inhuman, and degrading behavior for police officers to leave Michael Brown's lifeless body in the street for four hours without assistance or medical attention. Accordingly, The United States of America perpetuates police racism and violence through the torture of Black, Brown, and Indigenous communities.

The United States of America perpetuates police racism and violence through the hyper-criminalization of Black, Brown, and Indigenous communities. Hyper-criminalization is the process by which an individual's everyday behaviors and styles become ubiquitously treated as deviant, risky, threatening or criminal . . . ”²⁷ In fact, Black adults are five times as likely as whites to say police have unfairly stopped them due to their race.²⁸ In addition, 84% of Black

²⁵ *Missouri Police Officer who Killed Michael Brown Faces No Charges*, Raja Razek, from <https://www.cnn.com/2020/07/30/us/ferguson-missouri-michael-brown-darren-wilson-no-charges/index.html>.

²⁶ *Id.*

²⁷ *Youth and Punishment; The hyper criminalization of Black and Brown Boys*, Leslie Berestein Rojas, from <https://archive.kpcc.org/blogs/multiamerican/2011/09/20/7369/youth-and-punishment-on-the-hypercriminalization-o/>.

²⁸ *10 Things We Know about Race and Policing in the U.S.*, Drew Desilver, Michael Lipka, and Dalia Fahmy, from <https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/>.

and 63% of white people agree that Black people are treated less fairly than whites in dealings with the police.²⁹ This hyper-criminalization of Black, Brown and Indigenous communities creates and perpetuates grave, long-term disadvantages because “over-policing of Black neighborhoods leads to police officers that ‘... are primed to respond with more violence than they would in white neighborhoods.’”³⁰ In fact, the dichotomy between the treatment of White communities versus the hyper-criminalization in Black communities shot to the forefront as a result of the social-distance policing measures resulting from COVID-19 protocols. For example, on May 3, 2021, activist Zellie Imani illustrated this dichotomy with a viral tweet.³¹ In the first image, a police officer from the New York Police Department (NYPD) sought to enforce COVID-19 protocols by resting his foot on the neck of a Black man.³² In the second image, a police officer from the same Police Department sought to enforce COVID-19 protocols by simply handing out masks to a White couple.³³ Within the same city and the same police department, Black communities were hyper-criminalized-even amidst a deadly pandemic. As this dichotomy demonstrates, the hyper-criminalization of Black communities perpetuates grave, long-term disadvantages which may prove to be as fatal. Accordingly, the United States of America perpetuates police racism and violence through the hyper-criminalization of Black, Brown, and Indigenous communities.

²⁹ *Id.*

³⁰ *Police Genocide? Evaluating Police Brutality Against Black Americans under International Criminal Law*, Udodilim Nnamdi (2021).

³¹ <https://twitter.com/zellieimani/status/1257094389396054016?s=20>

³² *Id.*

³³ *Id.*

With this said, some may argue that the United States of America does not perpetuate police racism and violence through the hyper-criminalization and torture of Black, Brown, and Indigenous communities. Specifically, some may argue that hyper-criminalization is the *result* of violence that already exists within Black, Brown, and Indigenous communities. However, research demonstrates that “overt racism and prejudice combined with unrestricted police discretion, a ‘code of silence’ within police departments, and an absence of proper disciplinary measures to hold perpetrators of excessive deadly force accountable all contribute to the disproportionate rates of police brutality ... “³⁴ In fact, “negrophobia”, the irrational fear of Black people, creates and perpetuates a false sense of threat, used to justify killings of Black people.³⁵ Said justifications stem from the 1880-1950 slave patrol era, where patrolers were “responsible for maintaining the racial order by quelling slave rebellions and capturing runaway slaves through horrific methods such as castration, whipping, maiming, and lynching.”³⁶ Accordingly, hyper-criminalization is not the result of violence that already exists within Black communities, but rather a historical continuance rooted in racism and violence.

In conclusion, the United States of America perpetuates police racism and violence through the hyper-criminalization and torture of Black, Brown, and Indigenous communities.

C. The United States inflicts police violence on Black, Brown and Indigenous communities through criminalization that creates slow death conditions and apartheid.

³⁴ *Police Genocide? Evaluating Police Brutality Against Black Americans under International Criminal Law*, Udodilim Nnamdi (2021).

³⁵ *Id.*

³⁶ *Id.*

Police violence in the United States is deployed as a means of persecution and oppression. Resorting to violent practices that harm, dehumanize, and terrorize a protected group is a major signal to the intention to destroy a protected group in whole or part³⁷. The action charged violates Article 7 of International Criminal Court's Rome Statute, which expanded the list of prohibited acts to include apartheid³⁸. Apartheid is the "institutionalized" regime of systematic oppression and domination over any other racial group systematically oppressing them³⁹. Systematic oppression includes a political objective plan or ideology that calls for the persecution of a community. The targeting of the black community by law enforcement leads to systemic loss of resources needed to sustain life; "access to housing, employment, ability to purchase life insurance⁴⁰." Loss of these resources creates slow death conditions in which the black community gradually has a lower quality of life and life span.

The United States has discriminately and violently disciplined black and brown students through school administration and School Resource Officers (SROs)⁴¹. Black and Brown students are more likely to be disciplined under strict middle school administrators⁴². Schools

³⁷ United Nations, *Framework for Analysis and Atrocity Crimes*, 2014.

³⁸ UN General Assembly, *Rome Statute of the International Criminal Court*, Nov. 2010.

³⁹ *Id.*

ICTY Blaskic decision

⁴⁰ Ben Crump, *I believe black Americans face a genocide. Here's why I choose that word.* The Guardian, November 15 2019.

⁴¹ Andrew Bacher-Hicks, Stephen Billings & David Deming, *Proving the School-to-Prison Pipeline*, Education Next, Found [Proving the School-to-Prison Pipeline - Education Next](#).

⁴² *Id.*

with officers are more likely to refer students to law enforcement⁴³. School Resource officers are increasingly involved in handling minor disciplinary issues, which has led to arrest after tantrums in elementary schools and other petty infractions⁴⁴. The high tickets, arrests, and violence inflicted on disproportionately black and brown students result in a decreased likeliness to graduate⁴⁵ and increased likelihood to have police arrest and incarcerate them as adults. The increased violence SROs add to their interactions with students can be exemplified in the viral video of deputy Ben Fields flipping and dragging a student in a South Carolina classroom⁴⁶. These harmful acts violate United Nations Standard Minimum Rules for the Administration of Juvenile Justice⁴⁷. The frequency and efficiency in which black and brown students are criminalized as children by SROs, arrested and ticketed, then introduced to incarceration is referred to as the school-to-prison pipeline. The school-to-prison pipeline slowly and systemically exposes children to police violence, creating apartheid slow death conditions instead of opportunity.

Detractors may claim that increased disparities in discipline are due to the different behavior of students in protected groups. However, a study found that students predictably had an increased likelihood of being suspended or expelled attending a high suspension school when

⁴³ Jason P. Nance, *Students, Police, and the School-to-Prison Pipeline*. UF Law Faculty Publications (2016).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Associated Press, *No Criminal Charges for deputy seen dragging South Carolina high school student in video*, CBS News, Sept. 5, 2016, [No criminal charges for deputy seen dragging South Carolina high school student in video - CBS News](#).

they previously attended a low suspension school, suggesting that school administrators' use of SROs was the defining factor⁴⁸.

Civilians also weaponize police violence as a means of racial profiling and control. Many high-profile incidents highlighted the pattern of calling the police on black people who were not committing a crime, which has been popularly called the crime of existing while black⁴⁹. Notable examples include an instance in Oakland, for a family cooking out in a park⁵⁰, Black women golfing too slowly⁵¹, and a birdwatcher in Central Park in New York City⁵². As a result, a poll reported that 28% of blacks have had the police called on them compared to 4% white⁵³. Such instances can begin a deadly chain of events, exemplified by Jonathan Crawford, who was gunned down in a Walmart in Ohio after a customer called 911 when they saw him carrying a

⁴⁸ Andrew Hicks, Stephen Billings & David Deming, *Proving the School to Prison Pipeline*, Education Next, [Proving the School-to-Prison Pipeline - Education Next](#)

⁴⁹

⁵⁰

Carla Herreria Russo, *Woman Calls Police On Black Family For BBQing At A Lake In Oakland .Their crime?* Using the wrong type of grill in a barbecue-designated zone, May 18 2018, https://www.huffpost.com/entry/woman-calls-police-oakland-barbecue_n_5af50125e4b00d7e4c18f741

⁵¹ Joel Beall, *Police were called on five African-American women for playing too slow. The women allege the crime was "golfing while black."* [Inside a two-year fight for justice](#), Golf Digest, April 30, 2020, [Police were called on five African-American women for playing too slow. The women allege the crime was "golfing while black." Inside a two-year fight for justice | Golf News and Tour Information | Golf Digest](#)

⁵² David K. Lee, *Charges dropped against white woman who called the cops on a black bird watcher*, NBC News, Feb 16, 2021, [Charge dropped against white woman who called police on Black bird-watcher \(nbcnews.com\)](#).

⁵³ Huffpost: Racial Experience, Huff Post (66 from White caller crime)

gun sold in the store⁵⁴. In both instances of racially motivated police reporting (which criminalizes behavior that would not be suspect if the subject was white) and racially weaponized police reporting (efforts to capitalize on law enforcement mistreatment of blacks), the result is often physical and emotional harm with a profound and long-lasting impact⁵⁵. This charge is evidenced by *Hall v Oches*⁵⁶. The ways civilians weaponize police against blacks function to remove black presence (enforcing de facto segregation), the keep blacks in a subjugated place, and as tools of gentrification (to deprive black people of property and resources necessary to sustain life)⁵⁷.

Law enforcement rarely deters racialized police communication. In a few instances has law enforcement prosecuted for false reporting⁵⁸. Moreover, when vigilantes decide to act out violence before police intervention, laws and policies protect vigilantes' right not to be prosecuted⁵⁹. In the case of Trayvon Martin, a teenager followed and attacked by George

⁵⁴ Elahe Izadi, *Ohio Wal-Mart surveillance shows police shooting and killing John Crawford III*, Washington Post, Sept. 25, 2014, [Ohio Wal-Mart surveillance video shows police shooting and killing John Crawford III - The Washington Post](#).

⁵⁵ Harvard T.H. Chan sch. Pub. Health, *Discrimination in America* (2017) (

⁵⁶ *Hall v. Oches*, 817 F.2d 920 (1st Cir. 1987).

⁵⁷ Chan Tov McNamara, *White Caller Crime: Racialized Police Communication and Existing While Black*, 24 Mich. J. Race & L.,(2019).

⁵⁸ *Id.*

⁵⁹ Ebony Slaughter-Johnson, *'Stand Your Ground' Law Encourages Dangerous Vigilantism*, Institute for Policy Studies, Sept. 18, 2018, ['Stand Your Ground' Laws Encourage Dangerous Vigilantism - Institute for Policy Studies \(ips-dc.org\)](#)

Zimmerman while walking home from a convenience store; law enforcement declined to arrest his killer⁶⁰.

Critics may argue that this pattern of racialized police communication is too recent (with many famous examples shared through social media) and anecdotal to constitute intentional infliction of genocide. However, using police to enforce personal bias on black people doing daily activities is a longstanding practice evident in the sit-in Cases, *Loving v. Virginia* and *Lawrence*. Moreover, the courts have recognized since 1987 that calling the police on black people can have devastating effects⁶¹.

D. The United States Imposed measures meant to prevent births to Black, Brown, and Indigenous people being held in detention and coerced those facing charges into sterilization.

In California, Prison officials sterilized at least 148 female inmates without consent⁶². Likewise, Immigration and Customs Enforcement (ICE) has sterilized detainees without consent⁶³. Judges and prosecutors exchanged lighter sentences in agreement to undergo

⁶⁰ Barbra Liston, *Zimmerman studied Florida's 'Stand Your Ground' law: witness*, Reuters, July 3, 2013, [Zimmerman studied Florida's 'Stand Your Ground' law: witness | Reuters](#).

⁶¹ *Id.*

⁶² *Female Inmates Sterilized in California Prisons Without Approval*, Corey G. Johnson, found <https://revealnews.org/article/female-inmates-sterilized-in-california-prisons-without-approval/>

⁶³ Nicole Narea, *The outcry over ICE and hysterectomies explained*, Sept. 18, 2020, <https://www.vox.com/policy-and-politics/2020/9/15/21437805/whistleblower-hysterectomies-nurse-irwin-ice>.

sterilization⁶⁴⁶⁵⁶⁶. Lawmakers in Arizona and Louisiana advocated for making sterilization a requirement for getting public assistance from the state⁶⁷⁶⁸. These efforts demonstrate a willingness to use the state's power to further coerce sterilization from vulnerable black, brown, and indigenous people. These acts were done directly and intentionally to prevent births within the protected group in violation of UN resolution 61/295⁶⁹ and the Bangkok Rules⁷⁰

Though one could argue that these incidents are isolated, that would ignore events' context given the history of the eugenics movement and forced sterilizations in the United States⁷¹. These incidents manifested out of a belief that poor black, brown, and indigenous

⁶⁴ Shelia Burke, *Nashville Prosecutors require sterilization as part of plea deals*, Boston Globe, March 29 2015, <https://www.bostonglobe.com/news/nation/2015/03/28/attorneys-say-sterilizations-were-part-plea-deal-talks/oArBniU59sFIcImHpfqFUN/story.html?hootPostID=b61322f6537a63488008f94b54bd111e>

⁶⁵ David Boucher, *Tennessee Judge reprimanded for order shaving off jail time for inmates who receive vasectomies*, The Tennessean, Nov. 21, 2017, <https://www.tennessean.com/story/news/2017/11/20/tennessee-judge-reprimanded-shaving-off-jail-time-inmates-who-received-vasectomies-white-county/880733001/>

⁶⁶ Found <https://www.oklahoman.com/article/5582478/offender-awaiting-sentencing-in-counterfeit-chSeck-case-gets-operation-making-her-sterile-at-judges-suggestion>

⁶⁷ Marcus Baram, *Pol Suggests Paying Poor Women to Tie Tubes*, ABC News, Sept. 25, 2008, [Pol Suggests Paying Poor Women to Tie Tubes - ABC News \(go.com\)](http://abcnews.go.com/Pol/Suggests-Paying-Poor-Women-to-Tie-Tubes-ABC-News/story?id=3811111).

⁶⁸ Racheal Roth & Sarah L. Ainsworth, *"If They Hand You a Paper, You Sign It": A Call to End the Sterilization of Women in Prison*, 26 *Hastings' Women's L.R.* 7 (2015).

⁶⁹United Nations, *United Nations Declaration on the Rights of Indigenous Peoples (UN Doc 61/295)*, New York, 2007, [DRIPS_en.pdf \(un.org\)](https://www.un.org/development/dmpr/dp/indigenous-peoples/docs/61_295_en.pdf)

⁷⁰ United Nations Economic Security Council, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, 65/229, Rule 9, March 16, 2011.

⁷¹ *Id.*

women are not fit to be mothers⁷²⁷³. One could also point out the disparities in sterilization among races outside of state-controlled/influenced healthcare of prison and courts to argue these differences are preferential⁷⁴. However, Hispanic and Native women's likelihood to want children after sterilization suggest that the surgeries are premature. Premature surgeries could result from health complication, limited contraceptive options, or healthcare providers' intention to stop reproduction⁷⁵.

The wholesale targeting of African Americans for police contact and arrest, as described above, adds to efforts to prevent births. Targeting children for criminalization through the school-to-prison pipeline and teens and young adults through the practices such as stop and frisk has led to large percentages of black and brown people incarcerated during their prime child bearing years, resulting in 53% of female prisoners being women of color⁷⁶ and black women being twice as likely as white women to go to prison⁷⁷⁷⁸. Incarceration and policing policies (bought on

⁷² *Id.*

⁷³ Cozzarelli Catherine, Wilkinson Anna V, Tagler Michael J. *Attitudes Toward the Poor and Attributions for Poverty*. Journal of Social Issues. 2001;57:207–27

⁷⁴ Katrina M. Shreffler, Julia McQuillan, Arthur L. Griel, & David R. Johnson, *Surgical Sterilization, Regret and Race: Contemporary Patterns*, Social Science Research, March 2015.

⁷⁵ *Id.*

⁷⁶ Carson J. Bronson, *Prisoners in 2017*, Washington, DC: Bureau of Justice Statistics; 2019. NCJ 252156.

⁷⁷ *Id.*

⁷⁸ Sentencing Project, *Criminal justice facts*, <https://www.sentencingproject.org/criminal-justice-facts>.

through hyper-criminalization described above) have spillover effects on family formation patterns in the black community⁷⁹.

Incarceration secludes prisoners and detainees from the opposite sex and eliminates the opportunity to procreate. Targeting and hyper policing young black and brown people during childbearing years can prevent births for those groups.

E. The United States has intentionally and forcibly transferred the children of Black incarcerated parents and Brown immigrants to others as part of policy.

The United States has forcibly separated over 5,500 families through ICE⁸⁰. Some separated children were adopted with full custody given to their foster parents⁸¹. After separating the families, ICE deported most parents while their children remained in the U.S.⁸² These acts were intentionally carried out as part of a “zero tolerance” policy to penalize parents who migrate through the southern border⁸³. Agents entered inadequate information into the database resulting in being unable to locate hundreds of parents⁸⁴. These acts were carried out in violation of 18 USC 1091.

⁷⁹ Siobhan M. O’Keefe, *Baby’s Gone: The Effects of Increased Sentencing Severity on Fertility and Family Formation*, American Economic Association, 2019.

⁸⁰ *Id.*

⁸¹ Associated Press, *Deported parents may lose kids to adoption investigation finds*, NBC News, [Deported parents may lose kids to adoption, investigation finds \(nbcnews.com\)](https://www.nbcnews.com/news/Deported-parents-may-lose-kids-to-adoption-investigation-finds-nbcnews.com)

⁸² Brent McDonald, *Many Families Torn Apart at Southern U.S. Border Face a Long and Uncertain Wait*, New York Times, July 27, 2021, [Many Families Torn Apart at Southern U.S. Border Face a Long and Uncertain Wait - The New York Times \(nytimes.com\)](https://www.nytimes.com/2021/07/27/us-immigration/families-separated-border.html).

⁸³ *Id.*

⁸⁴ Andrew Eversden, *Why Homeland Security lost track of its kids it separated at the border*, F. Times, Dec 2, 2019, [Why Homeland Security lost track of kids it separated at the border \(federaltimes.com\)](https://www.federaltimes.com/2019/12/02/why-homeland-security-lost-track-of-its-kids-it-separated-at-the-border/)

Some may argue that this unfortunate circumstance leading to family separation results from government incompetence rather than intentional genocide. However, the practice of child separation is a long-practiced one from the U.S. government through indigenous boarding schools and relocation. The U.S. intentionally used these tactics to deprive the students of their culture and “kill the Indian, save the man⁸⁵.”

Furthermore, the hyper criminalization and targeting of black parents by police often results in temporary and eventually permanent custody rights to their children to be terminated at a disproportionate rate because of the Adoption and Safe Families Act⁸⁶. Once parental rights are terminated, their children are transferred to other parents or state institutional custody through the Foster Care system⁸⁷. One in nine black children have had a parent incarcerated compared to one in twenty eight for Hispanic children and one in fifty seven for white children⁸⁸. By the age of 14, it is estimated that 25% of black children have experienced a parent being imprisoned⁸⁹

⁸⁵ Kyle L. Simonson & Gavin M. Nadeau, *Truth and Reconciliation: “Kill the Indian, Save the man”*: How American Indian Boarding Schools Contributed to Feelings of Mistrust, *Native Times*, Dec. 3, 2016, [Truth and Reconciliation: 'Kill the Indian, and Save the Man' \(nativetimes.com\)](http://nativetimes.com)

⁸⁶ Raimond M. Lee, *Sometimes Good Intention Yields Bad Results: ASFA's Effect on Incarcerated Parents and Their Children and Their Parents*, 2009, (explains how policy forces the loss of parental rights for incarcerated parents).

⁸⁷ Crystal M. Hayes, Carolyn Sufrin, Jamila Perritt, *Reproductive Justice Disrupted: Mass Incarceration as a Driver of Reproductive Oppression*, *Am J. Public Health*, Jan. 2020.

⁸⁸ The Pew Charitable Trust: Pew Center on the States, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 2010.

⁸⁹ Christopher Wildeman and Bruce Wester, *Incarceration in Fragile Families*, *The Future of Children* 20, no. 2 (2010), 162, Table 2.

Detractors may claim that the loss of custody and permanent transfer of children is an unfortunate side effect of a necessary process to ensure the health and support of the children. However, incarcerated mothers are more likely to lose parental rights through foster care than parents who neglect, abuse, or sexually molest their children⁹⁰. Therefore, the harm of eliminating parental rights of incarcerated parents outweighs the risk of harm to the children.

⁹⁰ Smyth J., *Dual punishment: incarcerated mothers and their children*, 10(1):33–45, *Columbia Social Work Review*, 2012.

COUNT 2

I. Introduction - Mass Incarceration

The United States is charged with perpetuating a criminal justice system that results in hyper mass incarceration in disregard of the “just requirements of morality, public order, and the general welfare,” as called for in the Universal Declaration of Human Rights, Article 29.

America has systemically abused the very concept of criminal justice to the detriment of Black, Brown and Indigenous People, allowing police, prosecutors, courts and prisons to act in complete disregard of the “just requirements of morality, public order and the general welfare,” as called for in the Universal Declaration of Human Rights Article 29 and the American Convention on Human Rights Article 32. In 2021, the UN Commissioner for Human Rights spoke clearly and directly to the pervasiveness and perniciousness of the system which undergirds America’s racist approach to criminal justice:

Narratives that falsely associate Africans and people of African descent, including migrants, with criminal activities or that play on economic or even national security anxieties continue to be used to justify laws and practices governing criminal justice systems[.]⁹¹

The conscious failure to address systemic discrimination in the application of criminal justice in America is in violation of Article II of the Convention on the

⁹¹ UNHCHR, [“Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers”](#)

Prevention and Punishment of the Crime of Genocide.⁹² We see this most clearly in the denial of statistical evidence of systemic racial discrimination in criminal processes and in the criminalization of poverty, each of which are addressed below.

A. The United States has refused to acknowledge clear evidence of systemic racial bias in the administration of its criminal justice system. That which is not acknowledged is not addressed.

It is irrefutable that data is critical to revealing dynamics not visible to the naked eye, and data is especially critical when unpacking historical trends in racial discrimination. The UN Commissioner for Human Rights reminds that collecting, analyzing and applying data by race or ethnic origin to discern the impact of racial discrimination on laws, policies and practices is central to addressing problems of systemic racism.⁹³

Statistical evidence of ingrained patterns of racism in the American criminal justice system are well documented. Compared with white Americans, racial minorities in the United States are more likely to be arrested; those arrested are more likely to be convicted; those convicted are more likely to face stiff sentences.⁹⁴

⁹² United Nations, Convention on the Prevention and Punishment of the Crime of Genocide, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

⁹³ Systemic racism is defined by the Commissioner as, "the concept of systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour[sic], descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism. *Id.*

⁹⁴ See *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System*. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

African-American males are six times more likely to be incarcerated than white males.⁹⁵ If current trends continue, one of every three black American males and one of every six Latino males born today will experience prison in his lifetime—compared to one of every seventeen white males.⁹⁶ While the disparity is less stark, Brown and Black women also experience the American criminal justice at higher rates than their white peers.⁹⁷

By creating and perpetuating policies that allow such racial disparities to exist in its criminal justice system, the United States is in violation of its obligations under Article 2 and Article 26 of the International Covenant on Civil and Political Rights to ensure that all its citizens—regardless of race—are treated equally under the law. The United States is also in violation of Article II, sections (a) through (d) of the Convention on the Prevention and Punishment of the Crime of Genocide: America kills; causes bodily and mental harm to; deliberately inflicts conditions of life calculated to destroy in whole or part the lives of; and imposes measures that prevent births of Black and Brown individuals.⁹⁸

The growth of the American prison population and the disproportionate percentage of people of color within it has been attributed to implicit and explicit racial bias at all levels of the justice system.⁹⁹ Prison populations in the United States

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ United Nations, Convention on the Prevention and Punishment of the Crime of Genocide, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

⁹⁹ See <https://www.sentencingproject.org/wp-content/uploads/2021/07/Trends-in-US-Corrections.pdf>.

have exploded beyond all reasonable relation to the actual level of violent crime in American society.¹⁰⁰ The United States leads the world with over 2 million individuals in jail.¹⁰¹ This was not always the case: between 1970 and 2000, the number of incarcerated individuals in American prisons more than quintupled -- and nothing in the past twenty years has been done to knock the United States off its ignominious pedestal of greatest jailer of all time.¹⁰² This sustained high level of incarceration reflects an increase in the number of sentencing laws carrying mandatory minimum sentences;¹⁰³ the lengthening of prison sentences and increased imposition of life sentences; the massive influence of plea bargaining (itself impacted by questions of prosecutorial bias); an increase in the number of felony charges filed by prosecutors; and policing policies that target communities of color, among a host of other factors.¹⁰⁴ Racial bias is present throughout.

Racial disparities are particularly present at sentencing. While “in a fair, equitable, and non-discriminatory justice system, sanctions should be imposed equally on offending populations,”¹⁰⁵ the U.S. criminal justice system does not abide by this principle. Courts are substantially more likely to sentence African American and

¹⁰⁰ See https://www.brennancenter.org/sites/default/files/2019-08/Report_Unnecessarily_Incarcerated_0.pdf.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ According to the [Leadership Conference Fact Sheet on Sentencing and Mandatory Minimums](#) (last updated on March 28, 2018) “The number of federal mandatory sentences has doubled in the last 20 years . . . In 2010, 39.4 percent of individuals in Federal Bureau of Prisons custody were subject to a mandatory minimum penalty.

¹⁰⁴ *Id.*

¹⁰⁵ Jamie Fellner, *Race, Drugs, and Law Enforcement in the United States*, vol 20 *Stanford Law & Policy Review* 257 (2009). <https://law.stanford.edu/publications/race-drugs-law-enforcement-united-states/>

Latino people to prison than white people in similar circumstances.¹⁰⁶ Federal courts sentence African American men to longer prison sentences than white men arrested for the same offenses and with similar criminal backgrounds, and African American people constitute a disproportionate percentage of prisoners serving life sentences.¹⁰⁷

The situation on America's death row is a particularly stark manifestation of the trend in sentencing, and provides the clearest and most tragic example of the willful refutation of statistical analysis in the American criminal justice system.¹⁰⁸ While the number of individuals sentenced to death row and executed annually has fallen from a generational high in 1999 of 279 (sentenced to death row) and 98 (executed) to 18 (sentenced) and 17 (executed) in 2020,¹⁰⁹ the trends in those few states where executions are still ongoing are stark. Of the roughly 2,500 individuals on death row as of April 2021, 54 percent are Black or Brown individuals.¹¹⁰ Half of all executions in 2019 were of Black or Brown individuals, despite that fact that whites make up roughly 60 percent of the population and Black and Brown individuals are combined less than 33 percent. While this racist trend has been evident since the ground breaking studies of David Baldus¹¹¹, newer studies have uncovered an even

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ The enforcement of illegal discriminating patterns of capital punishment and deprivation of life is in violation of , inter alia, the Genocide Convention; the Universal Declaration of Human Rights Article 3; the American Convention on Human Rights Article 7 (1) - (3); the Convention on the Elimination of All Forms of Racial Discrimination Article 5; and the International Convention on Civil and Political Rights Articles 2(1) and 6 (1), (2) and (4).

¹⁰⁹ Source: Death Penalty Information Center, "Facts About the Death Penalty" <https://documents.deathpenaltyinfo.org/pdf/FactSheet.pdf>, last visited on 9/13/2021.

¹¹⁰ *Id.*

¹¹¹ See, for example, David Baldus, Charles Pulaski, George Woodworth, Comparative Review of Death Sentences: an Empirical Study of the Georgia Experience, 74 J. Crim. L. & Criminology 661 (1983). <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6378&context=jclc>

more disturbing trend: in the United States, the race of the victim is overwhelmingly determinative in deciding whether an individual is sentenced to death. In 75 percent of executions, the victim was white, even though crime data tells us that Black and Brown individuals are significantly more likely to be victims of homicide than whites.¹¹²

Despite these obviously well-supported studies and the trends they lay bare, since the 1987 United States Supreme Court decision in *McCleskey v. Kemp*¹¹³, courts in the United States have refused to acknowledge statistical proof of racial disparity in death penalty sentencing. The Supreme Court in *McCleskey* implicitly recognized that to yield to the data would be an acknowledgement that racial bias is so endemic in the American system of criminal justice that it cannot be cured by judicial act or legislation. The majority of the Court has refused to this day to take the logic of countless meticulous studies¹¹⁴ to their natural conclusion and abolish state sponsored executions. Given that the Court will not take this much needed action when a life hangs in the balance, it should be no surprise that it similarly dismisses statistical trends that expose racial bias in other parts of the criminal justice system.

Despite the promise of the 14th Amendment to the United States Constitution of equal protection of the laws and prohibiting the government from depriving a person

¹¹² 2019 figures tell us that 54.7% of homicide victims are black or African-American, 42.3% are white, and 3.1% were of other races. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/expanded-homicide-data-table-2.xls>, last accessed on 9/13/2021.

¹¹³ *McCleski v. Kemp*, 481 U.S. 279 (1987)

¹¹⁴ See, for example, the ground-breaking study of David Baldus, Charles Pulaski, George Woodworth, *Comparative Review of Death Sentences: an Empirical Study of the Georgia Experience*, 74 J. Crim. L. & Criminology 661 (1983). <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6378&context=jclc>

of life, liberty, or property, the Court has methodically reduced the import of statistical evidence of bias in judicial holdings, requiring individuals to prove with ever more exacting evidence that racial bias was present and controlling in their *particular* instance. While this may appear facially neutral, the Court's reasoning ignores the prevalence of unconscious but implicit racial bias, which permeates every aspect of American society, an idea aptly captured in the phrase "driving while Black," among others. It has made it extremely difficult to prove intent in racial discrimination claims, intent being an essential element of proving the claim. Extensive studies have shown that every discretionary decision in the criminal justice system is infused with implicit racial bias, which, while perhaps unconscious, nevertheless exercises a profound and distorting influence on the way individuals see and treat one another.¹¹⁵

A case in point is the death penalty appeal of Warren McCleskey,¹¹⁶ who was given the death penalty after being found guilty of felony murder for killing a white policeman in the course of robbing a store. McCleskey's appeals finally brought him to the Supreme Court, where he plead for life in prison, arguing that death penalty sentencing practices in Georgia were infused with racial discrimination. His legal team cited the Baldus study¹¹⁷ as proof of systemic racial discrimination in death penalty sentencing. While the Court did not refute the Baldus study, it refused to

¹¹⁵ Bailey Maryfield, *Implicit Racial Bias*, Justice Research and Statistics Association, December 2018. <https://www.jrsa.org/pubs/factsheets/jrsa-factsheet-implicit-racial-bias.pdf>

¹¹⁶ *McCleski v. Kemp*, 481 U.S. 279 (1987)

¹¹⁷ See supra fn 13. Baldus and his team looked at over 2,000 murder cases in Georgia and found, inter alia, that Black defendants who had killed white victims were disproportionately likely to receive the death penalty.

acknowledge the import of its findings, instead rejecting McCleskey's appeal on the grounds that he had failed to show specific intent to discriminate in his particular case. The holding was a double blow, both reducing the value of scientific studies in racial discrimination cases and narrowing the navigable path to mercy for future appeals. The Court in *McCleskey* implicitly recognized that to yield to the data would be an acknowledgement that racial bias is so endemic in the American system of criminal justice that the only remedy was vast systemic reform. The Supreme Court has refused to this day to take the logic of these and countless other meticulous studies to their natural conclusion and abolish state sponsored executions.

A few circuits courts, in non-death penalty cases, have recognized that implicit bias can indeed be evidence of intent.¹¹⁸ Were the Supreme Court to take this doctrine to its logical conclusion, a modern day McCleskey would have certainly not be put to death, and the death penalty would be truly dead. As the ultimate arbiter of equity, the Supreme Court has a role in leading the way in the effort to unwind the baked-in prejudices that impact the fair delivery of justice in the United States. The courts, legislatures, and executive branches all need to rely more on studies that forthrightly acknowledge the extent to which racial bias is a driving factor behind hundreds of discretionary decisions made every day by police, prosecutors, judges and juries.

For living proof that the rot that starts with America's callous treatment of those it executes permeates the entire system, we need look no further than the case of

¹¹⁸ [The Ninth Circuit in *Yu v. Idaho State University*](#), (*Yu v. Idaho State University*, No. 20-35582, 2021 U.S. App. LEXIS 26219, at *1 (9th Cir. Aug. 31, 2021), 2021 WL 3876971) (*Citing decisions in the First and Fourth Circuit Court of Appeals*) acknowledged that proof of implicit bias can stand in for otherwise invisible and unprovable intent.

Ben Baker.¹¹⁹ In 2006, Baker was approached by Ron Watts, a policeman on a Chicago's Second District Tactical Team, and told "either you pay or you go away." When Baker refused, Watts drummed up fake charges against Baker for possession of a controlled substance with intent to deliver. During the trial, the defense presented allegations of police corruption, but the judge bluntly told Baker that his word would not stack up against the testimony of the seven decorated police officers who testified against him. In 2012, Watts and another officer were caught in an FBI sting taking bribes, which started the process of unwinding cases, like Baker's, where Watts' improper testimony had led to conviction.¹²⁰

The case itself is shocking, and not unique, so it is worth asking, how did Watts and his crew get away with this extortion-conviction scheme for almost two decades? The answer is obvious. He knew that no one would doubt the word of a white officer against a Black individual--not the prosecutor, not the judge, not the jury—even when every piece of evidence was fabricated. Watts could pursue his scheme knowing that he could count on the racial bias present in every step of the American criminal justice system. All he had to was identify a Black individual and charge them with a drug-related crime. The system did the rest of the work for him. "Either you pay or you go away" is less threat than reality.

It would be unconscionable to leave out of this analysis at least a brief look into the horrors of life in American prisons, a nightmare that falls primarily on the

¹¹⁹ The facts presented here are all sourced to the Exoneration Project: <https://www.exonerationproject.org/our-stories/ben-baker/>

¹²⁰ As of July 2021, 109 individuals had been exonerated in connection with Watt's criminal extortion scheme, and another 88 cases were under examination for possible exoneration. <https://chicago.suntimes.com/2021/7/20/22585625/convictions-challenged-framed-chicago-police-sgt-ronald-watts-corruption-tactical-unit>. Last visited on September 20, 2021.

shoulders of Black and Brown individuals and those who are “socially and economically disadvantaged.”¹²¹ Behind bars, America’s incarcerated are treated as sub-humans, confined in inhumane conditions, victimized by their jailers, and often held in isolation for tortious periods of time. Overcrowded conditions are common; imagine dozens of individuals crammed into dayrooms, classrooms or gyms.¹²² Death in prison is so common it has impacted U.S. life expectancy rates.¹²³ A 2011 Supreme Court case cited by the Vera Institute of Justice said the primary cause of suffering and death in California’s prisons was overcrowding, unsurprising in light of the “grossly inadequate provision of medical and mental health care.”¹²⁴ The use of solitary confinement has exploded, with estimates of those held in solitary ranging from 80,000 to 100,000 on any given day.¹²⁵

In 2012, a federal class action lawsuit was filed on behalf of prisoners who had spent a decade or more in solitary confinement in violation of their Eighth Amendment rights¹²⁶ at the Pelican Bay State Prison in California.¹²⁷ Pelican Bay

¹²¹ See Vera Institute of Justice, *Reimagining Prisons Web Report*. <https://www.vera.org/reimagining-prison-web-report/examining-prisons-today>.

¹²² *Id.*

¹²³ According to a [study](#) by Evelyn Patterson published in 2013, “Each year in prison takes 2 years off an individual’s life expectancy. With over 2.3 million people locked up, mass incarceration has shortened the overall U.S. life expectancy by almost 2 years.”

¹²⁴ *Brown v. Plata*, 563 U.S. 493, 502 (2011).

¹²⁵ *Id.* The report cites studies that suggest the use of isolation has grown substantially in recent years —“perhaps by as much as 42 percent between 1995 and 2005.”

¹²⁶ The suit charged that solitary confinement violated the Eighth Amendment’s prohibition against cruel and unusual punishment, and that the absence of meaningful review for SHU placement violates the prisoners’ rights to due process. [Ashker v. Governor of California, Settlement Agreement \(C 09-05796 CW\) \(August 31, 2015\)](#).

¹²⁷ *Id.*

prisoners recounted how they were forced to spend “22 ½ to 24 hours every day in a cramped, concrete, windowless cell . . . denied telephone calls, contact visits, and vocational, recreational, or educational programming.”¹²⁸ Hundreds of prisoners were isolated for over 10 years and dozens for more than 20 years. 15 days is now “widely recognized to cause lasting psychological damage and can constitute torture under international law.”¹²⁹ Six years after a settlement was reached in the case, Pelican Bay State Prison is still under court ordered monitoring for failure to fulfill the terms of the settlement and stop the practice of systemic solitary confinement.¹³⁰

¹²⁸ See <https://ccrjustice.org/home/what-we-do/our-cases/ashker-v-brown>.

¹²⁹ *Id.*

¹³⁰ *Id.*

- B. The United States has systemically criminalized poverty to the specific detriment of Black and Brown individuals through pretrial detention schemes, punitive exercise of the cash bail system and the failure to provide adequate counsel.**

Pretrial Detention Schemes. The criminalization of poverty manifests itself most clearly in America’s wealth-biased pretrial detention systems. When the government jails someone solely because she cannot access money, it violates the constitutional principles of Equal Protection and Due Process. Pretrial liberty is a fundamental right. The Supreme Court has held that: “In our society, liberty is the norm, and detention prior to or without trial is the carefully limited exception.”¹³¹ As a result, any order that results in pretrial detention requires a finding that pretrial detention is necessary as a last resort because no other condition, or combination of conditions, exists to serve compelling interests.

The American judicial system continues to contradict the Supreme Court’s promise of liberty. For example, on May 15, 2010, police officers arrested sixteen-year-old Kalief Browder for the alleged theft of a backpack¹³². Although Browder though his initial contact with police was routine stop-and-frisk procedure, Browder would not go home for another three years.¹³³ As a result of Kalief Browder’s three-year incarceration on Rikers Island - two of which were spent in solitary confinement - the long-term conditions began to weigh heavily on Kalief Browder.¹³⁴ While awaiting

¹³¹ *United States v. Salerno*, 481 U.S. 739 at 755 (1987)

¹³² *Kalief Browder Hanged Himself after Jail Destroyed him. Then ‘a Broken Heart’ Killed his Mother*, Peter Holley, from <https://www.washingtonpost.com/news/post-nation/wp/2016/10/18/kalief-browder-hanged-himself-after-jail-destroyed-him-then-a-broken-heart-killed-his-mother/>.

¹³³ *Id.*

¹³⁴ *Id.*

a trial that would never occur, Kalief Browder attempted to end his life several times.¹³⁵ In February 2012, Browder's final attempt to end his life was successful.¹³⁶ As Browder's story illustrates, these communities' hyper-criminalization perpetuates long-term issues which may prove to be as fatal.

Despite these protections, every year, over half a million Americans are detained pretrial; across the United States, 731,000 people are incarcerated in local jails each day.¹³⁷ Nearly two-thirds of this population - some 476,000 individuals - are pretrial detainees who have not been convicted.¹³⁸ The federal system incarcerates a further 51,000 people pretrial.¹³⁹ Supporters of the bail-bond system argue that it keeps protects communities from potentially violent offenders and prevents flight risk, but these objectives seem far removed from the reality presented here. Clearly something is not right.

Pretrial detention has devastating cascading economic consequences for individuals and their families. In many cases, wages are foregone. Jobs are lost. Housing is jeopardized. Child custody is removed. Individuals, snatched from their homes and families, forfeit critical social and community supports networks. Once inside jail, pretrial detainees are exposed to new risks. Jails are notorious sources of infection and disease, and lack adequate resources for addressing health needs.¹⁴⁰

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Zhen Zhang, Bureau of Justice Statistics, *Jail Inmates in 2016*, 2 (Feb 2018).

¹³⁸ See *id.* at 4.

¹³⁹ Peter Wagner and Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, Prison Policy Initiative (2018), <https://www.prisonpolicy.org/reports/pie2018.html>.

¹⁴⁰ Ram Subramanian et al., Vera Inst. of Justice, *Incarceration's Front Door: The Misuse of Jails in America*, July 29, 2015

Though mental illness affects jail inmates at rates four to six times higher than the general population, 83 percent of jail inmates who need these services do not receive appropriate care.¹⁴¹ Between July 2015 and July 2016, more than 815 inmates died in local jails, with at least 207 of these deaths occurring within the first three days.¹⁴² As many as 1 in 30 jail inmates reported experiencing sexual assault.¹⁴³

Punitive Exercise of the Cash Bail System. Secured money bail creates two tiers of justice - one for the poor and one for the rich. People who have been detained pretrial, even when innocent, suffer worse case outcomes. One study in Harris County, Texas¹⁴⁴ found that pretrial detainees were 25% more likely to plead guilty than similarly situated defendants who could fight their cases from a position of freedom.¹⁴⁵ It also found that Harris County would have avoided almost 6,000 criminal convictions if it released all misdemeanor arrestees pretrial.¹⁴⁶ Pretrial detainees - in danger of losing jobs, access to healthcare, children, and housing - face enormous pressure to plead guilty and hasten their release. And when detained arrestees are convicted, they face longer sentences.¹⁴⁷ The result is that money bail creates two

¹⁴¹ *Id.*

¹⁴² https://www.huffingtonpost.com/entry/jail-deaths-statistics_us_58518e13e4b0ee009eb4f1a9

¹⁴³ Allen Beck & Marcus Berzofsky, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*, Bureau of Justice Statistics, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics (2013), 6.

¹⁴⁴ [Heaton, Paul S. and Mayson, Sandra Gabriel and Stevenson, Megan, *The Downstream Consequences of Misdemeanor Pretrial Detention* \(2017\)](#) examined detailed data on pretrial detention in hundreds of thousands of misdemeanor cases in Harris County, Texas

¹⁴⁵ Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 711 (2017). See also Criminal Justice Policy Program, *Moving Beyond Money: A Primer on Bail Reform*, Criminal Justice Policy Program at Harvard Law School, 7 (October 2016).

¹⁴⁶ Pretrial Justice Institute, *Pretrial Justice: How Much Does It Cost?* (2017), 6.

¹⁴⁷ See *id.* at 7.

tiers of justice. More than a third of felony defendants - all of them presumptively innocent - face job loss, housing instability, health risks, longer sentences, and higher rates of conviction only because they lack money, while wealthier counterparts have an increased chance of going free and never experiencing a life disruption.¹⁴⁸

Besides devastating the poor, cash bail has particular consequences for minorities. Controlling for various factors, people of color receive higher bonds and are detained at disproportionately higher rates.¹⁴⁹ This means that besides fueling mass incarceration, cash bail is exacerbating racial injustice.

Due process protections have effectively failed to protect individuals from debtor's prison in America and are worth understanding in greater detail. When deciding whether to require money bail as a condition of release, courts are required to inquire into an arrestee's ability to pay and if they cannot, alternative, less restrictive methods must be considered.¹⁵⁰ The legal touchstone is that a court must treat an unattainable financial condition as an order of pretrial detention that can be justified only when necessary as a last resort because no less restrictive alternative condition, or combination of conditions, will satisfy compelling interests.¹⁵¹ When the possibility of pre-trial detention implicates indigent individuals, even for short periods of time, the courts are supposed to apply to heightened constitutional scrutiny.

¹⁴⁸ Bernadette Rabuy & Daniel Kopf, *Detaining the Poor*, Prison Policy Initiative (2016).

¹⁴⁹ D. Arnold et al., *Racial Bias in Bail Decisions*, (2108). https://scholar.harvard.edu/files/cyang/files/ady_racialbias.pdf

¹⁵⁰ These may include phone calls, text messages, various forms of check-ins and supervision, or other non-financial conditions of release.

¹⁵¹ <https://cdn.buttercms.com/dvNXfnyRRj6VLTEcWA0Q>

This is frequently not followed in practice. The Fifth Circuit case of *ODonnell v. Harris County*,¹⁵² is a case in point. *ODonnell* was a class action alleging that Harris County's system for setting bail for indigent misdemeanor arrestees violated Texas statutory and constitutional law, as well as the due process and equal protection clauses of the Fourteenth Amendment.¹⁵³ The court findings of fact included that Harris County, the third largest in the United States, had “a consistent and systemic policy and practice of imposing secured money bail as de facto order of pretrial detention in misdemeanor cases”¹⁵⁴ which effectively operated only against the indigent.¹⁵⁵ The County’s practices were found to have disparate racial and ethnic effects, with Black detainees comprising 48 percent of the County’s adult jail population, while 70 percent of white misdemeanor defendants were granted early pretrial release.¹⁵⁶ The court found that Harris County bail practices caused “irreparable” harm to “tens of thousands” of poor misdemeanor arrestees.¹⁵⁷

Failure to Adequately Fund Counsel for Indigent Defendants. Most indigent defense agencies in America are grossly understaffed and underfunded. In 2012, more than 70% of public defender offices reported that obtaining adequate funding and providing adequate compensation for their attorneys were extremely or very challenging to the ability of their office to provide indigent defense services. An

¹⁵² *ODonnell v. Harris Cty*, 251 F. Supp 3d 1052 (S.D. Tex. 2017) *aff'd as modified*, 892 F.3d 147 (5th Cir. 2018).

¹⁵³ 892 F.3d at 152.

¹⁵⁴ *ODonnell v. Harris Cty*, 251 F. Supp 3d 1052, 1059 (S.D. Tex. 2017) *aff'd as modified*, 892 F.3d 147 (5th Cir. 2018)

¹⁵⁵ *Id.* at 1060.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

analysis of funding at both the state and federal levels indicates that effective indigent defense is not a priority in many jurisdictions in the United States. At the state and local level, 15,026 public defenders in 957 indigent defense offices handled 5,572,450 cases in 2007.¹⁵⁸ On average, each office handled 5,823 new cases and each public defender handled 371 cases—more than one new case for each day of the year. The states spent a total of \$2.3 billion on indigent defense in 2007, or \$414.55 per case.¹⁵⁹ Furthermore, of the \$5.9 billion in federal grants that agencies could have used for indigent defense, fully two-thirds of agencies reported that they did not allocate any funding for that purpose.¹⁶⁰ Indeed, only 54% of agencies reported that they were even aware that discretionary funds could be used for indigent defense.¹⁶¹ Of the agencies that did allocate grant money to indigent defense, the amount allocated for that purpose constituted only 4.7% of their total grant money allocations.

The crippled state of indigent defense in the United States disproportionately affects racial minorities because Black and Hispanic defendants are far more likely to need the services of a public defender than their white counterparts. The median income for Black and Hispanic Americans is roughly \$20,000 less than the median income for white Americans.¹⁶² The poverty rate is roughly 25% for both black and

¹⁵⁸ Bureau of Justice Statistics, *Census of Public Defender Officers, 2007*, 3 tbl.1 (Sept. 2010).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 29 tbl.8.

¹⁶² U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2010*, 6 tbl.1 (Sept. 2011).

Hispanic Americans, compared to 9% for white Americans.¹⁶³ In the criminal justice context, such statistics mean that black and Hispanic defendants are often more likely than white defendants to rely on an indigent defense system of overworked, underpaid attorneys—therefore increasing their chances of being convicted.

¹⁶³ *Id.* at 15 tbl.14.

Count 3

I. Introduction - Political Prisoners and Prisoners of War

It's important to distinguish those who can be classified as political prisoners from those who are criminal offenders. Political prisoners are detained for nothing more than political motivations. While they are charged and convicted of a crime, in many cases their punishment is not necessarily tied to their alleged crime but a persecution of their beliefs; and in some cases their very existence. Many of these political prisoners have significantly served out their sentences and pose no threat to the community. Political prisoners are defined as anyone who is imprisoned for speaking out against their government, practicing their religion, or as a result of their culture, race, or gender.¹⁶⁴ Though not formally defined by international treaty, the term is utilized interchangeably with prisoners of conscience by the United Nations and the Assistance Association for Political Prisoners.¹⁶⁵ Prisoners of conscience are people imprisoned solely for the peaceful expressions of their beliefs or because of their race, gender, or other personal characteristics.¹⁶⁶ Martin Luther King's arrest and subsequent detainment for trespassing is a famous political prisoner example, attributable to the United States, as King was seeking to challenge the injustices of racial segregation in Birmingham Alabama. Nelson Mandela himself is a famous political prisoner, as he spent 26 years in prison serving a life sentence for critically speaking out against the apartheid South African government.

¹⁶⁴ <https://aappb.org/wp-content/uploads/2014/10/Torture-Political-Prisoners-and-the-Un-Rule-of-Law.pdf>

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

While many would deny their existence, there are still political prisoners in the United States more than 50 of whom are still detained largely for their work during the 1960s' and 1970's. In recent years more political prisoners, largely supporters of modern day movements such as climate action, Black Lives Matter, etc. are being illegally surveilled and detained by the government under the pretext of rooting out extremist groups disproportionately comprised of People of Color who publicly challenge the dehumanization and oppression of Communities of Color.

“You’re guilty from the moment you’re born.”¹⁶⁷

I. The United States is charged with engaging in racist and discriminatory acts and omissions against plaintiffs to crush Black, Brown, and Indigenous justice and self determination movements. Specifically:

A. The United States has utilized the justice system as a means to ‘stamp out’ and suppress political dissidents.

The American legal system criminalizes people largely on the bases of race, status, and in a broader context values. Communities of Color are continually subjected to a vicious cycle of excessive policing and violent punishment for nothing more than being who they are in a society that continues to devalue their lives. In short their lives are a political statement that is continually targeted.

In most cases, political prisoners are often charged with other offenses and/or misdemeanors; an indictment on their political beliefs is not always their official charge. In many ways the odds are stacked against them in a concerted effort to detain them not because they pose

¹⁶⁷ In a scene from *Just Mercy*, Jamie Foxx portraying Walter McMillian a wrongfully convicted African American facing death row for murder, poiently laid out the reality the black experience in America when he confided with his attorney:

a danger to the community but because the ideals they espouse are contrary to the powers that be. Yet through the examples provided the main objective is to exert a form of control and subjugation, ultimately seeking to force a repudiation of their beliefs and in some cases indirectly control the proliferation of those beliefs.

DeRay McKesson is a prime example of criminalization of protesting in America. Black Lives Matter's protesters are constantly subjected to the criminalization of their blackness. This however is not a new concept as historically Black people have always faced the brunt and disproportionate effects of the American legal apparatus since enslavement continuing well after abolition. McKesson, widely known as an outspoken police reform activist, was violently arrested during a Black Lives Matter protest in Baton Rouge. He was held for 11 days before being released, while law enforcement officers claim he was charged for obstructing a highway of commerce.¹⁶⁸ Though McKesson was only recording a live broadcast of his participation in a protest against police violence.¹⁶⁹

This judicial misconduct does not stop at the point of a conviction, but extends to measures taken in order to keep the political opposition suppressed, most notably in the form of parole hearings. To political prisoners, parole hearings bear no difference from the initial trial, from the prejudicial disposition of those presiding over the hearing to the verdict itself. Political Prisoners typically struggle with parole board hearings due to the fact that the parole board lacks impartiality in regard to separating the initial act with current behaviors displayed by the incarcerated person.

¹⁶⁸ <https://www.washingtonpost.com/news/morning-mix/wp/2016/07/10/black-lives-matter-activist-deray-mckesson-taken-into-custody-by-baton-rouge-police/>

¹⁶⁹ Id.

Sundiata Acoli, who identified with the New Jersey Chapter of the Black Panther Party, was arrested on May 2, 1973 for the death of a police officer on the New Jersey Turnpike, along with several other members of the party.¹⁷⁰ Sundiata was thirty-five years old when he was arrested, and is currently eighty-four years old. He has been eligible for parole since 1992 and has had five parole hearings, all of which were ultimately denied by the police. The Parole Board has denied Mr. Acoli parole at every opportunity he has had before it, even after the Appellate Division found in 2014 that he was entitled to parole under the statute governing his release.¹⁷¹ There is a sixth parole hearing to be had this year. However, there is some doubt as Sundiata has never been given a fair chance.

Given that the agenda of the FBI under Former Director J. Edgar Hoover was to snuff out the Black Power Movement, Sundiata has had to face a justice system that was quite literally designed to keep him as a non factor by not just imprisonment but by implementing legal blockades to any means of obtaining freedom from imprisonment.¹⁷² Some may say that the prosecution of political prisoners is not abnormal in any respect, but rather is necessary to maintain fair and equal enforcement of the law to any person and/or group. It can also be said that those who engaged in forms of protest also did not do so peacefully, the reason for being before the courts in the first place, and that the courts have a responsibility to right the blatant disregard for American jurisprudence. In doing so, these individuals must be used as a legal

¹⁷⁰ <https://www.npr.org/2021/08/26/1031001005/sundiata-acoli-new-jersey-black-panther-parole>

¹⁷¹ *Sundiata Acoli v. New Jersey State Parole Board*, <https://law.justia.com/cases/new-jersey/appellate-division-published/2019/a5645-16.html>

¹⁷² <https://www.usatoday.com/story/news/factcheck/2021/07/25/fact-check-black-panthers-part-biggest-threat-1969-hoover-said/5302912001/>

martyr to assuage any future protestor who is willing to break the law in order to achieve their agenda.

It is oftentimes discouraging to the political prisoners to constantly stand before the Parole Board members with certainty of their inescapable fate. Parole boards are a safeguard by the courts as a shadow court for the purpose of keeping a prisoner detained if they so choose to.

Joy Powell, is currently serving a 16 year conviction for burglary and assault, was a pastor and activist in Rochester NY. Powell dedicated her life to social change in her community, educating the populace on how to make effective change through nonviolent means. After the death of her 18 year-old son at the hands of gun violence, Powell worked tirelessly to change the ecosystem that caused her son's death and ushered in a revitalization of the community formerly ravaged by drugs and crime. Despite being a victim of a violent crime herself, in 2006, Powell was warned by the Rochester police department that she was a target due to her work particularly in exposing corruption, and police brutality.¹⁷³ Powell was later charged and convicted on two counts of burglary and assault and sentenced to 16 years despite evidence to the contrary and violations due process and procedure on the part of the prosecution, the judge rendering her unable to properly defend herself.¹⁷⁴ Three years later, Powell was indicted on a cold murder case from 1992, and was later convicted and sentence to 25 years to life despite no physical evidence proving her guilt. Joy Powells only crime was that she desired to make a difference in her community and that she was willing to speak out and empower her community to demand

¹⁷³ <https://www.freejoypowell.org/background/>

¹⁷⁴ <https://www.thejerichomovement.com/profile/powell-rev-joy>

and expect better for itself. Instead she was met with legal consternation and persecution from the very force that pledges to protect and defend.

Defendants argue that they are only seeking to enforce its laws while protecting the community from otherwise dangerous offenders, however this couldn't be further wrong. Many of the people considered to be political prisoners pose no real harm to the community. Joy Powell worked for the city advocating non violence. Similarly McKesson organized community action for police reform yet he was arrested for attending and recording a protest. Additionally, many political prisoners were either engaged in conduct to protect their lives, the lives of others, or sought to challenge laws designed to oppress protected freedoms. McKesson, Powell and Acoli's stories underscore a similar message: blackness is political. The moment Black person engages in the society they are automatically deemed a combatant, indiscriminate of innocence or guilt, weather or potential or other common markers that determines a person's societal value. Their experience in the legal system makes them a political prisoner because their race is the political issue.

B. The United States usage of the legal system and counter intelligence infringes individual liberties and privacy rights instilling a chilling effect on political activist.

As mentioned earlier, political prisoners are -- more often than not -- denied their basic rights to procedural due process. These measures taken by the court are for the purpose of concealing the true nature of the crime, whether it be some form of social campaigning or opposing actions being taken by the United States. In the case of political prisoners, judges often assert the legal standing for the case ignoring factors and simply adjudicating the case on the matters of law. Judges do this by preventing certain key pieces of evidence that may give light to

an alternate situation, not allowing certain testimony such as the in the “Chicago 7”¹⁷⁵ movie, or quietly orchestrating vanishing trials.

For decades law enforcement has viewed activism perpetrated by communities of color, particular Black people, as a threat to national security.¹⁷⁶ Many of its surveillance efforts have primarily been targeted at black leaders and activists who have called for racial equality, liberation and an end to violence against Black People.¹⁷⁷ The outcome yields a chilling effect which hinders activist ability to freely speak and assemble with like minded individuals with fear of constant surveillance and intrusion on their privacy in a so-called democratic society that anchors itself in free thought and expression.

C. The United States postured itself in a sustained war of attrition against communities of color, denying the right to self determination for political prisoners and prisoners of war.

In 2017, the FBI released an intelligence assessment that designated “Black Identity Extremists” who were likely hostile to law enforcement.¹⁷⁸ The report's findings asserted without evidence that Black people, involved in unrelated police killings, shared the same political ideology as those held by Black Lives Matter activists.¹⁷⁹ The report additionally gave focus on individuals identified as “Black Identity Extremist” as the bureau describes as people willing to

¹⁷⁵ <https://www.nytimes.com/1970/01/29/archives/chicago-7-judge-bars-ramsey-clark-as-defense-witness-chicago-7.html>

¹⁷⁶ <https://www.brennancenter.org/our-work/analysis-opinion/fbi-targets-new-generation-black-activists>

¹⁷⁷ <https://www.aclu.org/issues/racial-justice/protectblackdissent-campaign-end-surveillance-black-activists>

¹⁷⁸ <https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/fbi-wont-hand-over-its-surveillance-records-black>

¹⁷⁹ Id.

commit unlawful acts, “in response to “perceived racism and injustice in American society.”¹⁸⁰

Despite countless Freedom of Information Act requests regarding the usage of the report, the FBI continues to withhold information critical in understanding the methods implored into the report without any valid explanation.¹⁸¹

The Defendant would have you believe that these steps were necessary to protect national security interest while preventing otherwise dangerous individuals terrorise the community, yet this grossly mistakes the reality. For one they seek to generalise activism that seeks to address and eradicate societal injustices committed to Black communities and communities of color as domestic terrorism. Moreover these official and even unofficial actions taken by law enforcement only propagates White supremacy and does more to police black activism while intentionally remaining silent to the atrocities of white terror and violence which masquerades itself as vigilantism.

¹⁸⁰ <https://www.documentcloud.org/documents/4067711-BIE-Redacted.html>

¹⁸¹ <https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/fbi-wont-hand-over-its-surveillance-records-black>

COUNT 4

I. Introduction - The Role of Environmental Racism in United States Genocide

Throughout the 21st century the United States has engaged in a series of actions that have violated the human rights of the Black and Brown folk that live within its interior. The environmental atrocities local, state, and federal official have consensually allowed to occur and actively contributed to have contravened Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).¹⁸² As such, we are charging the United States with perpetuating environmental racism through the establishment, implementation, and enforcement of practices, policies, and regulations that have intentionally destroyed, in whole or in part, Black communities, by causing seriously bodily or mental harm to members of the group; and deliberately inflicting on the group conditions of life that would bring about its physical destruction in whole or in part, in violation of Article II of the Genocide Convention.

Environmental Racism and The Flint Water Crisis

The United States has caused serious bodily harm to Black citizens by contaminating their water source, delaying information to Flint residents state officials were privy to regarding an outbreak of legionnaires triggered by contaminated water, knowingly allowing residents to

¹⁸² United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

suffer from lead poisoning, and being slow to move in correcting the environmental hazard. This is in violation of Article II(b)-(c) of the Genocide Convention.¹⁸³

Flint Michigan has a population of around 95,938 people, approximately 53 percent of whom, are African American or Black, with almost 44 percent of Black people living below the poverty line.¹⁸⁴ In April 2014, water began to flow to residents of Flint, Michigan from the Flint River after a decision by state officials appointed by former Michigan Governor Rick Snyder to change the water supply source from the Detroit Water and Sewerage Department to the Flint River.¹⁸⁵ The motive behind this act stems directly from the desire to cut costs and save money; part of this decision included not treating the water from the pipe with the anti-corroding agents aimed at preventing lead contamination—anti-corroding that were presently being used by the Detroit water system.¹⁸⁶ This active decision made by state officials was a complete disregard of the health, safety, and well-being of Flint residents who immediately noted changes to their water and complained of its taste, smell, and look.¹⁸⁷

Despite a symbolic vote to return to the Detroit water system by Flint city council, emergency managers, appointed by state officials under the direction of Governor Snyder, declined and continued to rely on the Flint River system.¹⁸⁸ The Michigan Department also

¹⁸³ Ibid.

¹⁸⁴ *Poverty in Flint, Michigan*, <https://www.welfareinfo.org/poverty-rate/michigan/flint>

¹⁸⁵ Michael Ray, *Flint Water Crisis*, <https://www.britannica.com/event/Flint-water-crisis>

¹⁸⁶ Melissa Denchak, *Flint Water Crisis: Everything You Need to Know*, <https://www.nrdc.org/stories/flint-water-crisis-everything-you-need-know>

¹⁸⁷ Ibid.

¹⁸⁸ Michael Ray, *Flint Water Crisis*, <https://www.britannica.com/event/Flint-water-crisis>

ignored dangers in 2015 and assured no further measures were necessary to prevent, protect, or otherwise ameliorate the state of lead in Flint water pipes.¹⁸⁹ This had fatal consequences as a legionnaires outbreak occurred in 2014 and 2015 and resulted in the death of 12 residents with many more falling ill—the third largest outbreak in United States history.¹⁹⁰ However, there has been debate around this number as there were many cases of pneumonia during the time (legionnaires presents as pneumonia) and the nexus between the water crisis and the illness were not initially made.¹⁹¹ Additionally, it can be difficult to retroactively attribute a link to death or illness. Also, the legionnaires outbreak was separate from the lead poisoning that ensued and affected a different demographic. While many of the deceased victims of legionnaires were older, the effects of lead poisoning were more damaging to children. In 2015, a switch was made back to the Detroit Water System, but this was after damage to the pipes had already occurred and was still contributing toward lead-polluted water. Both Governor Snyder and other state officials were aware of the potential risks of contamination, as well as of the legionnaires outbreak, however, Flint residents were not informed until almost a year after the first case was discovered. Flint switched back to the Detroit system but the damage to the pipes and the people had already been done.¹⁹² The decision of officials to put the lives of its predominantly Black residents at risk to save money, their awareness of occurrences that threatened the lives of Flint residents, their

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Sarah Childress, *We Found Dozens of Uncounted Deaths During the Flint Water Crisis. Here's How*, <https://www.pbs.org/wgbh/pages/frontline/interactive/how-we-found-dozens-of-uncounted-deaths-during-flint-water-crisis/>

¹⁹² Emma Winowiecki, *Does Flint have clean water? Yes, but it's complicated*, <https://www.michiganradio.org/environment-science/2019-08-21/does-flint-have-clean-water-yes-but-its-complicated>

compliance in remaining with a contaminated water system, and their negligently delayed response and report to inhabitants are all examples of their practices to establish, implement, and enforce environmentally racist practices and policies that harm the lives of Black people.

Opponents may argue that these actions do not constitute an attempt by the United States to destroy, in whole or in part, Black people, through serious bodily harm or the deliberate infliction of detrimental conditions of life, as many of the deceased victims of legionnaires were white.¹⁹³ Additionally, because people were affected by legionnaires and lead poisoning arbitrarily, there is no way that this could be deemed a direct attack aimed at the eradication of African Americans. However, it is impossible to argue that in a city where the majority of residents are African American—a group that generally has higher rates of fatality regarding pneumonia and is also experiencing high rates of those living below the poverty line—one would believe that their environmentally hazardous practices are not disproportionately bearing adverse effects on one such group. The areas that experienced the highest levels of tainted water also contained the largest concentrations of African American children, at 76.8 percent compared to 67 percent in other areas.¹⁹⁴ Lead poisoning in children can result in damage to brain and nervous system, developmental delays, learning and behavior issues, as well as difficulties with hearing or speech.¹⁹⁵ Although measures were enacted—delivering bottled water to residents,

¹⁹³ Elisha Anderson, *Here are the victims of the legionnaires disease outbreak in Flint*, <https://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/04/09/biographies-legionnaires-disease-flint-area/82478182/>

¹⁹⁴ Bérengère Sim, *Poor and African American in Flint, The water crisis and its trapped population*, <http://labos.ulg.ac.be/hugo/wp-content/uploads/sites/38/2017/11/The-State-of-Environmental-Migration-2016-76-102.pdf>

¹⁹⁵ *Prevent Children's Exposure to Lead*, <https://www.cdc.gov/nceh/features/leadpoisoning/index.html#:~:text=Exposure%20to%20lead%20can%20seriously,in%20children%20has%20been%20identified.>

switching back to the previous system, water testing—the delay in action the part of state officials who were aware of the dangers facing Flint residents, as well as their inaction when initially addressing and correcting the water crisis, show their intentions to participate in the destruction of Black communities.

It is clear the actions of Michigan state officials were to intentionally destroy Black people and bring about serious bodily or mental harm to them, as well as maintain conditions of life that would lead to their destruction. The establishment, implementation, and enforcement of the new water system; the decision to remain with a contaminated system, despite awareness of the presence of the contaminants and the toxic effects it is and could be having on residents; the delay in remedying the fatal consequences of their actions, all show conduct on the part of United States representatives that is a direct infliction of conditions that bring about the physical destruction of Black people and cause them serious bodily and mental harm.

State-Sanctioned Genocide in Cancer Alley

The United States failed to produce and enforce environmental regulations and practices that protect Black residents in “Cancer Alley” and are perpetuating harmful practices that are causing Black people serious bodily harm from cancer and pollutants while deliberately inflicting toxic conditions of life calculated to bring about their destruction, through unsustainable living conditions, violating Article II(b) and (c) of the Genocide Convention.¹⁹⁶

¹⁹⁶ United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

Cancer Alley, formerly known as Plantation Alley, is located in the lower Mississippi River area of Louisiana, stretching from Baton Rouge to New Orleans. It is an area that is 55 percent white and 40 percent Black; where descendants of formerly enslaved people reside and is plagued with abnormally high cancer rates. There are approximately 150 oil refineries, plastic plants, and chemical facilities within Cancer Alley (and counting) that emit noxious gases and harmful air and water pollutants that negatively affect residents.¹⁹⁷ Occupants of this area are more than 50 times more likely to suffer from cancer than the “average” American.¹⁹⁸ However, even within Cancer Alley, residents are affected at disparate levels, hinging upon racial identity.

Although the majority of inhabitants of Cancer Alley are white, Black residents, especially those near or below the poverty line, experience higher overall rates of exposure and cancer than their white counterpart, having a 16 percent greater cumulative risk of all toxins than whites.¹⁹⁹ Additionally, as the population of Black residents in an area increases, so do the risks of contracting cancer.²⁰⁰ The egregiously high rates of harmful pollutants and cancer in this area of the United States have been negligently ignored by the government to the detriment of its people.

¹⁹⁷ *Environmental racism in Louisiana’s ‘Cancer Alley’, must end, say UN human rights experts*, <https://news.un.org/en/story/2021/03/1086172>

¹⁹⁸ James Pasely, *Inside Louisiana's horrifying 'Cancer Alley,' an 85-mile stretch of pollution and environmental racism that's now dealing with some of the highest coronavirus death rates in the country*, <https://www.businessinsider.com/louisiana-cancer-alley-photos-oil-refineries-chemicals-pollution-2019-11>

¹⁹⁹ Wesley James, Chunrong Jia, Satish Kedia, *Uneven Magnitude of Disparities in Cancer Risks from Air Toxins*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3546767/>

²⁰⁰ *Ibid.* at

UN Human Rights experts have noted the disproportionate threats faced to the Black community in Cancer Alley violate the human rights to life, equality and non-discrimination, health, and the right to an adequate standard of living and cultural rights.²⁰¹ Non-discrimination and equality specifically, are recognized as two vital components of the right to health.²⁰² Despite suggestions from the UN to stop the industrialization and perpetuation of environmental racism in Cancer Alley. In 2018, St. James Parish proposed the Sunshine Project (the permit for which has been approved) for Formosa Plastics Group to erect one of the largest plastic facilities, as well as two methanol complexes that would belong to other manufacturers, adding to the already copious number of facilities in the area.²⁰³ The completion of this product will result in the addition of facilities that will double the cancer rates that are already disproportionately affecting Black residents.²⁰⁴ According to the UN's Special Rapporteur, states have a duty to protect the enjoyment of human rights from the harmful effects of the environment—a duty that Louisiana has breached.²⁰⁵

It is the obligation of the state to hold public and private actors accountable and to establish and effectively enforce the proper “non-discriminatory” and “non-retrogressive” substantive environmental standards, regulations, and procedures necessary to protect and satisfy

²⁰¹ *Environmental racism in Louisiana's 'Cancer Alley', must end, say UN human rights experts*, <https://news.un.org/en/story/2021/03/1086172>

²⁰² Office of the United Nations High Commissioner for Human Rights, World Health Organization, *The Right to Health*, <https://www.ohchr.org/documents/publications/factsheet31.pdf>

²⁰³ *Environmental racism in Louisiana's 'Cancer Alley', must end, say UN human rights experts*, <https://news.un.org/en/story/2021/03/1086172>

²⁰⁴ Ibid.

²⁰⁵ Human Rights Council, *Issue of human rights violations relating to the enjoyment of a safe, clean, healthy, and sustainable environment*, <https://undocs.org/en/A/HRC/40/55>

human rights.²⁰⁶ However, the state of Louisiana, as well as the federal government, have failed to introduce regulations that will effectively fulfill their duty to the people, particularly Black people. Despite existing disparately higher cancer rates in predominantly Black communities in Cancer Alley, the state is still allowing public and private actors to establish new and maintain existing facilities, plants, refineries, and complexes that are emitting noxious gases and chemicals that are harming and killing residents that live near to them. As of July 2021, residents feared of a new grain elevator (Greenfield) that had been proposed and had received support from the state.²⁰⁷ The state's concerns lie with the long-range plan to deepen the Mississippi River and new agricultural commerce prospects—not Black people. But they are the people who will be most adversely affected by these state-sanctioned decisions; decisions that can and likely will contribute to the presently hazardous emissions in the area and further lead to the perpetuation of unsuitable living conditions that effectively destroy Black bodies, bringing them serious bodily harm.

Critics may argue that issues of environmental racism are no longer a problem for the United States due to President Biden's January 2021 Executive Order, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, which is geared toward: providing access to clean air, reviewing federal regulations passed within the past 4 years that threaten public health and environment, limiting exposure to dangerous chemicals , and holding polluters accountable for the disproportionate affect these toxins have on minority

²⁰⁶ Ibid. at

²⁰⁷ John Burnett, Marisa Penaloza, *Descendants of Slaves Say This Proposed Grain Complex Will Destroy The Community*, <https://www.npr.org/2021/07/07/1012609448/descendants-of-slaves-say-this-proposed-grain-factory-will-destroy-the-community>

[Black] communities.²⁰⁸ While sound in theory, state and federal actors continue to engage in practices that exacerbate preexisting environmental hazards to the Black community. Opponents may also propose that the actions of the state are not designed to negatively affect one group over the other and their practices, regulations, and policies are non-discriminatory. The population concentrations, though favoring minority groups in certain areas, are not accurately reflected in the overall demographics, as whites are the majority in Cancer Alley. Additionally, cancer is a non-discriminatory disease that will choose anyone as its victim—regardless of self- or group identification. The decisions, made by state officials and supposedly geared toward the greater good, to further the industrialization of Cancer Alley, may be written off as genuine efforts to advance the development of Louisiana and its industries. However, despite the random nature of affliction associated with cancer, there are still groups that are more negatively affected than others, and in the case of Louisiana, that is Black people.

Despite the unpredictability with which cancer assumes its victims, it is impossible for local, state, and federal officials to ignore what is right before them. Black people suffer from disproportionately higher rates and risks of cancer in Louisiana's Cancer Alley.²⁰⁹ The United Nations has deemed the situation in Louisiana a case of environmental racism and the efforts on the part of the state, or lack thereof, maintain systems of oppression, destruction, and neglect present in the long relationship between the government and Black people.

²⁰⁸ Office of NEPA Policy and Compliance, *EO13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (2021), <https://www.energy.gov/nepa/articles/eo-13990-protecting-public-health-and-environment-and-restoring-science-tackle>

²⁰⁹ Wesley James, Chunrong Jia, Satish Kedia, *Uneven Magnitude of Disparities in Cancer Risks from Air Toxins*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3546767/>

State-sanctioned construction and maintenance of complexes, industrial sites, chemical facilities, and the like, in tandem with the failure to provide, produce, or protect non-discriminatory environmental safeguards are violations of the human rights of Black residents and cancer alley. Human beings have the rights to clean air, health, and a safe climate; rights that are not contingent upon one's race, ethnicity, nationality, or religious background.²¹⁰ However, Black residents in Cancer Alley are unable to enjoy these rights at the same level as their white counterpart as Black people in this area are disproportionately at risk of cancer due to government failure to protect them with environmental assurances and defenses.

The health risks posed by residence in Cancer Alley have since been exacerbated by the destruction brought forth by Hurricane Ida, a category 4 storm that made landfall in Louisiana in August 2021. Many in the area have reported increased flares from chemical plants, oil spills, and leakages that have aggravated the current environmental harms that plague Cancer Alley. Black smoke from flares from Shell have filled the skies, contaminating the air and surrounding area with crude smelling gas.²¹¹ When companies such as Shell, restart their facilities, refineries, and petrochemical plants, they must burn off extra hydrocarbons, emitting flares and thick clouds of black smoke that further the emission of greenhouse gases and contribute to climate change in conjunction with contaminating the already polluted air.²¹² Other companies such as Marathon

²¹⁰ Human Rights Council, *Issue of human rights violations relating to the enjoyment of a safe, clean, healthy, and sustainable environment*, <https://undocs.org/en/A/HRC/40/55>

²¹¹ Julia Dermansky, *Hurricane Ida Leaves Trail of Destruction in Badly Polluted Cancer Alley*, <https://www.sierraclub.org/sierra/hurricane-ida-leaves-trail-destruction-badly-polluted-cancer-alley>

²¹² Ibid.

Pipe Line have had leakages and spills that are tainting air and ground water.²¹³ Despite informing the public that the crude oil released had been stopped, controlled, and in the process of a clean-up, Marathon reported to the state Department of Environmental Quality that the St. James Parish tank discharged crude oil onto an “aboveground storage tank and then onto the ground and into surface water.²¹⁴ Thus continuing to pollute the air and water of residents of Cancer Alley. Without intervention from local, state, and federal officials, the right to clean air, water, and health afforded to every individual regardless of race, color, or creed, will continue to be violated and the destruction of the Black community will continue.²¹⁵

The United States has actively contributed to an ongoing cycle with climate change, natural disasters, and environmental racism. The pollutants emitted by the industries populated in Cancer Alley not only poison air and water but constantly contribute to the issue of climate change.²¹⁶ Climate change, in turn, increases the intensity of storms like Ida, Katrina, and other such natural disasters which can and often do exacerbate preexisting environmentally hazardous

²¹³ Antonia Juhasz, *Hurricane Ida Pounded Louisiana’s ‘Cancer Alley’. Its Residents Need Help, and Demand Change*, <https://www.rollingstone.com/politics/politics-news/hurricane-ida-louisiana-cancer-alley-1221409/>

²¹⁴ Ibid.

²¹⁵ Human Rights Council, *Issue of human rights violations relating to the enjoyment of a safe, clean, healthy, and sustainable environment*, <https://undocs.org/en/A/HRC/40/55>

²¹⁶ United States Environmental Protection Agency, *Air Quality and Climate Change Research*, <https://www.epa.gov/air-research/air-quality-and-climate-change-research>

areas.²¹⁷ As the cycle continues, it disproportionately affects Black lives, and continues to contribute to their destruction.²¹⁸

These acts perpetrated by the United States are nothing short of genocide, as they cause serious bodily harm to the Black citizens of Cancer Alley who are plagued with cancer and potential mental harm for those who may fear affliction. Additionally, the failure to fulfill obligations to safeguard the human rights of Black residents through the continuance of industrial development in Louisiana's Cancer Alley that furthers environmental degradation and air pollution, illustrates the United States disregard for the Black body, as well as their compliance in its physical destruction. With natural disasters (which are becoming increasingly powerful due to climate change) exacerbating preexisting environmentally hazardous situations and areas, Black communities are continuing to suffer at greater rates than their white counterpart. The vicious cycle between pollution, climate change, and the impact of natural disasters will continue to cause harm to the lives of Black people if something is not done.

These violations of the human rights of Black people have shown no end. Even in times of crisis, when support is desperately needed, the plight of Black people falls on deaf ears as state, local, and federal officials continually demonstrate their lack of care or sense of urgency regarding Black people and their needs.

Natural Disasters and the Impacts of Environmental Racism

²¹⁷ USGS, *How can climate change affect natural disasters?*, https://www.usgs.gov/faqs/how-can-climate-change-affect-natural-disasters-1?qt-news_science_products=0#qt-news_science_products

²¹⁸ Joe McCarthy, *Why is Climate Change a Racial Justice Issue?*, <https://www.globalcitizen.org/en/content/why-is-climate-change-a-racial-justice-issue/>

The United States has deliberately inflicted upon Black people of Louisiana, conditions of life that would bring about their physical destruction through faulty engineering, their negligent approach to preparing for the downfall of Hurricane Katrina in partnership with their inadequate response to Black victims and the disparate treatment of Black and white citizens with rebuilding and assistance efforts. These actions are in violation of Article II(c) of the Genocide Convention.

Unfortunately, the neglect felt by Black communities at the hands of state, federal, and local officials, is part of the United States' pattern of mistreatment and differential handling of Black people before, during, and after national disasters.

In late August 2005, Hurricane Katrina struck Louisiana. While the category 4 storm did do damage, the real destruction came as the levees gave way under the pressure of the storm surge, broke, and flooded the city of New Orleans. With more than 1800 people dead or missing and around 100 billion dollars in damage, Katrina devastated New Orleans, a city that in 2005 (prior to the storm) was 67.3 percent African American or Black and 26.5 percent non-Hispanic white.²¹⁹

The government failed New Orleans at each level – local, state, and federal. To begin to assess the many harms done to the Black residents of New Orleans, Louisiana, we must assess the levees, erected after Hurricane Betsy in 1965, long before the rise of Hurricane Katrina.²²⁰

The US Army Corps of Engineers were charged with overseeing the construction of the levees in

²¹⁹ United States Census Bureau, *Facts for Features: Hurricane Katrina 10th Anniversary: Aug. 29, 2015*, <https://www.census.gov/newsroom/facts-for-features/2015/cb15-ff16.html>

²²⁰ German Lopez, *Hurricane Katrina, in 7 essential facts*, <https://www.vox.com/2015/8/23/9191907/hurricane-katrina>

New Orleans, however, they failed catastrophically. A report from the Corps, in addition to taking responsibility for the levee failure, stated the levees were poorly constructed—disjointed in areas, “inconsistent in quality, materials, and design”, and with gaps that were exposed and exploited by Katrina.²²¹ Additionally, outdated information combined with lack of knowledge about New Orleans soil quality and a lack of funding for sufficient materials all contributed to the faulty levee system administered by the Corps.²²² The force of Katrina, wind, and storm surges overwhelmed the levees and they were breached or failed in over 50 locations, with some areas failing before the storm even made landfall.²²³ The decisions made by the Army Corps resulted in the deaths of more than 1800 people in New Orleans, a predominantly Black city. Had the levees been constructed properly, using current information and quality materials, the loss of life, particularly Black life, could have been prevented and the damage reduced. The Army Corps of Engineers put money before the lives of Black residents in New Orleans and it cost them just that. The United States chose money over Black people, and the consequence is the physical destruction of Black lives situated in communities designed for them to fail.

In addition to levee failure due to incompetence, frugality, and ignorance, the government’s preparation and response, or lack thereof, for Hurricane Katrina was a significant factor in the disaster of Katrina. Weather forecasters warned government officials about Katrina

²²¹ CBS, *Katrina Report Blames Levees*, <https://www.cbsnews.com/news/katrina-report-blames-levees/>

²²² Ibid.

²²³ University of North Carolina Charlotte, *Failure Case Studies*, <https://eng-resources.uncc.edu/failurecasestudies/dam-failure-cases/new-orleans-hurricane-katrina-levee-failures/>

prior to it making landfall.²²⁴ However, they failed to heed warnings and were left unprepared, relaying erroneous information to the public.²²⁵ Additionally, failures in communication systems, an insufficient quantity of resources acquired before the storm, and slow movement on the side of federal, state, and local officials contributed to the government's poor preparation plan prior to Katrina's landfall.²²⁶ State officials requested emergency provisions prior to the advent of the storm, however the demand far exceeded the supply.²²⁷ Officials were slow to move when it came time to evacuate citizens and many of the city's Black residents, particularly those of lower socioeconomic status, were left stranded to fend for themselves.²²⁸ This resulted in unnecessary death, which could have been avoided had government officials from all levels developed a functional and efficient evacuation plan.²²⁹ The negligence on the part of federal, state, and local officials displayed their complete disregard for the severity of the situation and the Black lives that would be impacted. Their actions, or lack thereof, served as the impetus for Black death in Hurricane Katrina, and cultivated an atmosphere that was ideal for the physical destruction of Black life.

²²⁴ Chris Edwards, *Hurricane Katrina: Remembering the Federal Failures*, <https://www.cato.org/blog/hurricane-katrina-remembering-federal-failures>

²²⁵ Ibid.

²²⁶ German Lopez, *Hurricane Katrina, in 7 essential facts*, <https://www.vox.com/2015/8/23/9191907/hurricane-katrina>

²²⁷ Chris Edwards, *Hurricane Katrina: Remembering the Federal Failures* <https://www.cato.org/blog/hurricane-katrina-remembering-federal-failures>

²²⁸ German Lopez, *Hurricane Katrina, in 7 essential facts*, <https://www.vox.com/2015/8/23/9191907/hurricane-katrina>

²²⁹ Ibid.

There were also various shortcomings on behalf of government both during and after the storm, especially the Federal Emergency Management Agency (FEMA). The Louisiana National Guard requested 700 buses to evacuate residents and transport them to safe locations, however, FEMA only sent 100 buses and which arrived days later and caused evacuations to take up to a week.²³⁰ Additionally, FEMA both wasted valuable resources, provided survivors with toxic trailers, and obstructed private relief efforts.²³¹ Millions of pounds of ice were transported to holding centers located in areas far from the Gulf, where it was desperately needed; this resulted in approximately \$100 million dollars of unused ice having to be thrown away.²³² Trailers allocated to victims of Katrina by FEMA contained dangerous levels of formaldehyde that were adversely affecting its inhabitants.²³³ Despite knowledge of these high levels of formaldehyde, FEMA was hesitant to enact testing of trailers and was not immediately forthcoming with this information, which could have saved lives and prevented further adverse health effects to the predominantly Black residents living in them.²³⁴ Also, efforts by private actors to help Katrina victims were stymied by FEMA; medical doctors volunteering their services at emergency facilities were turned away; emergency supplies ordered by Methodist Hospital in New Orleans were turned away; an offer by AMTRAK to evacuate victims was refused; Walmart trucks with

²³⁰ Ibid.

²³¹ Chris Edwards, *Hurricane Katrina: Remembering the Federal Failures* <https://www.cato.org/blog/hurricane-katrina-remembering-federal-failures>

²³² Ibid.

²³³ Heather Smith, *People are still living in FEMA's toxic Katrina trailers - and they likely have no idea*, <https://grist.org/politics/people-are-still-living-in-femas-toxic-katrina-trailers-and-they-likely-have-no-idea/>

²³⁴ Ibid.

water were turned away; even the Red Cross was denied access to the Superdome when attempting to deliver emergency supplies.²³⁵ All of the actions taken by FEMA were clearly detrimental to the health and well-being of Black survivors of Katrina in New Orleans. The measures taken and denied contributed to the environmental harm that Black residents were already disparately affected by – directly contributing to the death and destruction of Black life in New Orleans.

The cumulative actions of multiple levels of government officials in New Orleans during the Hurricane Katrina period exacerbated the environmental effects of the storm – poorly constructing levees that fail and flood predominantly Black neighborhoods which leads to the destruction of Black bodies; inept government responses that prolonged evacuation efforts and left residents stranded in contaminated water; providing resources placed survivors in hazardous environments, tainted with pollutants, and being slow to amend their mistakes; rejecting resources that prevent their access to clean air, water, and health – all human rights and all aspects of a healthy environment. The decisions made by state, local, federal officials, and other such government actors inflicted upon Black residents of New Orleans exacerbated environmentally disparate effects of Hurricane Katrina and detrimental conditions of life that led to Black death and destruction.

The actions taken by the United States governments, at all levels, have caused serious bodily injury to Black Americans and subjected them to conditions of life which inevitably lead to their demise. We cannot allow these behaviors to continue, and action must be taken to hold

²³⁵ Chris Edwards, *Hurricane Katrina: Remembering the Federal Failures* <https://www.cato.org/blog/hurricane-katrina-remembering-federal-failures>

the United States accountable for their violations of Article II(b)-(c) of the Genocide Convention.²³⁶ We must charge the United States with genocide and impose all appropriate punishments.

COUNT 5

Introduction: Public Health

*“If part of a body is sick, the whole body can’t be healthy...”
- Alana Semuels former writer for The Atlantic*

I. The United States is charged with cultivating a health crisis that aids in the destruction, in whole or in part, of the Black and Brown communities.

We shall offer proof of genocide through the inequitable health conditions in U.S. that disproportionately and deliberately impact Black Americans. We shall prove that such conditions create a mental health crisis, increased infant and maternal mortality rates, increased disease and death. Further, we shall show that the U.S. government acts intentionally as a participant on federal, state, and local levels in the genocide of Black Americans. The evidence below is by no means complete, but alone is sufficient to demonstrate a pattern of genocide. We cite historical precedent, typical cases, statistics, and other current events. For generations, the Black American people have been deprived of a livable and just experience of life that other groups are allotted in this country. The country promises equal protection before the law and Black Americans are once again failed this liberty.

²³⁶ United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

It is well-established that the United States Federal Government originally intended and heavily relied on the genocidal, for-profit enslavement of Africans for its own genesis and economic continuity.²³⁷ While the United States has since technically “abolished” *de jure* genocide, enslavement, and even racial discrimination, its genocide and exploitation of Black Americans continues into the present, covertly, in the form of racially discriminatory police violence, vigilante violence, and mass incarceration. The United States maintains these genocidal practices via the convict-labor loophole in its Thirteenth Amendment, and the “police power” derived from the Tenth Amendment.

In its perpetuation of these invidious and devastating practices, the United States knowingly perpetuates substantial and mental and physical health crises in Black men and women. This system has allowed the government to (1) actively kill, (2) cause bodily harm to, and (3) deliberately inflict conditions intending to bring about the physical destruction (in whole or in part) members of the Black community violating the Universal Declaration of Human Rights Article 3.

A. The United States has created a substantial mental health crisis in the Black community through a historically oppressive system of mass incarceration, police violence and hyper-community oversight.

In a fight to eliminate crime in the U.S., the United States government is failing the Black community. The U.S. Justice Dept., half of people in American prisons are being detained before they’ve had a trial.²³⁸ The [ABA](#) reports that 500,000 of these people are specifically detained for

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238 <https://bjs.ojp.gov/content/pub/pdf/fdluc09.pdf>

their inability to pay the set bail—African-Americans make up 45% of these detainees.²³⁹ The data showing the effects these disproportionate rates is overwhelming.

Early in the indictment, we discussed the mass incarceration that has generational implications. The targeting of the Black men specifically has led to not only a physical removal of members of the Black community but lasting health impacts. Black boys aged 5 to 12 are more likely to die by suicide than any other demographic.²⁴⁰ Suicide rates in Black children have increased 71% in the last decade.²⁴¹ Black males have had the highest increase in suicide attempts (nearly 80%) and according to the JAMA study, this is directly related to growing risks, such as adverse childhood experiences, systematic racism, discrimination, neighborhood violence, and socioeconomic disparities.²⁴²

We see this crisis peak in the case of sixteen-year-old Kalief Browder. Kalief Browder lived in New York at the time when he was arrested for theft.²⁴³ Before being found innocent of these charges, Browder spent 3 years Rikers—2 of which were in solitary confinement.²⁴⁴ In 2015, Browder was released but was still plagued by what he noted as the mental anguish and trauma from his time in jail.²⁴⁵ Browder tried to reenter post this traumatic experience by

²³⁹ https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/criminal-justice-debt-problems/

²⁴⁰ *JAMA Pediatr.* 2018;172(7):697-699. doi:10.1001/jamapediatrics.2018.0399

²⁴¹ <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2680952>

²⁴² <https://www.insider.com/rise-young-black-men-attempting-suicide-perfect-storm-of-hardship-2021-6>

²⁴³ Kalief Browder case

²⁴⁴ *Id.*

²⁴⁵ *Id.*

reenrolling in school and earning his GED, but after fighting three psychiatric hospitalizations and two suicide attempts Browder hanged himself.²⁴⁶ The city of New York paid out a \$3.3 million settlement. The United States Human Rights Office of the High Commissioner explored the effects of prolonged solitary confinement in Feb. 2020. A UN expert confirmed that prolonged solitary confinement amounts to great psychological torture. There is proof the social exclusion found in prisons leads to “anxiety, stress and depression that amounts to cognitive impairment and suicidal tendencies.” (Nils Melzer-Special Rapporteur/UN)

These systems have allowed the government to actively kill; cause bodily harm to; and deliberately inflict conditions intending to bring about the physical destruction (in whole or in part) members of the Black community violating the Universal Declaration of Human Rights Article 3.

[Add epidemiology section]

B. The United States facilitated an inaccessible healthcare system resulting in disproportionate health issues including long-term disease, conditions and rates of maternal and infant mortality in the Black Community.

While the United States has since technically “abolished” *de jure* segregation, it nevertheless covertly perpetuates its eugenics-based agenda and genocide of Black Americans via its for-profit, hierarchical healthcare system.²⁴⁷ Specifically, the United States continues to facilitate a *de facto* racially discriminatory system of healthcare facilities and providers.²⁴⁸

²⁴⁶ https://www.uml.edu/news/stories/2019/cj_panel.aspx

²⁴⁷ See *Harper v. Virginia State Bd. of Elections*, 383 US 663 (1966)(citing *Griffin v. People of State of Illinois* and *Douglas v. People of State of California*)(stating that “lines drawn on the basis of wealth...like those of race are traditionally disfavored”).

Article 25 of United Nations' Universal Declaration of Human Rights states:

“Everyone has the right to a standard of living adequate for the health ...
medical care and necessary social services, and the right to security in the event of
unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in
circumstances beyond his control.”²⁴⁹

Despite making this commitment, the U.S. has failed to fulfill this promise in many Black communities.

Inaccessible Healthcare. Under President Barack Obama, the Affordable care act (“AFA”) was created with the intention to make healthcare more accessible and affordable. While this legislation worked to narrow the great healthcare disparities in the U.S., the impact made was not nearly substantial enough for a humane society.²⁵⁰ The AFA increased the amount of people who are covered but made no change in the quality of treatment available among different demographics. Over the last 15 years, cities have worked to remove public hospitals from areas of greater Black populations and shifted to privatization.²⁵¹ The costs required for adequate treatment was stark before this change, but this evolution continues to drive out Black people with serious conditions who need medication, specialized treatment, or consistent doctor’s visits. Congress has ignored Senators like Bernie Sanders for years who’ve spoken about the dangers of removing public hospitals because those private facilities are allowed to

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251 <https://www.usnews.com/news/healthiest-communities/articles/2019-07-10/poor-minorities-bear-the-brunt-as-urban-hospitals-close>

offer differential treatment to those that cannot afford it.²⁵² As a result, Black Americans are often placed in situations where they cannot afford to live. The JAMA study shows the black cancer patients are 3x more likely to forego receiving any medication or specialized treatment.²⁵³ Special treatment is often needed for those with serious illnesses, which has limited coverage on state insurance. Thus, a systematic need for unaffordable private insurance has been created.

In addition, the Trump administration played a substantial role in receding the progress made by ACA because of the stricter restrictions he placed on the eligibility requirements.²⁵⁴ Moreover, 12 southern states, where black population are more prevalent, have outright refused to expand Medicaid, despite the support of federal financing.²⁵⁵ This decision has been made at a time where this country is facing its greatest pandemic. This neglect is intentional and discriminatory, which is a direct violation of the United States' treaty with the World Health Organization ("WHO").²⁵⁶

These governmental acts are not without consequences. The Center for Disease and Control has investigated the U.S. healthcare and found that Black mothers die (approx. 700/

²⁵² <https://www.politico.com/story/2019/07/07/bernie-sanders-healthcarephiladelphia-hospital-1399327>

²⁵³ <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2767589>

²⁵⁴ <https://www.kff.org/racial-equity-and-health-policy/issue-brief/disparities-in-health-and-health-care-5-key-question-and-answers/>

²⁵⁵ <https://cardinalpine.com/story/12-states-refuse-to-expand-medicaid-this-is-how-it-hurts-latinos/>

²⁵⁶ <https://www.ohchr.org/documents/publications/factsheet31.pdf>

yearly) at a rate 243% higher than white moms.²⁵⁷ 50% of these deaths were found to be preventable.²⁵⁸

Skyrocketing Maternity Mortality Rates. It's important to recognize that these health disparities are not simply an issue of socio-economic status. Black people across all backgrounds and incomes must overcome the discriminatory healthcare practices.

Serena Williams, a Black mother who has access to some of the greatest healthcare in the country, has shared about her near-death experience of giving birth in the U.S. . Williams well-informed about her medical history brought several concerns to physicians because she has a long history of blood clots. Doctors ignored this concern and noted it wasn't a current issue. Upon feeling extremely unwell, Williams reached out to hospital staff and asked for the specific treatment of blood thinners and a CT scan. She was told that she was confused. Later however, doctors performed an ultrasound--different exam, which showed nothing. When she finally received the treatment, she asked for, doctors confirmed that she was indeed suffering from blood clots and at immediate risk of a pulmonary embolism. Williams survived, but many mothers do not.

This is just one notable testimony, but many Black people can and have attested to experiences such as providers not believing their medical issue exists, being denied proper testing, being denied medication. Investigations have shown that doctors themselves have realized they are more likely to assume Black patients have a higher pain tolerance than their white patients. By allowing these haphazard housing concerns to persist, the United States is in

²⁵⁷ Villavicencio et al., *Overview of US Maternal Mortality Policy*, [https://www.clinicaltherapeutics.com/article/S0149-2918\(20\)30051-5/fulltext](https://www.clinicaltherapeutics.com/article/S0149-2918(20)30051-5/fulltext)

²⁵⁸ Id.

violation of Article 25 of the UN, which speaks to the U.S.'s obligation to provide a standard of living adequate for the health of its people, specifically related to housing. These healthcare failures result in the killing; cause bodily harm to; deliberately inflict conditions intending to bring about the physical destruction (in whole or in part) and impose measures that prevent births in the Black community violating the Universal Declaration of Human Rights Article 3.

C. The United States has designed harmful living spaces for Black Americans that cause disproportionate rates of health concerns like asthma, various diseases, delay in biological developments, and often death.

Article 25 of the United Nations agreement not only speaks to medical treatment, but also to housing.²⁵⁹ It is recognized that the conditions in which one lives plays a direct role in their health and the U.S. has orchestrated conditions in which it's impossible for Black people to live healthily. Redlining is the discriminatory practice that divides communities, so resources are inaccessible to groups of color.²⁶⁰ Redlining is the history of this country. This history follows through many issues in housing and the pattern is too prevalent to ignore. Housing in every major city in the United States tells the same story. Some of the more critical cases are discussed following.

Highways through Black neighborhoods. Modern day redlining continues to persist through local government's implementation of highways.²⁶¹ The federal government has played a role in encouraging this because the federal government offers cities subsidies in which they

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²⁶¹ https://www.google.com/url?q=https://www.npr.org/sections/health-shots/2020/11/19/911909187/in-u-s-cities-the-health-effects-of-past-housing-discrimination-are-plain-to-see&sa=D&source=editors&ust=1632067511536000&usg=AOvVaw1Xq5_9ph7iREw2bEdecaH4

cover 90% of the cost.²⁶² From coast-to-coast Black neighborhoods are flattened and disrupted for the sake of highway construction.²⁶³ This is intentional by design. Land in Black areas is typically cheaper and there is weaker political opposition to stop these decisions. Moreover, those with stronger political power have vocalized their intention to “block out the slums” and hoods, language masked to describe areas with high Black populations.²⁶⁴

In New Orleans and Kansas City the highway was rerouted from white neighborhoods to integrated and predominantly black areas.²⁶⁵ Interstate 40 cuts through a highly black community in the north. According to the U.S. Environmental Protection Agency, research has shown that living near a highway, which increases air pollution, causes the following health effects: asthma, reduced lung function, cardiovascular disease, and premature death.²⁶⁶ The University of Pennsylvania has studied the methods of highway planning across the country and have determined that in over 40 states the implementation of highways is unequally distributed through Black communities.²⁶⁷

Lead Housing Crisis. Redlining is said to have originated in Baltimore, MD, so there is no surprise to find that issues like lead housing have plagued this city for over 60 years. The lead housing issue is an issue of lead paint being used in housing units and the dust from this paint is

²⁶² https://www.senate.gov/artandhistory/history/minute/Federal_Highway_Act.htm

²⁶³ <https://www.reuters.com/world/us/us-freeways-flattened-black-neighborhoods-nationwide-2021-05-25/>

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²⁶⁶ <https://www.epa.gov/air-research/research-near-roadway-and-other-near-source-air-pollution>

²⁶⁷ <https://repository.upenn.edu/cgi/viewcontent.cgi?article=1208&context=curej>

extremely lethal. Lead paint can be absorbed into the skin and the most minute amount ingested can have lifelong effects such as speech delays, lack of impulse control, aggressive tendencies, ADHD and other learning disabilities.²⁶⁸ Black children were found to have higher lead levels independent of age or socio-economic status.²⁶⁹ The lead exposure is more prominent in areas with higher black populations, which leads to high impact to Black families.²⁷⁰

These problems have persisted in Baltimore city for over 50 years and the local government has yet to eliminate this issue and create safe housing. The city has deemed most of these housing areas uninhabitable instead of fixing these areas, which eliminates housing possibilities and subjects these families to homelessness. This isn't the only major city that experiences issues like this. These problems specific to lead also persist in New York, Detroit, South Los Angeles, specifically in areas where there is a vulnerable Black population.²⁷¹

Flint Water Crisis. The Flint Water Crisis is one the the most public examples of the U.S. government intentionally causing and accepting harm in Black communities to cut costs. Flint, Michigan has a Black population 55% greater than any other demographic.²⁷² The issue in Flint began because the local government decided to part from the usual water supplier and use the Flint River as its main water supply to cut costs, despite finding out the water had high levels

²⁶⁸ <https://storymaps.arcgis.com/stories/d1c973fb41494614ba0d0c0bcf022cac>

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹Reference to “Lead Children” in these cities with higher Black population and 5 times the CDC’s recommended maximum exposure: <https://www.bloomberg.com/news/articles/2016-07-29/why-lead-paint-still-haunts-industrial-cities-in-the-u-s>

²⁷² <https://www.cnn.com/2016/01/26/us/flint-michigan-water-crisis-race-poverty/index.html>

of toxins that could cause dangerous effects.²⁷³ Within weeks of the change, Flint residents complained about the issues in the appearance, taste and smell of the water.²⁷⁴ Their complaints went unrecognized. In the resulting court case, the court confirmed that the State and City officials actively failed to stop the shipment of Flint Water and assured the public that the use of the water was safe, despite knowing it was not.²⁷⁵ This resulted in tens of thousands of residents exposed to dangerous levels of lead.²⁷⁶ Outbreaks killed no less than 12 people and hospitalized dozens more.²⁷⁷ The EPA found that the water meets criteria to be classified as “hazardous waste”.²⁷⁸

A Cornell study reported the following health injuries were developed as a result of the local government’s failures: 50% of those studied reported skin rashes [60% of the black respondents and only 33% of white respondents], over 40% reported hair loss, depression, Anxiety, and PTSD was also found in those affected by flint Michigan, and an overall elevated lead in the blood.²⁷⁹ These were avoidable issues. After years of pleading, the city was awarded \$641 million dollars in a settlement and the Governor at the time, Rick Snyder, along with 8

²⁷³ In re Flint Water Cases, 960 F.3d 303, 310 (6th Cir. 2020)

²⁷⁴ Id.

²⁷⁵ Id.

²⁷⁶ Id.

²⁷⁷ <https://www.npr.org/2021/01/14/956924155/ex-michigan-gov-rick-snyder-and-8-others-criminally-charged-in-flint-water-crisi>

²⁷⁸ <https://www.britannica.com/event/Flint-water-crisis>

²⁷⁹ <https://news.cornell.edu/stories/2021/04/water-crisis-took-toll-flint-adults-physical-mental-health>

others are currently facing criminal charges of neglect, perjury, extortion, and misconduct.²⁸⁰ But these problems still persist, seven years later. Testing in 2021 has shown that the water in Flint still has elevated lead levels despite the city's work to replace the pipes in their water system. People in this community are not affluent enough to up and leave.²⁸¹ Further, they are still and have never stopped being charged for water bills, rent, mortgage, etc. despite the inhabitable living space.²⁸² This community has now been medically affected for the rest of their lives. Many Black communities in the U.S. are just like Flint. It should not take thousands to be affected for accountability to be sought.

These healthcare failures result in the killing; cause bodily harm to; deliberately inflict conditions intending to bring about the physical destruction (in whole or in part) and impose measures that prevent births in the Black community violating the Universal Declaration of Human Rights Article 3.

D. By and Through Its Colorblind Policy Response to the COVID-19 Pandemic Specifically, the United States Has Deliberately Chosen to Perpetuate Conditions Originally Calculated To Annihilate Physical “Unfit” Members of the Black Working Class, thus Continuing its Genocidal, Eugenics-Based Program.

The United States' politically-driven colorblind approach to combating the spread COVID-19 virus, specifically, is both deliberate and fatal for Black Americans. Although COVID infects people indiscriminately, Black Americans are 100% more likely (or more than

²⁸⁰<https://www.npr.org/2021/01/14/956924155/ex-michigan-gov-rick-snyder-and-8-others-criminally-charged-in-flint-water-crisi>

²⁸¹<https://www.washingtonpost.com/news/energy-environment/wp/2017/02/28/flint-residents-must-start-paying-for-water-they-still-cant-drink-without-a-filter/>

²⁸² *Id.*

twice as likely) to die from COVID-19 than *any other* ethnic group.²⁸³ The Center for Disease Control (CDC) found that while only 13% of the population, Black Americans comprise 33% of all Americans hospitalized for COVID-19.²⁸⁴ In jurisdictions like Chicago, IL, and the state of Louisiana, Black patients account for as much as 70% of coronavirus deaths, despite comprising only a third of the population²⁸⁵.

We submit that this blood is on the United States' hands. According to *The Contradiction: Of Color-blind Covid-19 Relief*, a 2020 report on Covid and Race, jointly published by the Howard University School of Law's Thurgood Marshall Center, Harvard Law School's Criminal Justice Policy Program, and Law 4 Black Lives DC, the United States failure to adopt a more "color-conscious" response to COVID-19 is killing Black Americans at alarming rates. For instance, the disproportionality of "comorbid conditions, future life expectancy, and the concentration of health and public safety workers" within the Black community results in "[h]igher disease burdens and shorter life expectancies' that reflect social failures, not personal ones."²⁸⁶ And especially in the face of myriad structural, social features that conspire to make people of color sicker, the refusal to promulgate policy that would account for the contribution of empirically documented, implicit racial bias of medical practitioners is a willful and thus intentional exacerbation of these disparate effects.

²⁸³ *The Contradiction*, HUSL TMC Report on Covid & Race (2020) at 8 (citing [copy fn. 10]).
***Verify "Blacks are the worst affected..." In the report goes on to compare Black v. White, Asian and Latino, but not Native American. I think I saw elsewhere that Native Americans were affected most.

²⁸⁴ *Id.* (citing [copy fn. 12]).

²⁸⁵ *Id.* (citing [copy fn. 13]).

²⁸⁶ *Id.*

In sum, United States’ politicians’ carefully-crafted “democratic,” “egalitarian” and “humanitarian” lip service aside, their *actual* promulgation of colorblind, utilitarian, one-size-fits-all legislative and regulatory response to this and other public health crises, past and present *willfully* ignores the empirically obvious and persistent effects of the United States original, 400-year-long genocide against people of color deemed “unfit” for their pre-determined use as menial laborers. The passive continuance of this policies are effectively deliberate decisions that undeniably continue to inflict the same conditions upon non-white Americans originally calculated to bring about our partial physical destruction.

At a minimum, a reversal of the United States’ genocide would have to entail the following reasonable, affirmative steps:²⁸⁷ (1) universal access to equitable healthcare to improve access to treatment for Black Americans;²⁸⁸ (2) the implementation of equitable protocols and complementary measures to reduce implicit bias in treatment;²⁸⁹ and (3) the expansion of access to testing and emergency care in Black neighborhoods.²⁹⁰

²⁸⁷ *Id.* at 8.

²⁸⁸ *Id.* at 6 (citing [Brookings Inst.]).

²⁸⁹ *d.* at 6 (citing [CDC]).

²⁹⁰ *d.* at 6 (citing [Brookings Inst.]).

Witness List

1. **Udodilim Nnamdi**,
 - a. Thesis, *Police Brutality and how that plays into Genocide*
 2. **Victor M. Rios**,
 - a. Author, *Punished: Policing the Lives of Black and Latino Boys*--> to speak to hyper criminalization
 3. **Kenneth Walker**,
 - a. Breonna Taylor's boyfriend who directly witnessed the series of events and can attest to the argument being made in the "strictly necessary" section and illustrate how nonsensical the shooting was
 4. **Chief Medaria Arradondo**,
 - a. The Minneapolis Police Chief who testified in Chauvin's trial that Chauvin continuing to apply that level of force was in "no way, shape, or form" policy --> can speak to the beyond-scope portion of the argument.
 5. **Paul Butler**
 - a. Author, *Chokehold: Policing Black Men*
-

Witness list - Criminal Justice System Charge

Racial Bias in the Criminal Justice System generally

- Ben Baker, described in the indictment²⁹¹
- William Underwood, released from prison in January 2021²⁹²
- Robert Hinton, inspiration for “Just Mercy”
- Alex Karakasanis, Civil Rights Corps²⁹³
- Ted Shaw, former Director, NAACP LDF and currently Professor of Professional Practice at Columbia University School of Law
- Paul Butler, Author of “Chokehold: Policing Black Men”
- Michelle Alexander, Author of *The New Jim Crow*

²⁹¹ In 2006, Baker was approached by Ron Watts, a policeman on a Chicago’s Second District Tactical Team, and told “either you pay or you go away.” When Baker refused, Watts drummed up fake charges against Baker for possession of a controlled substance with intent to deliver. During the trial, the defense presented allegations of police corruption, but the judge bluntly told Baker that his word would not stack up against the testimony of the seven decorated police officers who testified against him. In 2012, Watts and another officer were caught in an FBI sting taking bribes, which started the process of unwinding the cases, like Baker’s, where Watts’ improper testimony had led to conviction. the Exoneration Project: <https://www.exonerationproject.org/our-stories/ben-baker/>

²⁹² See press release: <https://justiceroundtable.org/news-item/personal-statement-of-nkechi-taifa-on-todays-granting-of-compassionate-release-to-william-underwood/>

²⁹³ Alec Karakatsanis: founder and executive director of Civil Rights Corps. Before founding Civil Rights Corps, Alec was a civil rights lawyer and public defender.

- Kyrystal Roundtree, expert on incarceration
- Bailey Maryfield, author of *Implicit Racial Bias*, Justice Research and Statistics Association, December 2018. <https://www.jrsa.org/pubs/factsheets/jrsa-factsheet-implicit-racial-bias.pdf>
- Jamie Fellner, author of *Race, Drugs, and Law Enforcement in the United States*, vol 20 Stanford Law & Policy Review 257 (2009). <https://law.stanford.edu/publications/race-drugs-law-enforcement-united-states/>

The Criminalization of Poverty

- Family members of Kalif Brown
- Maranda Lynn ODonnell, the plaintiff the *Odonnell* case²⁹⁴
- David Arnold, lead author of *Racial Bias in Bail Decisions*, (2108). https://scholar.harvard.edu/files/cyang/files/ady_racialbias.pdf
- Paul Heaton, lead author of *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 711 (2017).
- Peter Wagner and Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, Prison Policy Initiative (2018), <https://www.prisonpolicy.org/reports/pie2018.html>.

²⁹⁴ Maranda Lynn ODonnell, a 22-year-old single mother, was arrested on May 18, 2016 at 5:00 p.m. and charged with driving with an invalid license. Pls. Ex. 7(a). After she was booked into the Harris County Jail, she was informed that she would be released promptly if she paid a secured money bail of \$2,500 set according to the County's bail schedule, but that she would remain in jail if she did not pay either the full bail amount to the County or a premium to a bail bondsman up front. Id. Ms. ODonnell and her child struggled to meet the basic necessities of life. She received benefits from the federal government's Women, Infants, and Children program to feed her daughter. She could not afford housing, so she stayed with a friend. Id. At the time of her arrest, Ms. ODonnell was working, but it was at a new job she had held for only seven days. Id. She had no money to buy her release from detention. [**16] Id. She was otherwise eligible for release.

Harris County Pretrial Services interviewed Ms. ODonnell at 11:52 p.m. on May 18. Pls. Ex. 8(c)(1), ODonnell Pretrial Services Report. At 3:00 a.m., on May 19, Pretrial Services completed a risk-assessment report recommending her release on a personal bond—that is, an unsecured appearance bond requiring no up-front payment for release. Id. Ms. ODonnell appeared before a Hearing Officer at 7:00 a.m., by videolink from the Harris County Jail. Pls. Ex. 4(c)(1), ODonnell Docket Sheet. The Sheriff's deputies present ordered her not to speak. Pls. Ex. 7(a). Without explanation, the Hearing Officer told her that she did not "qualify" for release on personal bond and imposed the \$2,500 scheduled amount as secured bail, meaning that she had to pay the full bail amount or a bondman's premium to be released. Pls. Ex. 8(c), ODonnell Hearing Video. When asked if she would hire her own lawyer or would be seeking help from a court-appointed lawyer, Ms. ODonnell responded, "Seeking help." These were her only words during her 50-second hearing. Id.

On the morning of May 20, Ms. ODonnell appeared before a County Criminal Court at Law Judge. (Docket Entry No. [**17] 31, Ex. 1). She completed an affidavit declaring her lack of assets and was found indigent for the purpose of appointing counsel. (Id.). Her bail amount was not changed or set on an unsecured basis, even though she declared on her affidavit that she remained in jail. (Id.). That same day, but after Ms. ODonnell filed this suit, an insurance underwriter for a commercial bondsman posted her bail amount. Pls. Ex. 11 at *5. This third-party payment looks like an attempt to moot her claim. See id. Ms. ODonnell was released from jail after three days in pretrial detention on the charge of driving with an invalid license. Pls. Ex. 8(c), ODonnell Docket Sheet.

- Ram Subramanian, Vera Inst. of Justice, lead author of *Incarceration's Front Door: The Misuse of Jails in America*, July 29, 2015