

50 Years after the Civil Rights Act:

*The Ongoing Work for Racial Justice
in the 21st Century*

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In releasing this report, our goals are to shape the narratives and inform the policy debates of the day in order to create a climate conducive to civil and human rights.

The publishers are solely responsible for the accuracy of the statements and interpretations contained in this publication.

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Foreword

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The 50th anniversary of the Civil Rights Act is an important milestone that measures the progress we have made and the distance we still have to travel on freedom's road. Half a century ago, civil rights activists fought to fulfill the promise of the Emancipation Proclamation from a century before. Fifty years later, as this report shows, we still struggle to turn the language of the landmark legislation of the 1960s into living realities for all of our people.

America's track record of creating opportunities for people of color and ending racial discrimination is decidedly mixed. On nearly every indicator that we use in the United States to measure progress, people of color are falling further behind. And it starts early.

A recent report by the Annie E. Casey Foundation called *Race for Results* looked at how we are providing opportunities for children of color along 12 indicators, such as percentage of children enrolled in preschool, percentage of 4th graders proficient in reading, and percentage of children who live in low-poverty areas. The report found that African Americans, Native Americans, Latinos and some Asian American communities like the Vietnamese, Pakistani and Hmong communities are falling behind White children. Even middle-class families of color have a very tenuous hold on their economic status.

The data aren't just revealing; they are a call to action. What the data tell us is that, as we learn from the past, we will need to fight for the future.

In the chapters that follow, we discuss the challenges that face the civil and human rights coalition. We must reform our racially and ethnically discriminatory criminal justice system. We need to build a truly equitable, diverse, high-quality education system that educates each and every single child, regardless of race, ethnicity or zip code. We need safe and affordable housing for all

individuals living in the U.S. We need to fix our voting system so no voter has to wait in long lines, and we must eradicate any and all racial discrimination in voting. We need to ensure that every person in the U.S. has an equal opportunity to access quality health care, achieve positive health outcomes, and lead a healthy life. We need vigorous enforcement of hate crime protections and expanded, coordinated police-community efforts to track and respond to hate violence and improve hate crime data collection efforts. We need to transform the U.S. Commission on Civil Rights into an independent human rights commission. And we need to address new, 21st century risks, such as those posed by big data technologies, which may be outside our existing legal and policy frameworks.

These are big challenges. But historic anniversaries remind us that our journey toward justice is like an Olympic relay. We take the torch from those who came before and pass it along to those who will follow.

This year, as we recall the generation of giants whose sacrifices came before us, we are inspired to make the less risky but still righteous commitment to carry their work forward in protecting and promoting justice throughout the United States.



Introduction

Only 50 years ago, schools, restaurants, public bathrooms, and even drinking fountains were strictly segregated through much of the South. In the 1960s, a series of landmark federal laws was enacted to make real the constitutional commitment of equal protection. The first of these, the Civil Rights Act of 1964, catalyzed the most successful peaceful revolution in human history.

The 50th anniversary of the Civil Rights Act falls at the same time as we commemorate 20 years since the United States ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD). CERD obligates member nations to take steps to reduce racial and ethnic discrimination and disparities within their borders. The Leadership Conference on Civil and Human Rights collaborated with 39 other organizations in 2014 in documenting their concerns and recommendations for progress under the treaty.

Today, while much progress has been made, our nation still struggles on many fronts. In the chapters that follow, we address the racial justice issues that command our attention. While this report does not reflect the complete agenda of all of The Leadership Conference's member organizations, it does highlight many of the issues that are at the top of the civil and human rights coalition's agenda.

Criminal Justice System

Introduction

Discrimination and racial disparities persist at every stage of the U.S. criminal justice system, from policing to trial to sentencing. The United States is the world's leading jailer with 2.2 million people behind bars. Perhaps no single factor has contributed more to racial disparities in the criminal justice system than the "War on Drugs." Even though racial/ethnic groups use and sell drugs at roughly the same rate, Blacks and Hispanics comprise 62 percent of those in state prisons for drug offenses,¹ and 72.1 percent of all persons sentenced for federal drug trafficking offenses were either Black (25.9 percent) or Hispanic (46.2 percent), many of whom often face harsh mandatory sentences.²

Discriminatory Law Enforcement and Prosecutorial Practices

Racial Profiling: Police officers, whether federal, state, or local, exercise substantial discretion when determining whether an individual's behavior is suspicious enough to warrant further investigation.³ Racial profiling in the United States began expanding before the terror attacks of 2001 in at least three contexts—street-level crime, counterterrorism, and immigration law enforcement. The Department of Justice (DOJ) recently issued long-awaited revisions to its profiling guidance for federal law enforcement.⁴ The revisions represent a significant step forward by expanding protected categories and limiting some of the existing loopholes. It falls short in the areas of national security, border integrity, and does not apply to state and local enforcement. We will work with this administration to end profiling by all law enforcement. The shortfalls in the guidance reinforce the need for Congress to act, and we will redouble our efforts to ensure passage of current End Racial Profiling Act.

"Stand Your Ground" Laws: During the past decade, 22 states have adopted "stand your ground laws."⁵ "Stand your ground" laws change the common law doctrine of

self-defense, which requires retreat from anywhere an individual has a legal right to be present. "Stand your ground" laws have exacerbated the discriminatory treatment toward suspects of color. For example, a recent study by the Urban Institute found substantial evidence of racial disparities in justifiable homicide outcomes of cross-race homicides nationwide. A key finding was that Whites who kill Blacks in "stand your ground" states are far more likely to be found justified in their killings.⁶

There is no evidence that "stand your ground" laws or other expansions of self-defense laws have any deterrent effect on crimes such as burglary, robbery, and aggravated assault.⁷ Instead, according to a recent study conducted by researchers at Texas A&M University, evidence exists that the passage of "stand your ground" laws leads to more homicides.⁸

Police Misconduct: Accounts of police misconduct and police brutality throughout the 1960s and 1970s, especially horrific violence against individuals of color during the civil rights movement, are burned into the public consciousness of the United States. In the United States government's recent report to the Committee on the Elimination of Racial Discrimination (CERD) committee, the government notes its efforts to address the persistent problem of police brutality and racial profiling—most notably, the DOJ Civil Rights Division's recent investigation of the New Orleans Police Department, which led to one of the most comprehensive reform agreements in its history.⁹

As the government report notes, between FY 2009 and FY 2012 DOJ has aggressively investigated police departments, prisons, and other institutions to ensure compliance with the law and brought legal action where necessary against both institutions and individuals. As a result, there has been a 13.4 percent increase in number of convictions over the previous four years.¹⁰

While strides have been made in the areas of police misconduct and brutality, federal, state, and local police continue to use force disproportionately, and, in particular, more deadly force, against individuals and communities of color.¹¹ Anecdotal evidence of individual cases supports this conclusion; however, there is a great need in the area of police misconduct for reliable and comprehensive data disaggregated by race.¹² The National Police Misconduct Statistics and Reporting Project, run by the Cato Institute, reports that there were 4,861 unique reports of police misconduct that involved 6,613 sworn law enforcement officers and 6,826 alleged victims in 2010, the most recent year for which there is data.¹³ There were 247 deaths associated with the tracked reports in 2010 and 23.8 percent of the reports involved excessive use of force, followed by sexual misconduct complaints at 9.3 percent.¹⁴ In 2010, states spent an estimated \$346 million on misconduct-related civil judgments and settlements, not including sealed settlements, court costs, and attorney fees.¹⁵ For example, the New York Police Department was recently found liable for a pattern and practice of racial profiling and unconstitutional stop-and-frisks.¹⁶

Additionally, abuses by the U.S. Customs and Border Protection (USCBP), the largest federal law enforcement workforce, have recently come to light.¹⁷ From 2010 to 2013, at least 22 people have been killed by U.S. border patrol agents, most along the southwest border, and hundreds have filed formal complaints of official misconduct, including beatings, sexual abuse, and other assaults. Reports indicate USCBP failed to properly investigate these claims and refused to tell families of those injured or killed by border agents if the agency had determined that the agent had acted improperly or had been disciplined.¹⁸

DOJ's Special Litigation Section investigates state and local law enforcement agencies for compliance with federal civil rights law, including claims of police misconduct.¹⁹ Civil enforcement actions by the Special Litigation Section are small in number: the section has had only 33 cases and matters since the year 2000, a miniscule number compared to the number of reports of police misconduct throughout the country.²⁰ Furthermore, the Special Litigation Section has not opened matters in some of the jurisdictions with the highest police misconduct reporting rates, such as Galveston, Texas, Lee County, Pennsylvania, and Denver, Colorado.²¹ Criminal prosecution of police for misconduct is even rarer, compounded by the "code of silence" under which police cover up evidence or refuse to testify, making the investigation and prosecution of these cases extremely difficult.²² Prosecution, conviction, and incarceration rates are all much lower than those for ordinary citizens.²³

Impact of Prosecutorial Discretion on Individuals of Color: Prosecutorial discretion has disproportionately negative effects on defendants of color.²⁴ Black and Hispanic defendants, all else being equal, are more likely than Whites to be sentenced to terms of incarceration.²⁵ And according to the U.S. Sentencing Commission, "differences in charging and plea practices have contributed to [federal] sentencing disparities."²⁶ Moreover, Black defendants in the federal system typically receive sentences that are almost 10 percent longer than comparable sentences for Whites arrested for similar crimes, and the prosecutor's initial charging decision can account for at least half of this disparity.²⁷ A number of factors contribute to this difference, including the fact that federal prosecutors can be almost twice as likely to file charges carrying mandatory minimum sentences against Black defendants.²⁸ Black and Hispanic defendants also are less likely to be diverted from incarceration as a punishment.²⁹

In August 2013, DOJ announced a new policy to guide prosecutorial discretion in U.S. attorneys' offices, which seeks to ensure that low-level, nonviolent drug offenders who have no ties to large-scale organizations, gangs, or cartels will not be charged with offenses that impose mandatory minimum sentences. U.S. Attorney General Eric Holder also called for enhanced use of diversion programs such as drug treatment and community service initiatives. Data suggest that during the last six months federal drug prosecutions were at their lowest point in more than 20 years.³⁰

Disparities in Sentencing

Sentencing Inequity: Today, African Americans and Latinos comprise approximately 60 percent of imprisoned individuals. African-American men are six times more likely to be incarcerated than non-Hispanic White men. For Black men in their 30s, one in every 10 is in prison or jail on any given day. Hispanic men are imprisoned at about 2.5 times the rate of non-Hispanic Whites. Racial and ethnic disparities among women are less substantial than among men but remain prevalent.³¹ A comprehensive review conducted for the National Institute of Justice concluded that "Black and Hispanic offenders sentenced in State and Federal courts face significantly greater odds of incarceration than similarly situated White offenders."³²

The proliferation of the use of mandatory minimum penalties, particularly at the federal level, as a result of the "War on Drugs" has had a significant impact on minority communities and fueled the country's incarceration rates. For example, the U.S. Sentencing Commission found that in 2010, of the nearly 80,000 cases for which it had information, almost 25 percent of the offenders were sentenced to some sort of mandatory minimum

penalty.³³ Moreover, minorities comprised three-quarters of those serving a mandatory sentence for a federal drug trafficking offense.³⁴ In those instances in which relief from the mandatory minimum penalty occurred, it occurred least often for Black offenders.³⁵ In fact, Black offenders were the most likely to serve a mandatory minimum sentence as compared to any other group of federal offenders.³⁶

The federal government has recently demonstrated a commitment to addressing racial disparities in the criminal justice system. In 2010, Congress passed the Fair Sentencing Act of 2010, which reduced the sentencing disparity between powder and crack cocaine offenses, capping a long effort to address the disproportionate impact the sentencing disparity had on African-American defendants. Further, efforts by DOJ and the executive branch to address the overrepresentation of people of color in the system through changes in prosecutorial charging policy and executive clemency deserve recognition.³⁷

However, these reforms alone are not enough to stem the tide of mass incarceration and racial disparities in our justice system. Despite these efforts to reform the system, 48 states, the District of Columbia, and the federal government still impose extra sentencing penalties for certain drug offenses committed in specific geographic areas, such as within a certain distance of schools, child care programs, or public housing.³⁸ Not only do these enhancements fail to meet the intended goal of deterring harmful activity away from particular places,³⁹ but overlapping sentencing enhancement zones blanket urban communities and create a two-tiered system of justice that results in longer prison sentences disproportionately to people of color.⁴⁰

Death Penalty: As previously noted, racial discrimination pervades the U.S. criminal justice system, which among other things, has resulted in the disproportionate imposition of death sentences for people of color, especially African Americans.⁴¹ Today people of color account for 55 percent of those awaiting execution.⁴² It is well-documented that the likelihood of receiving a death sentence increases exponentially if the victim is White.⁴³ According to the U.S. General Accounting Office (GAO), “in 82 percent of the studies [reviewed], race of the victim was found to influence the likelihood of being charged with capital murder, i.e. those who murdered whites were found more likely to be sentenced to death than those who murdered blacks.”⁴⁴ As DNA evidence has become more available, it shows that innocent people are often convicted of crimes—including capital crimes—and that some have been executed.⁴⁵ Despite decades of evidence showing that the administration

of the death penalty is permeated with racial bias, the refusal of many courts and legislatures to address race in any comprehensive way reveals a fundamental flaw in America’s justice system.⁴⁶

There have been recent steps across the country toward the abolition of the death penalty. Since 2011, both Connecticut and Maryland have passed legislation abolishing the death penalty, which reduces to 32 the number of states in addition to the federal government and U.S. military that authorize capital punishment.

Barriers to Re-Entry

More than 2 million people are incarcerated in local, state and federal institutions. Incarcerated individuals, especially racial minorities, face a number of challenges during their imprisonment and upon re-entry, including interaction with their families, access to medical care, and voting rights restoration.

Prison and Jail Phone Charges: Private telephone companies negotiate exclusive service contracts with prisons and jails in exchange for giving a significant portion of the profits back to the correctional system in the form of a commission.⁴⁷ As a result, families with incarcerated loved ones, who are disproportionately low-income families of color, are forced to pay as much as \$17.30 for a single 15-minute call from a loved one behind bars. While the Federal Communications Commission (FCC) has approved a preliminary ruling to regulate prison and jail phone charges across state lines,⁴⁸ in-state phone calls in most states, as well as other forms of communication such as video visitation, remain unregulated. Furthermore, a telephone company lawsuit is pending that would roll back this initial progress.⁴⁹

Felony Disenfranchisement: The widespread disenfranchisement of formerly incarcerated persons is contrary to our democratic principles, disproportionately impacts minorities, and is a barrier to a person’s successful reintegration back in to society. Research has shown that formerly incarcerated individuals who vote are less likely to be rearrested.⁵⁰ In Florida, where then-Governor Charlie Crist briefly made it easier for people with felony convictions to get their voting rights restored, a parole commission study found that re-enfranchised people with felony convictions were far less likely to reoffend than those who hadn’t gotten their rights back. According to the report, the overall three-year recidivism rate of all formerly incarcerated people was 33.1 percent, while the rate for formerly incarcerated people who were given their voting rights back was 11 percent.⁵¹ When someone has fully and irreversibly served their time in prison, it is of the utmost importance that society restores that person’s right to vote. There is no rationale for continuing to deny individuals the right to vote after the completion of their sentence since no one

in a democracy is truly free unless they can participate in it to the fullest extent possible.⁵²

Access to Health and Behavioral Health Care for Justice-Involved Persons: Access to health, mental health, and substance abuse services are critically important for justice-involved men and women who are re-entering the community. It is estimated that approximately 800,000 persons with serious mental illness are admitted annually to U.S. jails. Similarly, a 2004 survey by DOJ estimated that about 70 percent of state and 64 percent of federal incarcerated people regularly used drugs prior to incarceration. The study also showed that one in four violent incarcerated people in state prisons committed their offenses under the influence of drugs.⁵³

The expansion of Medicaid eligibility through the Affordable Care Act (ACA) is especially important and a real possibility for this vulnerable population. Unfortunately, expansion of Medicaid in all 50 states has been slow. To date, only 26 states have agreed to the ACA-related expansion of Medicaid. Many of the states that have not expanded have the highest rates of uninsured persons in the nation, many of whom are people of color.

Juvenile Justice

Minority Juveniles in the Criminal Justice System: Juveniles from racial, ethnic, and national minority communities in the United States continue to be incarcerated at disproportionately high levels compared to their representation in the overall population,⁵⁴ though the full impact is difficult to ascertain because there are no systematic approaches to collecting this information in a disaggregated manner.⁵⁵

What is known is that juveniles from racial, ethnic, and national minority communities represent a disproportionate number of juveniles processed through the criminal justice system.⁵⁶ They accounted for 67 percent of juveniles committed to public facilities nationwide, which is nearly twice their proportion in the juvenile population. Black juveniles comprise approximately 15 percent of the juvenile population in the United States, yet, in 2011, were arrested twice as often as Whites.

Juveniles Serving Sentences of Life Without Parole: In its 2008 Concluding Observations, the CERD committee noted concern that “young offenders belonging to racial, ethnic and national minorities, including children, constitute a disproportionate number of those sentenced to life imprisonment without parole.”⁵⁷ The United States remains the only country in the world that continues to sentence juveniles to life in prison with no chance for parole.⁵⁸ The majority of youth sentenced to life without parole are concentrated in just five states: California, Louisiana, Massachusetts, Michigan and Pennsylvania.⁵⁹

Despite the U.S Supreme Court’s decisions in *Graham v. Florida* and *Miller v. Alabama*,⁶⁰ both of which sought to curtail the imposition of life without parole (LWOP) sentences on juveniles, minority juveniles continue to be sentenced to LWOP in the United States. There are approximately 2,570 juveniles currently serving life sentences without the chance of parole.⁶¹ One study found that Blacks comprised approximately 60 percent of those serving a LWOP sentence, and Latinos comprised approximately 14 percent.⁶² These juveniles, like most minority juveniles processed through the criminal justice system, “reported childhoods that were marked by frequent exposure to domestic and community-level violence, problems in school, engagement with delinquent peers, and familial incarceration.”⁶³

In addition, the majority of juveniles serving a LWOP sentence are not able to participate in any sort of rehabilitative programming. One study found that of those LWOP juveniles surveyed, almost one-third (32.7 percent) had been prohibited from participating in rehabilitative programs because they will never be released from prison.⁶⁴ The study found that an additional 28.9 percent of those surveyed were in facilities without sufficient programming or had completed all available programming.⁶⁵ This is problematic since juveniles serving a LWOP sentences must, under *Graham v. Florida*, demonstrate reform or rehabilitation that many have been denied because their life sentences precluded participation in such prison programs.⁶⁶

Recommendations

Discriminatory Law Enforcement and Prosecutorial Practices

- The U.S. Department of Justice (DOJ) should prioritize implementation of its recently released Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity. Where the revised policy falls short in the areas of national security, border integrity, and failure to apply to state and local enforcement, the administration should continue to work end profiling by all law enforcement.
- The Obama administration should issue an executive order that prohibits federal law enforcement authorities from engaging in racial profiling or sanctioning the use of the practice by state and local law enforcement authorities in connection with any federal program.
- The Obama administration should support, and Congress should pass, an anti-racial profiling law, such as the End Racial Profiling Act.

- DOJ should investigate state law enforcement agencies that enforce “stand your ground” laws in a way that disproportionately harms defendants of color.
- The Obama administration should rigorously investigate the disproportionate use of deadly force against individuals of color by state and local police, require law enforcement agencies to collect data disaggregated by race and use its federal funding authority to encourage police departments to reduce the use of deadly force by police departments.

Disparities in Justice System and Sentencing

- The Obama administration should incentivize states to reduce and/or repeal mandatory minimum penalties for drug offenses. The administration should also urge Congress to repeal federal mandatory minimums for drug offenses.
- DOJ should develop and implement training to reduce implicit and explicit racial bias, and encourage criminal justice agencies at the state level to collect and evaluate data on racial outcomes at key decision making points in the justice system.
- The Obama administration should encourage states to repeal the death penalty. The administration should also urge Congress to introduce federal legislation to eliminate capital murder from federal law.

Barriers to Re-Entry

- The FCC should prohibit the prison and jail communications industry from sharing its profits with contracting agencies, set maximum rates for all phone calls placed from correctional facilities, and enact comprehensive regulation to control other predatory charges and practices in the industry.
- DOJ should expand and clarify its support of automatic restoration of voting rights to citizens upon their release from incarceration for disenfranchising convictions, and oppose restrictions for those on parole or probation or with unpaid fees or fines.
- The Obama administration should support, and Congress should pass, the Democracy Restoration Act, which would restore voting rights in federal elections to disenfranchised individuals upon their release from incarceration.⁶⁷

Juvenile Justice

- The government should disaggregate data on the number of juveniles imprisoned in adult facilities, including demographic data and time spent in solitary confinement.
- The government should utilize the U.S. Department of Education’s audit function to ensure that data

collected and reported by local education agencies (LEAs) and states pursuant to federal requirements are current, complete, and accurate.

- The government should use its funding authority to create and implement more robust programs that provide alternatives to incarceration, focus on rehabilitation, and emphasize imprisonment as a last resort only.

Contributing Organizations and Individuals: The Leadership Conference Criminal Justice Task Force is chaired by the NAACP and the American Civil Liberties Union. Additional organizations and individuals that contributed to this section include The Lawyers’ Committee for Civil Rights Under Law; National Association of Social Workers; Prison Policy Initiative; The Sentencing Project; and Lisa Rich, Associate Professor of Law, Texas A&M University School Law School.

Lessons from Ferguson, Missouri – The Need for Sensible Law Enforcement Reform

The August 9, 2014 police shooting of an unarmed African-American teenager named Michael Brown sparked protests and community unrest in Ferguson, Missouri—and raised national questions about police profiling, practices, and training—and the use of military-style weapons and material by local police departments. The wrong-headed decision to use tear gas and rubber bullets to disperse peaceful demonstrators, most of whom were people of color, resonated deeply across the country, with tragic roots that include the 1965 Bloody Sunday march in Selma, Alabama.

There has been considerable focus on the circumstances of the shooting, which became the subject of a local grand jury investigation, a federal criminal civil rights investigation, and an investigation to determine whether Ferguson police officials have engaged in a pattern or practice of violations of the U.S. Constitution or federal law.⁶⁸

Going forward, Attorney General Holder has highlighted a 2012 collaboration between the Justice Department's Office of Community Oriented Policing Services and the Las Vegas Metropolitan Police Department. The Las Vegas review resulted in 75 findings and concrete recommendations regarding officer-involved shootings and other use-of-force issues—the vast majority of which have now been adopted.⁶⁹

In addition, experts have pointed to lessons learned from the city of Cincinnati, Ohio—which faced similar community unrest in April 2001 when police shot Timothy Thomas, an unarmed African-American teenager. Following days of rioting, many members of the community came together to work with civic and police leaders to craft strategies to avoid such tragedies in the future. The Cincinnati Collaborative Agreement,⁷⁰ adopted in 2002, established specific community goals to advance police-community relations, including improved monitoring and accountability and a commitment to more diverse hiring

practices. Since then, Cincinnati police have decreased their use of force, and improved their relationship with their communities they are charged to serve and protect. Cincinnati delegates have traveled to Ferguson in order to lend their perspective on how to solve this ongoing problem.⁷¹

But beyond Ferguson, the tragic incident has underscored the need for systemic changes in the criminal justice system⁷² and expanded prohibitions against profiling. In addition, the White House⁷³ and Congress⁷⁴ have begun examinations of Department of Defense, Department of Homeland Security (DHS), and DOJ programs that transfer excess military equipment and weapons to police departments for counterterrorism and drug interdiction purposes.⁷⁵

Effective counterterrorism is important to everyone, but policies that divide communities, inflame fear, and violate human rights undermine our nation's core values and our security. Some counterterrorism measures have resulted in insufficient adherence to constitutional protections and violations of human rights. Moreover, debates on issues such as border security have often fanned public fear and contributed to an atmosphere that fostered distrust, racial profiling and even hate violence. Indeed, some government policies enacted in haste after 9/11 have had discriminatory effects and singled out entire groups as targets of suspicion.⁷⁶

In light of the tragedies in Ferguson, more than 100 groups⁷⁷ renewed their call for DOJ to expand existing federal prohibitions against racial profiling by updating the June 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies,⁷⁸ to provide an effective enforcement mechanism, eliminate unnecessary loopholes and include religion, national origin, and sexual orientation, as well as coverage for state and local police officials.

Without doubt, the tragic events in Ferguson provide a teachable moment for our nation—and an urgent opportunity to discuss and address widespread racial disparities in society and in the criminal justice system.⁷⁹ Despite the tremendous progress our nation has made in so many areas—including the election of the first African-American president—it is essential to acknowledge and confront implicit and explicit bias and systemic structures that maintain vestiges of segregation, dehumanization, and stereotyping in our society.

Update: White House Review: Federal Support for Local Law Enforcement Equipment Acquisition

Just after this report went to print, President Obama announced a series of reforms in response to the police shooting of unarmed teenager Michael Brown and similar shootings across the country. Among the reforms are initial investments in body-worn cameras and community policing, the creation of a task force to study best practices in 21st century community policing, and greater standardization for how police can acquire military equipment. All are important down payments on the systemic reforms needed to address this national crisis.

However, it will take a much greater investment in community policing and an outright ban on profiling to drive the significant changes necessary to reform law enforcement. It will also take deep-seated changes to our court and prison systems to start correcting the biases in policing, sentencing, and incarceration that plague our justice system.

Recommendations:

- The U.S. Department of Justice (DOJ) should continue to aggressively investigate whether the shooting of Michael Brown constituted a federal criminal civil rights violation—as well as whether Ferguson Police and other St. Louis County departments have engaged in a pattern or practice of violations of the U.S. Constitution or federal law. DOJ should enhance its pattern and practice investigations where there are civil rights violations against the community.
- DOJ should prioritize implementation of its recently released Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity. Where the revised policy falls short in the areas of national security, border integrity, and failure to apply to state and local enforcement, the administration should continue to work end profiling by all law enforcement.
- DOJ should require all state and local law enforcement agencies that receive federal funds to collect data on the use of race, ethnicity, religion, or national origin in their law enforcement activities and engage in compliance reviews of select state and local law enforcement agencies to determine whether they are complying with their obligations under Title VI of the Civil Rights Act of 1964 to be free from discrimination based on race, color, or national origin in all of their law enforcement activities.
- DOJ, the U.S. Department of Homeland Security (DHS), and the U.S. Department of Defense (DOD) should immediately re-evaluate programs that transfer military-style equipment and weapons to police departments “for counterterrorism and drug interdiction purposes.” To the extent these programs remain in effect, the government must ensure that equipment transfers are accompanied by effective training, accountability, and oversight to ensure proper use of the equipment.
- To the broadest extent possible, Congress, DOJ, and the U.S. Department of Education (DOE) should work to create programs and initiatives to address systemic structures that maintain vestiges of segregation, dehumanization, and stereotyping in our society, and develop and fund programs and initiatives to address widespread racial disparities in society and in the criminal justice system.
- The administration should establish a commission to review 21st century policing practices that would look at best practices within law enforcement agencies around the country and successful community policing models; set national standards on not only discriminatory profiling, but also on critical related issues such as preventing the use of excessive force, implementing body and vehicle camera policies; recommend practices for achieving diversity in law enforcement agencies; issue guidelines on effective police training that particularly focuses on implicit and explicit racial bias; and create a national database to track and monitor such issues and also to ensure that investigations of state or local law enforcement agencies are fair and transparent (i.e. no law enforcement agency should be solely responsible for investigating itself). The commission should include in its composition leaders/experts from civil rights advocacy groups who work with the most impacted communities.
- There should be incentives for state and local law enforcement agencies to use federal funding streams to implement best practices in policing, i.e. training for officers on implicit and explicit racial bias, implementing body and dash camera policies and substituting “broken windows” policing practices with community-based policing models.

Education

Introduction

In the six decades since the Supreme Court, in *Brown v. Board of Education*, held racial segregation in education to be unconstitutional,⁸⁰ much has changed in the United States: The civil rights movement and landmark civil rights legislation have made the ability to participate in our democratic system attainable for millions of African Americans and members of other minority groups; the federal government initiated a War on Poverty; and the United States elected its first Black president.

Despite this progress, what has remained unchanged is the pervasive racial injustice in U.S. public educational systems. This injustice manifests in a number of ways: continued racial isolation in American schools; the massive inequity in resources between majority-minority schools and majority White schools; and the unequal treatment of racial minority students within schools, regardless of degree of desegregation. Taken together, these factors function to undermine the economic, social, and political potential and opportunities of racial minorities in the United States, perpetuating—if in a different way—the second-class citizenship that has defined their experience in America for centuries.

In large part because the U.S. public education system has failed them, racial minority students in the United States trail significantly behind their White peers. Although numerous statistics provide evidence for this conclusion, the disparity in high school graduation rates is particularly disturbing: For the vast majority of ethnic and racial minorities, high school graduation rates remain at about 60 percent, compared to 83 percent for White students; the graduation rate is even lower, at 50 percent, for Black students attending high-poverty schools.⁸¹

The shortcomings of the educational system are not limited to elementary and secondary schools. Black

and Latino students have significantly lower college-going rates than their White counterparts. According to 2010 data from the National Assessment of Education Progress (NAEP), just over half (55.7 percent) of Black students and just under two-thirds (63.9 percent) of Latino high school graduates enroll in postsecondary education, compared with 71.7 percent of White graduates.⁸² Furthermore, because students of color are both less likely to be academically prepared and more likely to experience economic hardship, their college completion rates are lower as well. For full-time students attending a four-year institution for the first time, only 20.4 percent of Black students graduated in four years, compared with 41.1 percent of White students.⁸³ Finally, young Black men without a high school diploma have an unemployment rate of more than 50 percent—while Black men who graduate college have an unemployment rate of 9 percent.⁸⁴

Racial Segregation

Sixty years after the *Brown* decision, segregated schools are the norm for the majority of Black and Latino students and millions of American students continue to attend separate and unequal schools. In 1968, 76.6 percent of Black students and 54.8 percent of Latino students attended majority-minority schools.⁸⁵ For Black students, those numbers have remained virtually unchanged, while Latino students are today substantially more segregated than they were a half-century ago: as of 2010, 74.1 percent of Black students and 79.1 percent of Latino students attended majority-minority schools.⁸⁶ Even more distressing, the number of Black and Latino students attending schools that are more than 90 percent segregated has increased: between 1980 and 2009, the number of Black students attending these schools rose from 33.2 percent to 38.1 percent, and the number of Latino students attending these schools increased from 28.8 percent to 43.1 percent.⁸⁷

Although the causes of this trend are numerous, the federal government bears some responsibility for its failure to provide the vigorous leadership, adequate enforcement, and sufficient resources necessary to combat segregation.

Concentrated poverty often coincides with racial segregation, and this both exacerbates the effects of racial isolation and complicates efforts to secure effective remedies.⁸⁸ In fact, the correlation is so strong that almost every supermajority-minority school is associated with high levels of poverty, which is not the case for White-dominated schools.⁸⁹ Today, “the typical Black student attends a school where almost two out of every three classmates [64 percent] are low-income, nearly double the level in schools of the typical White . . . student [37 percent].”⁹⁰ This “double segregation” has a deep life-long academic impact on the students who experience it, as studies show that the concentration of poverty within schools plays a significant role in determining student achievement—even more so than the poverty status of individual students.⁹¹

Resource Inequity

Minority students, to an overwhelming degree, disproportionately attend underfunded and under-resourced schools.⁹² The result is that students whose families already face hardship are placed at an even greater disadvantage. For example, according to the U.S. Department of Education (DOE), in schools where more than three-quarters of the students were classified as low-income, “there were three times as many uncertified or out-of-field teachers in both English and science.”⁹³

A comparison of two high schools in New York City is illustrative. In Passages Academy, where 47.9 percent of students are Black and 43.7 percent of students are Hispanic, 61 percent of teachers are absent more than 10 days of the school year, and none meet all state licensing and certification requirements.⁹⁴ By contrast, in the New Explorations into Science, Technology, and Math School, where only 11.8 percent of students are Black and 14.2 percent of students are Hispanic, only 21 percent of teachers are absent more than 10 days of the school year, and 86.5 percent of teachers meet all state licensing and certification requirements.⁹⁵ Even when these teachers are adequately paid, certified, and within-field, on average, majority-minority schools provide lower-quality teachers with a greater rate of turnover.⁹⁶

Segregation by race and class is also highly correlated with other deprivations. For example, DOE’s Office for Civil Rights (OCR) recently reported that state and local education agencies are failing to provide students with the classes needed for students to succeed in college or post-secondary career-education programs,

including math and science courses required for admission to many universities. For example, in the 2011-12 school year, among those high schools with the highest percentage of Black and Latino students, only 74 percent offered Algebra II—a key course for college preparation—compared with 83 percent of schools with the lowest Black and Latino student enrollment.⁹⁷ As a result, minority students are either unprepared for university-level curricula or are unable to attend college altogether.⁹⁸ Even comparing similar courses, majority-minority schools tend to teach a less demanding curriculum than wealthier, non-minority schools.⁹⁹

Furthermore, because these and other schools frequently are poorly managed and do not provide adequate staff training or professional counselors, they rely significantly on extensive use of suspensions, expulsions, and even law enforcement to enforce behavioral expectations. Nationwide, the percent of students reporting the presence of law enforcement personnel in their schools increased from 54.1 to 69.8 percent between 1999 and 2011.¹⁰⁰ In particular, the concentration of inexperienced or less-qualified teachers and administrators, and understaffed or undertrained counseling offices, has been linked to the overuse of law enforcement in educational environments.¹⁰¹ In many schools, and especially “hyper-segregated” school systems such as those in New York City or Chicago, administrators even place the local police force in charge of school security and ensuring discipline.¹⁰² In New York City, the New York Police Department employs more than 5,000 “School Safety Agents” who patrol the city’s public schools.¹⁰³ By contrast, there are only 3,100 guidance counselors employed in New York City schools.¹⁰⁴ This contributes to nationwide disparities in youth arrests and prison sentencing between White students and Black and Latino students: Black and Latino students make up only 18 percent of the U.S. student population, but comprised 70 percent of school-related arrests or referrals to law enforcement in 2009.¹⁰⁵

These problems have been exacerbated by some recent decisions by the current administration, such as the liberal approval of state waivers from the requirements of the Elementary and Secondary Education Act (ESEA) and backtracking on the law’s requirements for the equitable assignment of qualified teachers.¹⁰⁶

In 2011, the U.S. Secretary of Education invited each state to apply for waivers of key ESEA provisions. Forty-seven states (including the District of Columbia and Puerto Rico) did so—and nearly all (41 states) were approved. Although the administration termed the waivers “flexibility” and asserted they would result in higher student achievement, the waivers in fact allowed states to avoid compliance with important provisions of the law. Of great concern to civil rights organizations were

those provisions aimed at closing achievement gaps based on race, national origin, family income or disability in federally funded schools. DOE needs to carefully monitor implementation of waivers and hold states accountable for improving achievement and graduation rates; otherwise inequality among students, schools, and school districts is likely to persist or worsen.

More recently, DOE reversed its previous position regarding the equitable distribution of qualified teachers (“teacher equity”). Since ESEA was reauthorized in 2011, the law required both states and school districts “to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.”¹⁰⁷ The Bush administration did not take any serious measures to enforce these provisions until halfway through its second term when, under pressure from NGOs, it required states to develop plans to address and ensure teacher quality and equity.¹⁰⁸ The Obama administration allowed these plans to languish and signaled to states that it would not enforce the teacher equity provisions in the statute. In 2013, however, again under pressure from NGOs, the Obama administration announced it would require any state seeking an ESEA waiver to be working toward compliance with teacher equity requirements.¹⁰⁹

Discriminatory Discipline

Even where racial minority students are not relegated to impoverished schools and school districts, the American public educational system still fails to provide them with a fair, equal, and adequate education. For example, racial minority students—both boys and girls of color—are disproportionately punished through suspension and expulsion.¹¹⁰ Even in more affluent schools and schools where White students are in the majority, Black and Latino students face significantly harsher punishments than their White peers.¹¹¹ In one study of Florida students, 39 percent of all Black students were suspended at least once, compared with only 22 percent of White students.¹¹² This remains true regardless of age or grade. For example, in 2011, in one prekindergarten and kindergarten school in Louisiana, Black students comprised every single out-of-school suspension and half of all in-school suspensions, despite constituting only 26.5 percent of all students.¹¹³ According to DOE, “Black children represent 18 percent of preschool enrollment, but 48 percent of preschool children receiving more than one out-of-school suspension.”¹¹⁴

Even among those students suspended, White students averaged only 6.6 days of suspension, while Black students averaged 7.4 days of suspension.¹¹⁵ Repeated studies have shown that such disparities are not attributable to the degree or nature of the offense, but to different responses by schools to the same types of

misbehavior.¹¹⁶ In particular, Black and Latino students receive more severe punishments for less serious and more subjective offenses, such as “defiance,” which are most open to interpretation and which may reflect the biases and subjective perceptions of staff.¹¹⁷

A recent report on school discipline by the Council of State Governments—the result of more than three years of research—noted the devastating impact that severe punishments such as detention and suspension can have on the ability of students to learn.¹¹⁸ The report urges schools to use such methods only as a last resort.¹¹⁹

Although the federal government has taken some steps to address this crisis, action has not been uniform. Federal enforcement in the areas of resource inequity (including assignment of teachers) and discipline has been slow and scant in relation to the scope of the problem and the irreparable harm to school-aged children. Compliance reviews have generally not yielded strong remedies including numerical goals and timetables for compliance. Political considerations appear to inappropriately intrude into the functioning of OCR, which was established as a quasi-judicial agency to investigate and remedy unlawful discrimination by recipients of federal funds.¹²⁰

Minority Juveniles and the School-to-Prison Pipeline

In its 2008 conclusions, the Committee on the Elimination of Racial Discrimination (CERD) committee expressed concerns “that alleged racial disparities in suspension, expulsion and arrest rates in schools contribute to [...] the high dropout rate and the referral to the justice system of students belonging to racial, ethnic or national minorities.”¹²¹

A 2007 study by the Advancement Project and the Power U Center for Social Change found that for every 100 students who were suspended, 15 were Black, 7.9 were American Indian, 6.8 were Latino and 4.8 were White.¹²² Similarly, a 2014 DOE study found that “Black students are suspended and expelled at a rate three times greater than White students.”¹²³ The study noted that, on average, 4.6 percent of White students are suspended, compared to 16.4 percent of Black students.¹²⁴ The study also concluded through use of available data that Black boys and girls have higher suspension rates than any of their peers: 20 percent of Black boys and more than 12 percent of Black girls receive an out-of-school suspension.¹²⁵ Moreover, “while Black students represent 16 percent of student enrollment, they represent 27 percent of students referred to law enforcement and 31 percent of students subjected to a school-related arrest.”¹²⁶ Black students are 3.5 times more likely to be suspended than their White peers.¹²⁷

The disparate disciplinary enforcement of minority juveniles appears regardless of whether the educational institution is “affluent” or not. Schools with majority low-income Black and Latino youth “rely significantly upon the extensive use of suspensions and expulsions, and even law enforcement, to enforce discipline.”¹²⁸ However, even in “more affluent schools and schools where White students are in the majority, Black and Latino students face significantly steeper punishments than their White peers.”¹²⁹

Progress and Steps toward Resolution

Notwithstanding the shortcomings discussed above, it is worth recognizing the steps taken recently by the current administration toward fulfilling its moral and legal obligations. The government has undertaken efforts to rectify the above-discussed problems through the Equal Educational Opportunities Act of 1973 (EEOA), Titles IV and VI of the Civil Rights Act of 1964, the Elementary and Secondary Education Act of 1965 (ESEA), and the Equal Protection Clause of the U.S. Constitution to eliminate *de jure* and *de facto* educational discrimination. Moreover, a 2011 amendment to the ESEA aims to promote reform through “rigorous and comprehensive state-developed plans” to improve access to and the quality of education for all students.¹³⁰

Likewise, the administration has undertaken efforts to increase diversity and eliminate discrimination through DOE’s formation of the Equity and Excellence Commission in 2011.¹³¹ OCR has circulated best practices to prevent and mitigate student interactions with the school-to-prison pipeline and zero tolerance policies.¹³² It has also issued guidance regarding discipline;¹³³ significantly, the department indicated that, in addition to discipline policies that treat racial minority students differently than White students, it would find discipline policies that have a disparate impact on racial minority students to contravene obligations under Title IV and Title VI of the Civil Rights Act of 1964.¹³⁴ Finally, there has been a nearly \$100 billion commitment to fund the “Race to the Top” program and financial aid for postsecondary education.¹³⁵ These efforts illustrate the government’s efforts to address educational disparities, but these measures do not go far enough to address discrimination and provide equal and quality opportunities to all students.

Beyond all this, two further steps by the administration stand out as deserving of praise.

First, DOE has issued guidance to schools and school districts regarding the application of the Supreme Court’s decision in *Plyler v. Doe*. In *Plyler*, the Court struck down a Texas statute denying undocumented immigrants access to public education as a violation of the Equal Protection clause of the Fourteenth Amend-

ment.¹³⁶ In its guidance, the department advised school districts that, in order to comply with the requirements of *Plyler*, as well as the requirements of various federal civil rights statutes, they may not request information with “the purpose or result of denying access” to education “on the basis of race, color, or national origin” (including immigration status).¹³⁷ Therefore, for example, districts may not require birth certificates or social security numbers.¹³⁸

Second, DOE has issued important guidance on how civil rights laws apply to public charter schools.¹³⁹ In particular, the guidance reminded charter schools of the requirements of nondiscrimination in admissions, provision of services to English-language learners such that they may participate fully in the school’s educational program, and the nondiscriminatory use of discipline.¹⁴⁰

Together, these guidance documents represent important first steps toward addressing the deep racial injustices that plague the American educational system. However, these initiatives alone are insufficient to fully address the depth of the problems outlined above and experienced daily by minority students in publicly funded schools throughout the United States.

Recommendations

- The Obama administration should immediately begin implementation of federal recommendations in the report of the Equity and Excellence Commission and to facilitate (and require where it can) all states to identify and remedy resource disparities that deny poor and minority students, as well as those with disabilities or who are English language learners, equal educational opportunities.
- DOE should require all states—as a condition for continuing receipt of Title I funds—to ensure that all schools have the resources needed to enable all students to achieve college-ready academic standards, including the Common Core State Standards.
- The U.S. Department of Justice (DOJ) and DOE should develop a comprehensive plan to address concentrated poverty and racial isolation in schools and neighborhoods. The plan should include enforcement of federal civil rights laws, as well as programs and policies to incentivize school improvement; racial and socioeconomic integration; economic and infrastructure development (including affordable housing and transportation); coordinated health and social services; and effective re-entry programs.
- DOE should aggressively enforce federal requirements in both Title VI of the Civil Rights Act (and

related requirements of Title IX and of Section 504 and ADA) and Title I of the Elementary and Secondary Education Act that require: a) equitable assignment of teachers to poor and minority students, b) equal access to core curriculum and college-preparatory classes, c) services and appropriate instruction for English Language Learners, and d) fair and effective disciplinary policies and practices.

Employment

Introduction

Despite much progress in U.S. workplaces, there remain significant barriers to accessing employment, creating affirmative opportunities for career advancement of women and minorities, ending employment discrimination especially for lesbian, gay, bisexual and transgender (LGBT) people of color; and ensuring fair access to the courts for employees who feel they have been unfairly treated in the workplace.

Barriers to Obtaining Employment

Discrimination against Unemployed Workers: The 2008-2009 recession exacerbated the existing wealth gap between Whites and communities of color.¹⁴¹ While the recession affected the entire population, the current unemployment rate for African Americans is roughly double the rate for Whites.¹⁴² Increases in incarceration rates, particularly among minorities, have made it more difficult for the unemployed to find new employment. Despite the ongoing challenges and barriers facing unemployed and underemployed populations, additional obstacles such as the overuse and misuse of criminal and arrest records and credit checks have a discriminatory impact on people of color.

Criminal Background Checks: The overbroad use of criminal background checks by employers to screen out job applicants has a disproportionate impact on minorities. According to the Society of Human Resource Management, which comprises most major U.S. companies, more than 90 percent of employers use criminal background checks to screen applicants for some or all positions.¹⁴³ Furthermore, some even screen out applicants with arrest records that did not lead to a conviction.¹⁴⁴ Nationally, African Americans and Hispanics are arrested in numbers disproportionate to their representation in the general population: in 2010, African Americans made up 28 percent of all arrests, even though African

Americans only comprised approximately 14 percent the population generally.¹⁴⁵ In 2008, Hispanics were arrested for federal drug charges at a rate of approximately three times their proportion of the general population.¹⁴⁶

In 2012, the Equal Employment Opportunity Commission (EEOC) adopted enforcement guidance on the use of criminal background checks in hiring.¹⁴⁷ The guidance prohibits discrimination against persons solely because they have an arrest record that did not lead to a conviction. The guidance generally requires that employers conduct individualized assessments based on a list of criteria to determine if an applicant's criminal record is job-related and necessary for the business. Despite this guidance and enforcement by the U.S. Department of Labor (DOL), the Office of Personnel Management, which sets government personnel policies, requires that applicants for a wide swath of government positions undergo credit and criminal background checks.¹⁴⁸

Credit History Checks: Currently, 47 percent of major employers use credit background checks during the hiring process to screen out employment applicants with poor credit.¹⁴⁹ This percentage may be even higher for smaller companies. Research consistently shows that African-American and Latino households tend to have worse credit, on average, than White households.¹⁵⁰ The use of poor credit to cut off employment opportunities has had a disparate impact on minorities.¹⁵¹ Despite the fact that there is no proven link between personal credit reports and criminal behavior or performance of a specific job, employers still use these checks as a barrier to employment.¹⁵²

Affirmative Opportunities for Career Access and Advancement

Women and minorities constitute a significant percentage of the workforce overall, yet they are severely underrepresented in high-wage male dominated occupa-

tions. For example, while women are over half of the workforce, they make up only 2.6 percent of all construction workers.¹⁵³ Black men are 9.7 percent of the employed male workforce, but only 6.1 percent of the construction workforce.¹⁵⁴

Equal Employment Opportunity in Apprenticeship: In 1978, DOL mandated affirmative action to increase women and minority enrollment in the apprenticeship programs—the main pathway to employment in the skilled construction trades. Today, women hold fewer than 3 percent of the skilled trades apprenticeships and their numbers are shrinking.¹⁵⁵ While minority numbers have increased, discrimination and other barriers have held their numbers lower than in the general workforce.

Construction Contractors' Affirmative Action Requirements: Executive Order 11246 prohibits federal contractors from employment discrimination on the basis of race, color, religion, sex, or national origin. It also requires federal contractors to take affirmative steps to ensure that equal opportunity is provided in all aspects of employment. Later amendments set specific goals for women at 6.9 percent¹⁵⁶ and minority goals based on the 1980 Standard Metropolitan Statistical Area or Economic Area.¹⁵⁷ Strengthened affirmative action requirements and enforcement by DOL's Office of Federal Compliance Programs (OFCCP) will improve access to higher-skilled and higher paying jobs in nontraditional careers for women and minorities.

Ending Employment Discrimination for LGBT People of Color

While the government recently accepted a recommendation in the Universal Periodic Review process that it “take measures to comprehensively address discrimination against individuals on the basis of their sexual orientation or gender,”¹⁵⁸ there is no federal law that explicitly protects LGBT people from employment discrimination and a majority of U.S. states (32) currently lack such explicit protections for both sexual orientation and gender identity. The reality of being fired, denied a job, or experiencing some other form of discrimination in the workplace is one that too many LGBT people, particularly LGBT people of color, have personal experience with today. For example, surveys of Black LGBT people put rates of employment discrimination near 50 percent. LGBT people of color have higher rates of unemployment compared to non-LGBT people of color (e.g. unemployment rates for transgender people of color have reached as high as four times the national unemployment rate). In addition, research has shown that LGBT people of color, particularly Black LGBT people, are at a much higher risk of poverty than non-LGBT people (e.g., Black people in same-sex couples have

poverty rates at least twice the rate of Black people in opposite-sex married couples—18 percent vs. 8 percent).

For Asian and Pacific Islander LGBT people, those who say they have experienced employment discrimination based on their sexual orientation range from 75 to 82 percent.¹⁵⁹ The number of transgender people of color who report having actually lost a job because of discrimination is especially daunting. Thirty-two percent of Black transgender respondents reported having lost a job due to bias.¹⁶⁰ The numbers for other transgender people of color are 36 percent for American Indians, 30 percent for Latinos, and 14 percent for Asians and Pacific Islanders.¹⁶¹

In a positive development, President Obama recently announced his intention to issue an executive order barring all federal contractors from engaging in discrimination based on sexual orientation or gender identity. This new requirement will benefit LGBT people of color.

Ensuring Access to the Courts

The U.S. Supreme Court, in the cases described below, has made it increasingly difficult for workers, and particularly low-wage workers and workers of color, to access the court system, bring collective action, and seek remedies through the judicial process. By chipping away at fundamental worker rights and civil rights laws, the judicial system has made it increasingly difficult for low-wage workers and workers of color to gain redress through the courts.

In June 2013, in *Vance v. Ball State University*, the Supreme Court significantly restricted protections for employees facing harassment in the workplace. The Court narrowed the definition of supervisor to individuals with the power to hire and fire or take other tangible employment actions against the employee, as opposed to those who oversee daily work activity.¹⁶² After the Court's decision to narrow supervisor liability, the burden shifted to the employee to prove that the employer was negligent in preventing harassment, a much higher and difficult burden.¹⁶³

Also in June 2013, the Supreme Court decided *University of Texas Southwestern Medical Center v. Nassar*, holding that Title VII retaliation claims must be proven under a heightened “but-for” causation standard of proof, and may not proceed under a more protective “mixed motive” test available for Title VII discrimination claims.¹⁶⁴ The *Nassar* decision extends the “but-for” standard that was first articulated in *Gross v. FBL Financial Services, Inc.* in 2009. Workers must now prove discrimination played a *decisive* role, and the burden of proof never shifts, despite a proven violation. This heightened standard makes it more difficult for workers

to vindicate their rights and signals to employers that some lesser amount of discrimination or retaliation is permissible.

In June 2011, the Supreme Court in *Wal-Mart v. Dukes* declined to allow a class-action lawsuit brought by female employees of Wal-Mart challenging discriminatory practices to move forward, making it more difficult for victims of discrimination to seek judicial relief.¹⁶⁵ The decision prevents low-wage workers, including women of color, from banding together to fight discriminatory actions. Many individuals cannot afford the cost of individual actions, increasing the likelihood that discrimination will continue without remedy.¹⁶⁶

Earlier Supreme Court decisions also undermined minority workers' rights. These cases include *Hoffman Plastic Compounds, Inc. v. NLRB*, where the Court held that the National Labor Relations Board (NLRB) cannot order back pay when an employer unlawfully fires undocumented workers for exercising their federal labor rights,¹⁶⁷ and *Alexander v. Sandoval*, where the Court held there is no private right of action to enforce the regulations prohibiting practices with a discriminatory effect on the basis of race or ethnicity under Title VI of the Civil Rights Act of 1964.¹⁶⁸ In 2013, the Senate passed a legislative fix to the *Hoffman* case as part of the comprehensive immigration reform legislation; however, the House of Representatives has not taken action.¹⁶⁹ While legislation has been introduced in the past that would address the *Sandoval* case, Congress has not taken any action to move such legislation forward.

Finally, over the past 20 years, there has been movement away from the public enforcement of statutory workplace rights in favor of a private system of forced arbitration of employment disputes. Forced arbitration—“binding predispute mandatory arbitration”—has been transformed from a rarely used form of dispute resolution into a juggernaut that has changed the nature of statutory enforcement of worker protection laws in the United States.¹⁷⁰ Forced arbitration threatens the role of courts as a means for ordinary Americans to uphold their rights when their employers violate the law and denies them access to America's civil justice system. In 2010, 27 percent of U.S. employers reported that they required arbitration of employment disputes—covering more than 36 million employees, or one-third of the non-union workforce. This percentage is likely higher today and continues to grow in the wake of court rulings that have misinterpreted the Federal Arbitration Act,¹⁷¹ which was enacted to regulate voluntary agreements between commercial parties with equal bargaining power.¹⁷²

Progress to Date

The government has taken many steps to alleviate the problems arising from discrimination in employ-

ment. The first bill signed into law by President Obama in 2009 was the Lilly Ledbetter Fair Pay Act, which restored the time periods workers had to bring litigation to hold their employers accountable for pay discrimination. In 2014, the president signed an executive order prohibiting companies that contract with the federal government from retaliating against workers who disclose or inquire about their pay. The president also signed a presidential memorandum requiring DOL to collect wage data from federal contractors that will allow for analysis of pay rates by sex and race.¹⁷³ DOL is expected to engage in rulemaking later in 2014 to implement the executive order and to establish these new regulations requiring federal contractors to submit data on compensation paid to employees.¹⁷⁴

While Congress has so far failed to pass a bill increasing the minimum wage, the president took the important step this year of issuing an executive order¹⁷⁵ raising the minimum wage to \$10.10 an hour for federal contract workers.

Additionally, during FY 2012, the EEOC resolved a total of 254 of its employment discrimination lawsuits against private sector employers. In 2012, the EEOC resolved 430 systemic employment discrimination charges that concerned race or national origin. The government has worked to combat *de facto* discrimination in the workplace, filing 32 lawsuits under Title VII from 2009 to 2012 to address cases where a pattern of employment discrimination was notable.

The government has worked to remove existing barriers to equal employment opportunity in the government for Asian Americans and Pacific Islanders and African Americans. And in 2011, President Obama expanded on efforts to improve participation of minorities in federal employment by issuing Executive Order 13583 which requires agencies to identify and target barriers to equal employment opportunity in the government.

DOL has required private companies to increase minority participation and fairness in the workplace. DOL also expanded its focus to enforce non-discrimination laws, including Titles VI and VII of the Civil Rights Act of 1964, Executive Order 11246, and Section 188 of the Workforce Investment Act of 1998. The EEOC also addressed workplace discrimination through job training and educational efforts. The agency conducted training on how to comply with federal employment antidiscrimination laws in FY 2012 for more than 5,000 human resources professionals.

However, while DOL recently has been more aggressive in enforcing noncompliant government contractors and the EEOC has initiated well over 100 cases against pri-

vate employers, including a number of systemic cases,¹⁷⁶ more needs to be done. The Employment Litigation Section of the Department of Justice’s Civil Rights Division has opened more than 40 pattern and practice investigations but has filed few systemic enforcement challenges in recent years.¹⁷⁷ In addition, as noted above, recent Supreme Court rulings have limited the ability of private plaintiffs to bring class actions,¹⁷⁸ highlighting the importance of government enforcement to eradicate systemic discrimination.¹⁷⁹

Recommendations

Barriers to Obtaining Employment

- The government should take steps to become a “model employer” with respect to the use of credit history and criminal background checks when screening applicants for employment.
- The Obama administration should support, and Congress should pass, employment legislation including the Equal Employment for All Act (H.R. 645/S.1837), the Fairness & Accuracy in Employment Background Checks Act (H.R. 2865), and the Accuracy in Background Checks Act of 2013 (H.R. 2999).

Affirmative Opportunities for Career Access and Advancement

- To improve access to higher-skilled and higher paying jobs in nontraditional careers for women and minorities, the U.S. Department of Labor’s (DOL) Office of Federal Compliance Programs should increase the utilization goals to reflect the overall population of women and minorities working in the modern workforce; update and revise its affirmative action requirements and require construction contractors to document their efforts to recruit and retain women and minorities; and increase its oversight of large construction sites including on-site monitoring in order to assess job conditions, job assignments and overall equal opportunity procedures.
- The DOL should update the long overdue Equal Employment Opportunity in Apprenticeship Regulations without further delay and enforce them with both incentives and penalties.

Ending Employment Discrimination for LGBT People of Color

- The Equal Employment Opportunity Commission (EEOC) should issue guidance on the scope of protections for LGBT people under Title VII of the Civil Rights Act of 1964, and DOL should adopt rules explicitly prohibiting discrimination based on sexual orientation and gender identity in federally-funded job training and workforce development programs.

- The Obama administration should support, and Congress should pass, explicit sexual orientation and gender identity workplace nondiscrimination protections. Anti-LGBT discrimination should be treated the same as race, color, sex, national origin, age, disability, or genetic information under federal workplace laws.

Ensuring Access to the Courts

- The Obama administration should support, and Congress should pass, legislation to address the *Hoffman Plastics* decision by making clear that nothing in immigration law prevents courts and agencies from fully enforcing core labor laws; and to address the *Sandoval* decision to restore a private right of action to challenge disparate impact race discrimination in federal programs. In addition, the Obama administration should increase its caseload of disparate impact cases.
- The Obama administration should support, and Congress should pass, legislation to provide and restore adequate remedies and access to the courts limited by recent Supreme Court cases, including the Fair Employment Protection Act,¹⁸⁰ the Protecting Older Workers Against Discrimination Act,¹⁸¹ the Equal Employment Opportunity Restoration Act,¹⁸² Civil Justice Tax Fairness Act,¹⁸³ and the Arbitration Fairness Act.¹⁸⁴

Contributing Organizations: The Leadership Conference Employment Task Force is chaired by the Lawyers’ Committee for Civil Rights Under Law and the National Partnership for Women & Families. Additional organizations that contributed to this section include the American Civil Liberties Union, Legal Momentum, NAACP Legal Defense and Educational Fund, National Center for Transgender Equality, National Employment Law Project, National Employment Lawyers Association, National Gay and Lesbian Task Force, and the National Women’s Law Center.

Hate Violence

Introduction

Violence committed against individuals because of their race, religion, ethnicity, national origin, gender, gender identity, or sexual orientation remains a serious problem in the United States. In the more than 20 years since national hate crime reporting began, the number of hate crimes reported has consistently ranged around 6,000 to 7,000 or more annually—that’s nearly one bias-motivated criminal act every hour of every day.

The Federal Bureau of Investigation has been tracking and documenting hate crimes reported from federal, state, and local law enforcement officials since 1991 under the Hate Crime Statistics Act of 1990 (HCSA). Though clearly incomplete, the Bureau’s annual HCSA reports provide the best single national snapshot of bias-motivated criminal activity in the United States. The Act has also proven to be a powerful mechanism to confront violent bigotry. It has increased public awareness of the problem and sparked improvements in the local response of the criminal justice system to hate violence—since in order to effectively report hate crimes, police officials must be trained to identify and respond to them.

In 2012, the most recent report available,¹⁸⁵ the FBI documented 6,573 hate crimes. Of these, 47.2 percent were motivated by race, 20.2 percent by religion, 19.7 percent were motivated by sexual orientation, 11.4 percent by ethnicity or national origin, and 1.4 percent by disability.

These data certainly understate the true number of hate crimes committed in our nation. Victims may be fearful of authorities and mistrust the police and thus may not report these crimes. Some local authorities may not accurately classify these violent incidents as hate crimes and thus fail to report them to the federal government. Overall, reported hate crimes directed against individuals because of race, religion, sexual orientation, and national origin increased in 2012, as compared to 2011,

but this comparison may still be misleading because of under-reporting. Notably, more than a quarter of law enforcement agencies did not provide the FBI with their hate crime statistics. Only about 14,500 law enforcement agencies (out of about 18,000) reported in 2012. Almost 90 cities with populations over 100,000 either did not report hate crime data to the FBI or they affirmatively reported zero hate crimes.

Criminal activity motivated by bias is distinct and different from other criminal conduct. These crimes occur because of the perpetrator’s bias or animus against the victim on the basis of actual or perceived status—the victim’s race, color, religion, national origin, sexual orientation, gender, gender identity, or disability is the predominate *reason* for the crime.

Hate crime laws and effective responses to hate violence by public officials and law enforcement authorities can play an essential role in deterring and preventing these crimes, creating a healthier and stronger society for all Americans. Law enforcement officials have come to recognize that strong enforcement of hate crime laws can have a deterrent impact and can limit the potential for a hate crime incident to explode into a cycle of violence and widespread community disturbances. In partnership with human rights groups and civic leaders, law enforcement officials have found they can advance police-community relations by demonstrating a commitment to be both tough on hate crime perpetrators and sensitive to the special needs of hate crime victims.

The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA)

Enacted in October 2009, the HCPA is the most important, comprehensive, and inclusive federal criminal civil rights enforcement law in the past 40 years. The HCPA encourages partnerships between state and federal law enforcement officials to more effectively address hate

violence, and provides expanded authority for federal hate crime investigations and prosecutions when local authorities are unwilling or unable to act.

Importantly, the HCPA closes gaps in state hate crime laws¹⁸⁶ and current federal enforcement authority. First, the HCPA eliminated the overly restrictive obstacles to federal involvement by permitting prosecutions without having to prove that the victim was attacked because he/she was engaged in a federally protected activity. Second, the law provides authority for federal officials to work in partnership with state and local law enforcement authorities to investigate and prosecute cases in which the bias violence occurs because of the victim's actual or perceived sexual orientation, gender, gender identity, or disability.

Over the past five years, the HCPA has proved to be a valuable tool for federal prosecutors—especially in situations where state and local law enforcement authorities cannot proceed with hate crime charges, or determine that federal government has a greater likelihood of success. The U.S. Department of Justice (DOJ) has brought more than two dozen cases over the past five years – and successfully defended the constitutionality of the Act against several challenges.¹⁸⁷

On August 27, 2014, the U.S. Court of Appeals for the Sixth Circuit in Cincinnati reversed the hate crimes convictions of a number of individuals involved in violent intrareligious attacks on members of an Amish community in *United States v. Miller*.¹⁸⁸ Evidence at trial showed that the leader of an Old Order Amish sect, Samuel Mullet, Sr., led his followers in cutting the hair and beards, sacred religious symbols for the Amish, of those who rebelled against his teachings.¹⁸⁹ In overturning the hate crime convictions, the court focused on the standard for determining whether the defendants assaulted the victims “because of” their religion.

The court did not consider the constitutionality of the Act, though the defendants had asked them to do so. A very broad coalition¹⁹⁰ of religious, civil rights, and law enforcement groups that had helped secure enactment of the HCPA after more than a decade of advocacy filed a brief¹⁹¹ in the Sixth Circuit supporting the constitutionality of the 2009 law.

Recommendations

All Americans have a stake in reducing hate crimes. These crimes are intended to intimidate not only the individual victim, but all members of the victim's community, and even members of other communities historically victimized by hate. By making these victims and communities fearful, angry, and suspicious of other groups—and of the authorities who are charged with

protecting them—these incidents fragment and isolate our communities, tearing apart the interwoven fabric of American society. Thus, the damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents. For these reasons and more, hate crimes demand a priority response from governmental authorities.

The fifth anniversary of the HCPA, on October 28, 2014, provided an important teachable moment for advocates, the administration, and Congress to promote awareness of the HCPA, to report on the progress our nation has made in preventing hate violence, and to rededicate ourselves and our nation to effectively responding to bias crimes when they occur.

Improvements in Hate Crime Reporting

- Justice Department officials, including U.S. attorneys, FBI officials, and Community Relations Service professionals should promote comprehensive participation in the HCSA—with special attention devoted to underreporting large agencies that either do not participate in the Hate Crimes Statistics Act (HCSA) program at all or erroneously report zero (0) hate crimes.
- The FBI, the U.S. Department of Justice (DOJ), and U.S. attorneys should create incentives for participation in the FBI's HCSA data collection program—including national recognition, targeted funding, matching grants for state and local HCSA-related training, and mechanisms to promote replication of effective and successful programs. Some DOJ funding should be made available only to those agencies that are demonstrating credible participation in the HCSA program.
- DOJ and FBI officials should conduct public education about the new HCPA-mandated HCSA data collection categories—gender and gender identity (including training on how serial domestic violence and the most violent incidents of rape and sexual assault could be criminal civil rights violations), as well as hate crimes committed by and against juveniles—and ensure that state and local law enforcement officials are reporting on these new categories for calendar year 2013.
- The DOJ and the FBI should work with the civil rights community and disability rights organizations to raise awareness and provide guidance and training on how to enhance accessibility so that people with disabilities—especially those with sensory, intellectual, and mental disabilities—can more effectively navigate the criminal justice system in an effort to improve disability-based hate crime prevention, reporting, and response by police agencies.

- The FBI should work to make steady progress toward implementing its new 2015 HCSA mandate to collect data on bias-motivated crimes directed against Sikhs, Arabs, and Hindus, as well as Buddhist, Mormon, Jehovah's Witness, and Orthodox Christian individuals.
- The Obama administration should complete its study about the connection between the overheated and too frequently demonizing immigration policy debate and the disturbing number of bias-motivated crimes against new immigrants, people who look like immigrants, and Hispanic Americans.

Comprehensive Implementation of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA)

- The president, the attorney general, the FBI director, U.S. attorneys, and other appropriate administration officials should use their bully pulpit on the occasion of the fifth anniversary of the HCPA to educate about the impact of hate violence and to speak out against all forms of bigotry and bias-motivated violence.
- Congress should hold oversight hearings on the implementation of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, enforcement actions over the past five years, and efforts to improve federal, state, and local response to hate violence.
- DOJ should continue to file appropriate cases under the HCPA—and vigorously defend the constitutionality of the Act.
- DOJ, including the FBI and the Community Relations Service, should expand inclusive education and outreach to state and local law enforcement officials on the components of the HCPA, using the bureau's updated and revised Hate Crime Data Training Manual.¹⁹²
- The Obama administration should support grants authorized under Sec. 4704 of the HCPA, which are intended to help support criminal investigations and prosecutions by state, local, and tribal law enforcement officials.
- Recognizing the limits of legal responses to hate violence, the administration and Congress should promote the enactment of comprehensive legislation focusing on inclusive anti-bias education, hate crime prevention, and bullying, cyberbullying, and harassment education, policies, training, social and emotional learning school-wide positive behavior supports and early intervention initiatives.
- The White House should convene a summit or briefing with civil rights and religious organizations and appropriate representatives of federal agencies to discuss the nature and magnitude of the current hate crime problem in America, the status of hate crime training and enforcement initiatives, and strategies and best practices to prevent these crimes in the future.

Demonstrate International Leadership in Countering Violent Bigotry

- The United States, through the Department of State, DOJ, the delegation to the Organization for Security and Cooperation in Europe (OSCE), and other multilateral organizations, should:
- Maintain comprehensive and inclusive Department of State monitoring and public reporting on anti-Semitic, racist and xenophobic, anti-Muslim, homophobic, transphobic, anti-Roma, and other bias-motivated violence abroad.
- Promote programs that educate and counter gender-based violence against women.
- Provide appropriate technical assistance and other forms of cooperation, including training of police and prosecutors in investigating, recording, reporting, and prosecuting violent hate crimes, and organizing international visitors programs for representatives of law enforcement, victim communities, and legal advocates.

10th Anniversary of the OSCE's Berlin Conference on Anti-Semitism

The Leadership Conference has been at the forefront of efforts to combat racism and discrimination in all its forms, including the fight against hate crimes and anti-Semitism. Our participation in the initial 2004 Organization for Security and Cooperation in Europe (OSCE) Conference on Anti-Semitism and this year's 10th Anniversary Conference, including the civil society forum and high level government meeting, is an important aspect of that effort. In 2014, as we marked the five-year anniversary of the historic signing of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, we note that Americans have learned a great deal—the hard way—about how failure to combat bias and bias motivated crimes can cause an isolated incident to fester and result in widespread tensions that can take years from which to recover. The Leadership Conference has been at the forefront in challenging American political leadership, as well as civil society leaders, to confront these tensions, recognizing that anti-Semitism, like other forms of racism and xenophobia is an attack not only on a particular group but an attack on our democracy. We believe anti-Semitism, xenophobia, and hate crimes affect us all, regardless of who is the target of these heinous acts of hate. That is why we have worked to build broad coalitions to address these issues. As with the passage of the Hate Crimes Prevention Act, we brought together diverse religious groups, including Jews and Muslims and Sikhs, racial and ethnic minorities, and LGBT groups, in our delegation to the Berlin Conference on Anti-Semitism.

At the Berlin conference, we made clear that while governments bear ultimate responsibility to safeguard vulnerable communities, The Leadership Conference believes that visible concern and advocacy beyond the Jewish community or any one community is vital to the fight against anti-Semitism and other forms of hate and bigotry. No community should stand alone in the face of

prejudice and violence. Our experience has demonstrated that broad, inclusive coalitions can help to mobilize public concern and promote more accountable, responsive government action.

As noted by Ambassador Samantha Power, U.S. Permanent Representative to the United Nations and member of the president's cabinet, anti-Semitism is a threat not only to the Jewish community but also to the broader community of democratic nations as it “threatens the core principles upon which a peaceful and stable Europe has been built.” The Berlin meeting took place against a backdrop of a stunning escalation of anti-Semitism across the region. Government officials and civil society expressed the urgent need for leaders from all sectors to explicitly condemn all acts of anti-Semitism, provide security to Jewish communities throughout the region and to promote tolerance in formal and informal education, particularly for youth.

The Leadership Conference delegation focused on the strategy of building diverse coalitions. Thus, our work to end all forms of discrimination and bigotry—racism, sexism, homophobia, anti-Semitism, Islamophobia and xenophobia—is stronger because as a coalition, we are able to make the powerful case that such hatred destroys the very fabric of our democracy and negatively affects everyone in the United States.

We also related our experience with collecting disaggregated data on hate crimes—so we can track the type of hate crime and its incidence. Today, 40 OSCE nations have some type of hate crime law. This progress is to be applauded but much more needs to be done to strengthen implementation. For example, only 27 of the 57 OSCE participating States submit official hate crimes statistics to the OSCE. Data collection is an important means to understanding the problem so that appropriate responses can be developed. Training of law enforcement per-

sonnel is needed as is increasing the understanding of prosecutors and judges. There should be no impunity for those who commit hate crimes in any country.

Recommendations

- The administration should urge all OSCE participating states to condemn unequivocally all manifestations of anti-Semitism—including its promotion in the political sphere—and make clear that anti-Semitism and hatred are incompatible with the values of human rights and human dignity. This includes directing government officials to improve the tenor of how they speak about individual groups and uphold the shared humanity of all members of society.
- The administration should promote diverse coalitions of all those racial, ethnic and religious and LGBT groups that experience hate violence to speak out against all forms of bigotry, racism, anti-Semitism, Islamophobia and xenophobia.
- The administration should continue to collect data and investigate and prosecute anti-Semitic and all violent hate crimes; train law enforcement, prosecutors and judges to do so as well as to work with communities to promote greater reporting of anti-Semitic incidents and other hate crimes and actively engage in efforts to assist other OSCE countries.
- The administration should convene a national summit on fighting anti-Semitism and hate crime which gathers officials from relevant agencies, experts, practitioners, representatives of constituencies affected by hate crimes and bigotry, including diverse religious leaders. The Summit can elevate concern and highlight best practices and promote the benefits of an effective response to anti-Semitism and other hate crimes. This model should be promoted and replicated in the OSCE region.
- The administration should support efforts of OSCE and ODIHR to strengthen its data collection of hate crimes and implement effective education against anti-Semitism and all forms of bigotry.
- The administration should urge the OSCE Ministerial Council to adopt a decision urging Participating States to implement these recommendations and to report annually on progress.

Housing

Introduction

Access to housing is central to economic and personal security and to social inclusion, yet remains shaped by racial discrimination throughout the United States. Affordable housing is in critically short supply.¹⁹³ Communities throughout the United States remain marked by a high degree of racial segregation and concentrated poverty, creating inequality in access to education employment, and healthy public spaces, and perpetuating gaps in opportunity for successive generations.¹⁹⁴ These inequities were exacerbated by the economic downturn, and in particular, by the impact of predatory lending practices and residential foreclosures on minority communities.

Although safe and affordable housing is a basic need and provides access to key social resources, many government policies serve to reinforce the decades-long legacy of segregative housing programs. Discrimination by both private and public actors remains a significant problem, often in evolving forms (as in the financial sector), evincing the need for stronger enforcement of antidiscrimination laws. Moreover, additional resources, and improved policy designs, are needed to provide sufficient housing that is affordable to low-income people throughout the United States.

Housing discrimination and segregation are critical barriers to opportunity for people of color in the United States. In 2013, the U.S. Department of Housing and Urban Development (HUD) received 9,324 complaints of housing discrimination based on race, color or national origin combined. Discrimination based on race, color, and national origin were most often reported in the most racially and ethnically segregated metropolitan statistical areas (MSAs) in the United States. These complaints represent only a fraction of the estimated 4 million complaints of housing discrimination that occur every year just in the rental and real estate sales markets.

Effects of the Foreclosure Crisis

The racial dimensions of the recent foreclosure crisis in the United States are undeniable. Continued residential segregation and the exclusion of racial minorities from access to quality mortgage credit created model conditions for predatory lending to poor households in communities of color.¹⁹⁵ This has led to the massive loss of wealth built over generations in communities of color.¹⁹⁶

Discrimination now affects the recovery from the housing crisis and the future of homeownership in communities of color. In an investigation into the maintenance and marketing practices of Real Estate Owned (REO) properties by banks, the National Fair Housing Alliance found that major banks around the nation maintain and market REO homes in White communities significantly better than in communities with higher concentrations of racial minorities.¹⁹⁷ Failures by banks to maintain and market properties bring down neighboring home values and devastate the recovery in entire communities, and encourage investor purchasers over owner-occupant purchasers of those homes.

State and local actors that receive and administer federal housing funding are bound by the Fair Housing Act's affirmative obligations to administer funds in a way that affirmatively furthers fair housing and addresses segregation and encourages diverse and inclusive communities. Further, state and local governments must conduct thorough analyses of impediments to fair housing and identify ways to address those impediments. However, many jurisdictions fail to comply with the standards of both U.S. civil rights law and CERD. For example, jurisdictions frequently use federal housing programs, or allocate Low Income Housing Tax Credits, in a manner that fails to address segregation (and may perpetuate it) or to enable broader housing choice among families reliant on housing assistance.¹⁹⁸

Progress to Date

In its 2013 CERD submission, the U.S. highlighted the application of the discriminatory effects standard under the Fair Housing Act and the Equal Credit Opportunity Act. The government noted instances of successful civil rights enforcement by HUD and the U.S. Department of Justice (DOJ), as well as HUD's 2013 issuance of a discriminatory effects regulation implementing the standard. The government described the role of federal housing assistance programs in subsidizing affordable housing, highlighting the Baltimore Housing Mobility Program's success. In addition, the government also described its efforts in addressing the problem of homelessness.

In 2013, HUD also released a draft regulation addressing the Fair Housing Act's requirement that jurisdictions operating housing programs "affirmatively further fair housing," that is, promote residential integration and equality in housing choices, 42 U.S.C. § 3608.

Recommendations

Housing Segregation

- The U.S. Department of Housing and Urban Development (HUD) should increase the number of complaints using the discriminatory effects standard to challenge discriminatory lending practices.
- There should be a meaningful independent evaluation of all HUD housing and community development programs for their impacts on residential segregation.
- The Obama administration should withdraw funds from entitlement jurisdictions and local participants of programs if administration of those funds and programs yields discriminatory results or increases residential segregation.
- The Obama administration should engage in meaningful implementation of the affirmatively furthering obligation (including finalization of the regulation, if not yet issued).
- The Obama administration should issue civil rights standards for the Low Income Housing Tax Credit Program, including implementation of Title VI of the 1964 Civil Rights Act and the Fair Housing Act (including its affirmatively furthering provision).
- The Obama administration should enact policies that facilitate mobility in the Section 8 program, such as the use of small-area Fair Market Rents and incentives for mobility outcomes in the Section 8 Management Assessment Program.
- The Obama administration should enact explicit mobility standards and incentives for programs

such as Moving to Work and the Rental Assistance Demonstration, and high standards for affordable housing siting in programs such as Choice Neighborhoods.

- There should be increased staffing of HUD's Office of Fair Housing and Equal Opportunity to conduct additional compliance reviews of entitlement jurisdictions' efforts to affirmatively further fair housing.
- The Obama administration should issue a regulation that details what constitutes racial harassment by housing providers and other tenants under the Fair Housing Act.

Foreclosure Crisis and Unfair Lending Practices

- HUD and the financial regulatory agencies should issue guidance on compliance with the obligation to maintain and market REO properties in a nondiscriminatory manner.
- The Obama administration should require reporting and public disclosure of data by mortgage servicers to report loss mitigation outcomes by protected class similar to the reporting requirements of the Home Mortgage Disclosure Act (HMDA).
- The Obama administration should engage in increased supervision and enforcement of mortgage originators and servicer activities for compliance with the Equal Credit Opportunity Act and the Fair Housing Act.
- The Consumer Financial Protection Bureau (CFPB) should amend its mortgage servicing rule to require loan servicers to offer loan modification options if it is in the best interest of the mortgage investor.
- The CFPB must collect protected class data, including race, in its consumer complaint process, and make such data available in its public complaint database.

Contributing Organizations: The National Fair Housing Alliance and the Poverty & Race Research Action Council contributed to this section.

Human Rights

A major development in the evolution of human rights is taking place. While the United States reinvigorates leadership on human rights globally, targeted activities are now being undertaken to implement the international human rights commitments made by the United States here at home. In addition to its support of the Universal Declaration of Human Rights, the United States has ratified several of the core human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture, and the Convention on the Elimination of all Forms of Racial Discrimination (CERD). Under the Obama administration, the U.S. has rejoined the Human Rights Council, participated in the Universal Periodic Review (UPR), and reported to several of the treaty bodies. President Obama signed the International Convention on the Rights of Persons with Disabilities (CRPD) and waged a major campaign for its ratification. The Obama administration also testified at several Senate hearings on the need for the United States to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

We are using a single yardstick to measure our progress toward advancing human rights for all. Through the periodic reviews of these treaty bodies, the U.S. government must reflect on how well it has carried out its treaty obligations and committee concluding observations—looking both at progress made and challenges to be addressed. As we reclaim our leadership on the global human rights stage, our shortcomings at home are harmful enough in their own right. But they also undermine our ability to serve as role models to other friendly nations, and as they have in the past, continue to serve as convenient fodder for opponents of ours who want to divert attention from their own wrongdoing.

As we found in our shadow reports on the ICCPR entitled, “Segregated: How Race, Class and Where Chil-

dren Live Stymie the Right to Education,” and CERD entitled, “Falling Further Behind: Combating Racial Discrimination in America,” there is an inconsistency between the ideals the nation professes and the reality of its practices. While it is true that U.S. laws and policies are comparatively advanced in protecting civil rights, the gap in U.S. law and policy as it relates to the protection of universal human rights recognized by the Universal Declaration of Human Rights (UDHR) is striking, especially in the areas of economic inequality, racial discrimination, criminal justice and educational inequity. We believe the U.S. government can and should do more through legislative and executive means to take affirmative steps to more fully integrate the provisions and committee recommendations of both the ICCPR and CERD into U.S. law and policy.

Implementation of treaty obligations is carried out currently on an ad hoc basis, primarily around the reporting process. The Obama administration has relied on Clinton Administration Executive Order 13107 that created an Interagency Working Group on Human Rights under the leadership of the National Security Council. However, its principal focus has been on addressing human rights abuses in other countries.

The administration created a set of interagency working groups to implement the recommendations of the Universal Periodic Review. One of these is the Equality Working Group, which is led by the Civil Rights Division of the Justice Department, together with the State Department. It was established to facilitate the implementation of human rights commitments relating to equality, with an emphasis on CERD. It has members from over twelve federal agencies and several divisions of the Department of Justice. The working group meets periodically to share information among its members and also engages in dialogue with civil society. How-

ever, its mandate is far narrower than needed for robust implementation of CERD and other human rights obligations related to equality.

While a number of agencies, including the U.S. Commission on Civil Rights and the EEOC, among others, carry out some activities to implement human rights obligations, there is no single independent human rights institution that meets international guiding principles. Building on the convening of a Global Exchange on National Human Rights Commissions and its subsequent report, “The Road to Rights: Establishing a Domestic Human Rights Institution in the United States,” the United States needs to consider various policy proposals for approaches to transform the U.S. Commission on Civil Rights into a less politicized, stable, better funded, and more effective independent institution and expand its mandate to cover human rights issues. The commission is an independent body that already has authority to undertake many of the monitoring activities envisioned by a national human rights institution, including the power to convene hearings and issue subpoenas, issue reports, and make recommendations to Congress and the Executive branch. However, in order to carry out these functions effectively, reforms are needed in the commission’s operations, its state committees and its funding.

Recommendations:

- The administration should be more proactive about informing government agencies of the concluding observations and accepted recommendations of treaty reviews and the UPR. To that end, concrete steps need to be taken to ensure the implementation of these recommendations.
- The State Department should create a fund to support the participation of appropriate officials from domestic agencies in international reviews.

Institutional Mechanisms

- The administration should update executive order 13107 or other official communication to expand the Interagency Working Group on Human Rights convened by the National Security Council, to focus on implementation of human rights in the United States in addition to its ongoing activities related to human rights in countries outside the U.S. The White House Domestic Policy Council should co-convene the Working Group so that domestic agencies responsible for implementation are fully engaged. Both the ICCPR and CERD Committees following the reviews of the U.S. called for more robust implementation of human rights commitments.

- The administration should support the U.S. Commission on Civil Rights in its efforts to expand its mandate to encompass the monitoring and enforcement of human rights obligations. We urge the administration to press for an increase in the commission’s budget in order for it to begin to fulfill its historic role. We also strongly recommend that its mandate be expanded to include human rights and its authority expanded to include the submission of reports to international treaty bodies and related activities.

Treaty Ratification

- The administration should continue to support and push for the ratification of CEDAW, including the appointment of a person in the White House to coordinate these efforts. The administration could undertake a review of its current efforts to implement the provisions of CEDAW even without ratification, in consultation with women’s and human rights groups.
- The administration should continue to press for ratification of CRPD in the 114th Congress in consultation with disability and civil and human rights groups, veteran’s organizations, and business.

Immigration Policy

Introduction

In the absence of comprehensive immigration reform legislation, the United States has continued aggressively enforcing immigration laws, often to the detriment of families and communities across the country. Earlier this year, the federal government surpassed the two million mark for removals conducted since President Obama took office, more than any other administration in the same period of time. Concerns about heavy-handed immigration enforcement were also highlighted this year by the government's policies—including a proposed increase in the use of expedited removal, deplorable immigration detention conditions, and calls by some lawmakers to undo recent progress in administrative policy reforms—in response to a surge in unaccompanied alien children arriving at the southern U.S. border.

At any given time, the U.S. Department of Homeland Security (DHS) detains thousands of noncitizens who pose no flight risk or threat to public safety while they are awaiting deportation proceedings. These detainees often include asylum seekers and other vulnerable persons. DHS also underutilizes less costly and effective alternatives to detention, even though such alternatives are standard practice in criminal justice systems across the country. While institutional detention costs the American taxpayer an estimated \$159 per person per day, alternatives such as release on recognizance, community-based support services or bond do not carry an expense, and other alternatives cost from pennies to around \$18 per person per day and impose fewer restraints on liberty. Compared to billions of dollars spent annually on detention, alternatives represent a smarter, less costly, and more humane way to ensure compliance with immigration laws.¹⁹⁹ The recent surge in unaccompanied alien children arriving at the U.S. border only heightens our concerns about humane detention policies and procedures.

In the southwest border region, there were widespread complaints of abusive conduct by law enforcement agents against both immigrants and citizens. Numerous reports have pointed to border security agents “regularly overstepping the boundaries of their authority by using excessive force, engaging in unlawful searches and seizures, making racially motivated arrests, detaining people under inhumane conditions, and removing people from the United States through the use of coercion and misinformation.”²⁰⁰

There are also widespread concerns about the treatment of immigrant workers. Whether it was Chinese immigrants in the 19th century, the 4.5 million Mexican workers under the Bracero program, or H-2 workers under the current program, immigrant guest workers have long been some of the most vulnerable and poorly treated workers among us even though they have been fundamental to our economic growth. Because workers under the current H-2 system are bound to their employers, many are subjected to routine mistreatment including the denial of wages, squalid living conditions, and inadequate safety protections. Workers who speak up to demand fair treatment can easily be deported or face other forms of retaliation.²⁰¹

Recent Progress

The government has taken many steps to alleviate the problems arising from discrimination in immigration. The government demonstrated its efforts to reform immigration detention policies through the Immigration and Customs Enforcement (ICE), and through the alternatives to detention (ATD) policy, a release condition that allows individuals who might otherwise be detained in ICE custody to live in the community. Additionally, the government has taken steps to clarify that all U.S. workers, regardless of immigration status, are offered substantial protections under U.S. labor and employ-

ment laws, and the Migrant Worker Partnership Program, which was created to assist the U.S. Department of Labor (DOL) in the protection of migrant workers employed in the U.S. In response to complaints of law enforcement officials using excessive force against immigrants, the U.S. Department of Justice (DOJ) has investigated numerous police departments and works with law enforcement agencies that have committed such violations to ensure the constitutionality of their practices.

Update: Executive Action on Immigration

Just after this report went to print, President Obama, in a primetime address to the nation, announced a new policy, similar to his 2012 policy for “Dreamer” immigrant youth, to defer the deportation of many immigrants who, despite lacking legal status, have become incorporated into their communities and have otherwise obeyed the law. His new policy will allow parents of U.S. citizen or legal resident children, if they have lived in the United States for at least five years and have otherwise stayed out of legal trouble, to pay a fee and apply for “deferred action” status. This status will allow as many as four million parents to live for three years without the threat of deportation. President Obama also announced he would expand his 2012 order to provide relief to more undocumented children who were brought into the country by their parents, streamline some visa application processes, shift more enforcement resources to the border, and reform how decisions to prosecute individual immigration cases are made. In all, his reforms could spare up to five million immigrants from the threat of deportation in the next several years.

While his policies are temporary and no substitute for immigration reform legislation, and while he could face the prospect of a political backlash from Congress next year, The Leadership Conference praised his decision as a victory for human rights and for mere common sense. It makes no sense to separate hardworking parents from their American children, and we believe that his actions will be of tremendous benefit both to the families affected and the economy as a whole.

Recommendations

The 113th Congress failed to enact comprehensive immigration reform. While the “Border Security, Economic Opportunity, and Immigration Modernization Act” (S.744) passed the Senate in June 2013, and was supported by the Obama administration, the leadership of the House of Representatives has declared that they will take no action on comprehensive reform. In the absence

of legislation, President Obama announced in November that he would use his own legal authority to make some important reforms—including providing temporary relief from deportation for up to five million immigrants. There are additional reforms that could be implemented through executive action.

In FY 2013, more than 260,000 people (70 percent of those deported that year) were deported through expedited removals or reinstatement, with no hearing before an immigration judge. The Obama administration should:

- End the use of deportations without hearings for people who have a case for relief or for prosecutorial discretion, and for people who agree to a stipulated removal and were not represented by counsel;
- Limit the use of expedited removal to people caught at a port of entry or while trying to enter (as was DHS policy before 2004);
- Provide an administrative appeal process for immigrants who faced such procedures; and
- Reconsider the use of expedited removal procedures as a response to the surge in unaccompanied alien children that have recently arrived at the southern U.S. border.

When immigrants stand up for basic labor and civil rights protections, they should never be undercut by immigration enforcement practices. The Obama administration should:

- Clarify and publicize the processes for immigrants involved in labor and civil rights cases to obtain immediate immigration status and work authorization;
- Prohibit civil immigration or criminal arrests of workers in the context of workplace enforcement actions;
- Look into labor and civil rights complaints before I-9 or other worksite enforcement actions; and
- Prevent employers from abusing I-9 or E-Verify procedures to violate workers’ rights.

The Obama administration should require a bond hearing for anyone detained, shortly after being taken into custody and again upon being held for six months; interpret “custody” in statutes to permit forms of custody short of detention; shift resources from institutional detention to effective and far less expensive alternatives; and reaffirm DHS Secretary Jeh Johnson’s interpretation that the “detention bed quota” in recent appropriations bills is not a mandate to indiscriminately fill those beds with immigrants regardless of need.

If immigrants are to face deportation or other enforcement action, it should never be as a result of racial, ethnic, or national origin profiling. As discussed elsewhere in this report, the administration should revise the flawed 2003 DOJ guidance on profiling, which contains massive exceptions for national security and border integrity that do far more harm than good.

In addition, the Obama administration should end the 287(g) program, the use of detainers, and other ICE ACCESS programs that encourage the use of profiling and undermine public safety.

The Obama administration should:

- End the Operation Streamline program;
- Implement all recommendations on use of force from the Police Executive Research Forum, and strengthen oversight and accountability regarding inappropriate use of force;
- Roll back the U.S. Customs and Border Protection’s (CBP) claimed 100-mile authority;
- Create enforceable standards and provide effective oversight for CBP short-term holding facilities;
- Carefully limit the use of drones;
- Equip all CBP officers with lapel cameras; and
- Provide more humanitarian resources such as rescue beacons and water stations along the border region—which will not encourage more crossings, but will reduce the number of senseless migrant deaths.

Since 1996, a number of “criminal alien” provisions in the law have amounted to the immigration equivalent of mandatory minimum sentences. The Obama administration should, as a general policy, not deport legal residents on the basis of offenses that occurred years ago.

Contributing Organizations: The Immigration Task Force is chaired by Asian Americans Advancing Justice | AAJC, and the United Food and Commercial Workers International Union.

Media and Technology

Introduction

Today, classrooms, businesses, health care centers, and emergency workers all depend on advanced communications technology. Just like electricity and telephone service before it, access to communications in the 21st century has moved from being a luxury to a necessity. Advanced communications services are rapidly becoming a key indicia of the difference between second-rate, low quality services and outcomes, and the highest quality tools to provide essential services to our society. Access to these services is determined by our nation's communications and technology policies—policies that must promote equality in a free, plural, and democratic society.

When communications policy fails to ensure media access by all members of society, civil rights are denied. When these policies fail, equal opportunity and democratic participation are compromised. What is at stake is nothing less than equality of economic and educational opportunity, and the right to meaningful democratic participation in the political process.

For years, civil rights leaders have fought for and won battles against discrimination and for opportunity in the communications industry. These advances have contributed to the nation's progress in educational and economic opportunity, as well as political participation. Unfortunately, many of these advances have been reversed at a time when our educational and economic opportunities, as well political participation, are increasingly dependent upon communications infrastructure and technology.

At the same time, there is a growing need to protect and strengthen key civil rights protections in the face of technological change. New technologies like big data have the potential to improve the lives of all Americans, and at the same time they pose new risks to civil and

human rights that may not be addressed by our existing legal and policy frameworks.

Media, Race, and Public Policy

Access to the media by the broadest sector of society is crucial to ensuring that diverse viewpoints are presented to the American people. Whether it is television coverage of police beating marchers on “Bloody Sunday” in Selma, Alabama in 1965 or police in riot gear atop armored tanks aiming assault rifles at protestors in Ferguson, Missouri in 2014, media content plays a powerful and critical role in the shaping of our national viewpoints and policy goals.

Who owns the media is important. However, despite a national consensus going back to the late 1960s as to the need and importance of diversity in media ownership and employment, progress has slowed to a crawl in the wake of the 1996 Telecommunications Act. While Latino Americans, African Americans, Asian Americans, and Native Americans make up fully one-third of this nation, they own just a small fraction of the nation's media outlets. According to the most recent data released by the Federal Communications Commission, for full power television, Hispanics own 3 percent, Asian Americans own 1.3 percent, African Americans own 0.6 percent, Native Hawaiians and American Indians own less than a percent combined. For FM radio, Hispanics own 7.4 percent, Asian Americans own 0.7, African Americans own 1.3 percent, and Native Hawaiians and American Indians own less than a percent combined.

The Intersection of Consumer Privacy and Discrimination

In May 2014, following a 90-day review of big data policies, the White House released its report on big data, “Big Data: Seizing Opportunities, Preserving Values.” The report highlighted the crucial importance of updating the nation's civil rights, data, and privacy policies to

unlock big data's benefits and guard against its risks. A specific finding of the report was that "big data technologies can cause societal harms. . . such as discrimination against individuals and groups. This discrimination can be the inadvertent outcome of the way big data technologies are structured and used. It can also be the result of intent to prey on vulnerable classes."²⁰²

As the "Big Data" report notes, the E-Verify program illustrates one very serious example of this type of discrimination. E-Verify is the voluntary, government-run system that employers can use to check whether new employees are work eligible. According to government reports this system has an error rate that is 20 times higher for foreign-born workers than for those born in the US.²⁰³

This experience provides an important lesson for commercial systems. E-Verify has been under development since first authorized in 1996, uses data only from one fairly homogenous source—the governments—and is frequently audited. Yet after nearly 20 years, persistent errors remain. That strongly suggests that existing commercial systems, which are fairly new and untested, use data from widely different sources, and operate with no transparency, are much more flawed. The consequences of errors in these commercial systems are growing and can be severe, including wrongly labeling individuals as engaged in fraud or as meriting additional scrutiny before then can gain access to fundamental financial services like bank accounts.²⁰⁴

In another example highlighting the intersection of consumer privacy and discrimination, a major auto insurer has begun to deny its best rates to those who often drive late at night, such as those working the night shift. The insurer knows each driver's habits from a monitoring device, which drivers must install in order to seek the insurer's lowest rate.²⁰⁵ Unfortunately, this type of rate discrimination ignores the racial disparities of individuals working late shifts. While this type of data driven discrimination may have an actuarially sound basis—perhaps because it includes a higher mix of drunk drivers—the fact is that it will result in a clear racial bias.

Big data can also be used to target vulnerable populations and thus facilitate predatory marketing directed toward such groups as seniors or people with physical and mental disabilities. Unscrupulous companies can find vulnerable customers through a new industry of highly targeted marketing lists, such as one list of 4.7 million "Suffering Seniors" who have cancer or Alzheimer's disease.²⁰⁶ Some advertisers boast that they use web monitoring technologies to send targeted advertisements to people with bipolar disorder, overactive bladder, and anxiety.²⁰⁷

There is also potential for more direct forms of discrimination. A recent report by the Federal Trade Commission

(FTC) highlights the disturbing practice of data appending.²⁰⁸ Using massive databases of consumer information, data brokers can take many types of consumer personal information, such as an email address, and append many other types of information about that consumer, such as race, religious affiliation, ethnicity, gender, and age. As FTC Commissioner Julie Brill notes in her statement accompanying the report:

Nothing in the Commission's report suggests that data brokers or their clients are running afoul of anti-discrimination laws. It is foreseeable, however, that data that closely follow categories that are not permissible grounds for treating consumers differently in a broad array of commercial transactions will be used in exactly this way.²⁰⁹

Civil Rights Principles for the Era of Big Data

The White House report came after the release in February of a set of Civil Rights Principles in the Era of Big Data, a push by 14 civil rights and media reform groups to urge companies and the government to develop and use new technologies in ways that promote equal opportunity and equal justice.

Through these principles, the signatory organizations call on companies and the government to develop and use new big data technologies in ways that will promote equal opportunity and equal justice. The principles call for an end to high-tech profiling; urge greater scrutiny of the computerized decision making that shapes opportunities for employment, health, education, and credit; underline the continued importance of constitutional principles of privacy and free association, especially for communities of color; call for greater individual control over personal information; and emphasize the need to protect people, especially disadvantaged groups, from the documented real-world harms that follow from inaccurate data. As such, they help identify the pernicious and subtle discrimination that can pervade new systems, and help pave the way for a high-tech civil rights enforcement agenda.

Recommendations

- The Federal Communications Commission should take further action to improve its data collection about the ownership of women and people of color, undertake more research how to increase that ownership, and take the steps necessary to ensure more ownership diversity.
- The Obama administration should put forward a strong legislative proposal on consumer privacy that includes language addressing the risks of discrimination that stem from new uses of data.

- The White House Big Data report called on the federal government to “pay attention to the potential for big data technologies to facilitate discrimination inconsistent with the country’s laws and values.” Yet in a cutting edge and technology-driven field, the expertise to use big data to assess the impact on civil rights is scarce. The Obama administration should recruit experts in big data techniques to work in civil rights and consumer protection agencies.

Voting

Introduction

In addition to constitutional protections on the right to vote, the United States has several laws to protect against discrimination in and limiting access to voting. Most notably, the Voting Rights Act of 1965 has provided significant protection to voters of color. However, the right to vote is still under attack in many areas. The Supreme Court recently weakened the Voting Rights Act, and access to voter registration, voting rights for former felons, and voting rights for residents of the District of Columbia remain concerns.

Voting Rights in the Aftermath of *Shelby County v. Holder*

Since the adoption of the Voting Rights Act (VRA) in 1965, Section 5 has been an extraordinarily effective tool that screened new voting practices within the states with the worst histories of racial voting discrimination. Within the areas subject to this federal review, which primarily were in the southern and southwestern portions of the United States, thousands of racially discriminatory voting changes were blocked from going into effect and countless others were deterred. However, in June 2013, in *Shelby County v. Holder*, the U.S. Supreme Court struck down a core provision of the Act, rendering Section 5's federal "preclearance" review process inoperative. In its wake, there is no comparable safeguard.

Under Section 5 of the VRA, the U.S. Department of Justice (DOJ) or a federal district court would scrutinize all new voting procedures *before* they could be put into effect to ensure that they were free from racial discrimination. Section 5 was widely recognized as the heart of the VRA's remedial scheme. The Supreme Court upheld the constitutionality of Section 5 in cases decided in 1966, 1980 and 1999. However, the Court in *Shelby*, by 5-4 vote, essentially gutted the preclearance remedy

by holding that the formula Congress had relied upon to identify the covered jurisdictions is unconstitutional. Thus, because there no longer are any jurisdictions covered for Section 5 preclearance, Section 5 is effectively null and void.

In a recently released report, "The Persistent Challenge of Voting Discrimination: A Study of Recent Voting Rights Violations by State," The Leadership Conference found that racial discrimination in voting remains a significant problem in our democracy in every region of the country, but is concentrated in states previously covered under Section 5 of the Voting Rights Act; that local elections are elections where voting discrimination most often occurs; and that new methods of discrimination continue to emerge, both overt and subtle. The report identified 148 instances of racial discrimination in voting since 2000. The report also identified voting changes since the *Shelby* decision which have raised concerns as potentially discriminatory changes.²¹⁰

The *Shelby* decision was widely criticized by legal scholars for its strained reasoning and reliance upon previously rejected legal doctrines and for wholly ignoring the overwhelming evidence that Section 5 remained needed to prevent racial voting discrimination. In 2006, Congress reauthorized Section 5 after compiling a 15,000-page record that demonstrated an ongoing pattern of voting discrimination in the covered areas.²¹¹ As Associate Justice Ruth Bader Ginsburg observed in her dissent from the *Shelby* decision, "[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."

The *Shelby* decision made millions of voters of color more vulnerable to voting discrimination by opening the door for formerly covered areas to implement new and

onerous restrictions on voting. For example, shortly after the Supreme Court's decision, the North Carolina state legislature passed a wide-ranging bill that adds numerous procedural barriers to voting and reduces voting opportunities by requiring a government-issued photo identification card for all in-person voting, limiting early in-person voting, and prohibiting citizens from registering to vote in conjunction with early voting. Likewise, within mere hours of the *Shelby* decision, Texas state officials announced that they immediately would begin to enforce a 2011 photo-identification requirement for in-person voting; that requirement had been blocked under Section 5 not only by an administrative objection by DOJ, but also by the judgment of a three-judge federal court. DOJ and private plaintiffs are now challenging the North Carolina and Texas laws via expensive and time-consuming litigation.

One unique function that Section 5 served was to provide information to communities of color and civil rights advocates that particular voting changes were under consideration or had been adopted. During the course of its Section 5 review, DOJ staff would typically contact local citizens to obtain their views of the change. This had the effect of encouraging jurisdictions to let local Black, Latino, Asian and/or Native American leaders know of voting changes before enactment. In addition, DOJ published a weekly list of voting changes that had been submitted for preclearance, which was a comprehensive and up-to-date list of voting changes in the covered jurisdictions. This “transparency” function of Section 5 now has been lost.

The *Shelby* decision does not prevent Congress from enacting a new coverage formula for Section 5 preclearance. Legislation has been introduced in both the House and Senate to do that, and to augment the remedies included in the VRA in other ways.

Under Section 2 of the VRA, DOJ is authorized to bring legal challenges to voting practices that have a discriminatory purpose or effect. Since 2009, DOJ has brought only four cases.²¹²

Photo ID

Since 2012, more than 40 states have attempted to implement requirements that voters show photo identification prior to casting a vote during an election.²¹³ While advocates have successfully fought the implementation of some of these laws through litigation, many of these laws have been adopted and are either in effect or will soon be in effect in upcoming elections. Some of these laws have a disproportionate impact on voters who have historically been subject to discrimination and voter intimidation, including communities of color, seniors, low-income individuals, and students. While

most individuals in the United States have possession of some identification that proves who they are, many do not possess the type of required identification that many states are now demanding. For example, a law recently passed in Tennessee requires that individuals present government-issued identification to cast a ballot. With an estimated 25 percent of voting-age African Americans possessing no government-issued identification, the discriminatory impact of such laws is substantial. Although many states requiring identification have ostensibly made provisions for all eligible voters to obtain the requisite form of identification, a significant number of voters still have difficulty meeting these requirements. An estimated 1.2 million eligible African-American voters and 500,000 eligible Hispanic voters live more than 10 miles from their nearest identification-issuing office that is open more than two days a week. Significant efforts should be undertaken to break down the barriers to voting presented by these identification requirements.²¹⁴

National Voter Registration Act Enforcement

The National Voter Registration Act of 1993 (NVRA) has proven to be one of the most effective means for registering hard-to-reach potential voters by providing registration opportunities at public agencies where they are apt to go anyway—such as Departments of Motor Vehicles, public assistance agencies, and providers of services to people with disabilities. However, this landmark federal law is only effective when it is enforced.

The Voting Section of DOJ's Civil Rights Division is charged with suing states that do not follow the mandates of the NVRA, but its litigation activity under this statute has been sparse over the last few decades. During the Obama administration, only two lawsuits have been filed by DOJ seeking enforcement of Section 7 of the NVRA, the public agency registration mandate: one in Rhode Island, which was settled, and one in Louisiana, which is pending. During the same period, NGOs, which are also authorized to bring such suits, filed seven lawsuits—against Indiana, Massachusetts, Louisiana, New Mexico, Nevada, Georgia, and Pennsylvania. Settlements were reached with Indiana and New Mexico in 2011 and in Georgia and Pennsylvania in 2012. All four states reported significant spikes in agency registrations following the settlements. The cases against Massachusetts, Louisiana, and Nevada are ongoing at this writing.

Criminal Disenfranchisement

An estimated 5.85 million citizens cannot vote as a result of criminal convictions, including nearly 4.4 million of those who have been released from prison and are living and working in the community.²¹⁵ Nationwide one in 13 African Americans of voting age have lost the right to vote—a rate four times the national average.²¹⁶ Available data suggests criminal disenfranchisement laws

may also disproportionately impact Latino citizens because of their overrepresentation in the criminal justice system.²¹⁷ Many of the current criminal disenfranchisement laws proliferated in the Jim Crow era and were intended to bar minorities from voting.²¹⁸ The United States continues to lead the world in the rate of incarcerating its own citizens.²¹⁹ Over the last few decades, the number of disenfranchised citizens has been increasing because of an incarceration boom fueled by mandatory minimum sentences and the “War on Drugs.”²²⁰

Currently, individuals with criminal convictions in the United States are subject to a patchwork of state laws governing their right to vote. The scope and severity of these laws varies widely, ranging from the uninterrupted right to vote to lifetime disenfranchisement, despite completion of one’s full sentence.²²¹ Although voting rights restoration is possible in many states, and some recent progress has been made,²²² it is frequently a difficult process that varies widely across states.²²³ Individuals with criminal convictions may lack information about the status of their voting rights or how to restore them. Further, confusion among election officials about state law contributes to the disenfranchisement of eligible voters.²²⁴ While Attorney General Holder’s recent statements in support of the easing of restoration requirements²²⁵ are a positive step, these reforms do not go far enough to address the disenfranchisement of millions of Americans following a criminal conviction. Already approximately 40 percent of states have more expansive policies than those proposed by DOJ.²²⁶ In addition, DOJ’s proposal that individuals must wait until after probation and parole fuels confusion among election officials and returning citizens, and the requirement to pay fines before voting, we believe, is tantamount to a poll tax.²²⁷

Prison-based Gerrymandering

Although people in prison in the United States are not permitted to vote and remain legal residents of their home communities under the laws of most states, the U.S. Census Bureau currently tabulates people in prison as residents of their prison cells, not their homes. Since incarcerated persons in the United States are disproportionately Black and Latino, and most prisons are built in disproportionately White rural areas, counting Black and Latino prisoners to increase the populations of white legislative districts dilutes minority voting strength statewide and enhances the voting strength of predominantly White rural districts where prisons are typically located. Only four states have passed legislation to end the practice of prison gerrymandering internally.²²⁸

Proof of Citizenship

Citizenship checks have a racially discriminatory effect on Americans’ ability to cast ballots and participate in democratic processes. Americans of color are dispro-

tionately likely to lack the kinds of documents accepted as proof of citizenship.²²⁹ Moreover, post-registration citizenship checks largely focus scrutiny on the only group of Americans likely to have been previously identified in government databases as noncitizens: naturalized citizens. According to the most recent data released by the Census Bureau, 75.4 percent of all naturalized citizens belong to a racial or ethnic minority group, compared to just 30.6 percent of all native-born American citizens. Disparate treatment of naturalized citizens therefore constitutes disparate treatment of the nation’s racial and ethnic minorities.

There is no empirically established need for heightened scrutiny of voters’ citizenship. When Americans register to vote, they are uniformly asked to affirm their citizenship. Warnings and potential penalties are typically associated with citizenship questions on application forms. Accordingly, it is exceedingly rare for non-citizens to end up on voter rolls, and even rarer still for them to cast ballots. Journalists investigating prosecutions of noncitizens for registering or voting have found that the very few cases identified nearly always arose as a result of misunderstanding and mistakes, not fraud.²³⁰ Far from stopping noncitizens from casting illegal ballots, citizenship-check policies have tended to prevent actual qualified Americans from voting: for example, 90 percent of Arizonans whose registration applications were rejected between January 2005 and fall 2007 for lack of proof of citizenship indicated that they were born in the U.S. (and thus were unquestionably U.S. citizens), yet only one-third ultimately became registered; most or all of the remaining individuals failed to register not because they were ineligible noncitizens, but because they did not have the time and resources to fulfill the proof of citizenship requirement, or were unable to obtain sufficient proof of nationality.²³¹

Protecting Language Minority Voters

Many language minorities, particularly those who are also racial or ethnic minorities, face discrimination when attempting to exercise their right to vote. This discrimination at the polls can manifest itself as a hostile and unwelcoming environment or the outright denial of the right to vote.²³² Citizens who are not yet fluent in English²³³ have difficulty understanding complex voting materials and procedures and are often denied needed assistance at the polls. And while many of these voters understand that voting is the most important tool Americans have to influence government policies that affect every aspect of their lives, these barriers can depress their participation in the process.²³⁴

DC Voting Rights

The District of Columbia’s right to full congressional representation has long been a subject of debate, though

no progress has been made. While the government has argued that D.C.'s lack of representation is a function of the U.S. Constitution and the structure of government, rather than being racially motivated, the District's lack of full voting representation in Congress has a disparate racial impact due to the city's current demographic makeup. Although large numbers of White residents have recently moved to the District of Columbia, it is a historically Black city and currently half of the city's population is Black (Blacks make up approximately 13 percent of the population nationwide). The Inter-American Commission on Human Rights expressed concern as to the possibility that the absence of Congressional representation for the District of Columbia has had a disproportionate impact upon the Black community residing in the District.²³⁵ In 2014, the United Nations Committee on Human Rights raised concerns about the lack of voting representatives for District residents, and called on the United States to correct this violation of basic human rights.

Recommendations

Voting Rights in the Aftermath of Shelby County v. Holder

- The Obama administration should vigorously enforce all provisions of federal voting rights law. The administration should support, and Congress should pass, a law that prevents the implementation of racially discriminatory voting changes.

Photo ID

- States that implement voter identification requirements should significantly expand the number and types of identification that are acceptable as voter identification, and make the accepted identification readily available particularly in minority communities.
- States that have implemented voter identification requirements should rigorously and regularly evaluate their voter identification policies, not only in terms of its disparate racial impact and whether there is a need, but also should evaluate the quality and effectiveness of programs to provide accepted forms of ID in the hands of eligible voters who need it, and to educate the public, particularly racial and ethnic minority voters, about access to those programs.

National Voter Registration Act Enforcement

- The U.S. Department of Justice (DOJ) should take action against the many states that have not integrated voter registration into the protocols of its covered agencies, as well as states that have done so only episodically. Bringing the weight and the prestige of DOJ to bear has been shown to be a powerful deterrent to the states, which all too often do not take

the mandates of the National Voter Registration Act (NVRA) agency provisions seriously.

- With the creation of health benefit exchanges under the Affordable Care Act, additional public agencies are now subject to the requirements of Section 7 of the NVRA. Through the operation of the single streamlined application system, the health benefit exchanges are administering applications for public assistance, and therefore voter registration must be offered with each covered transaction—initial application, renewal, and change of address. Health benefit exchanges should comply with this NVRA mandate immediately, regardless of whether the covered transaction occurs in person, by telephone, by mail, or online.
- The Obama administration should require federal agencies that do not currently offer voter registration under Section 7, including the Indian Health Service, the Veterans Administration, and the Social Security Administration to provide for voter registration. U.S. Citizenship and Immigration Services has recently agreed to offer voter registration to new citizens at its naturalization ceremonies, but this should be done consistently and should be monitored and enforced. Further, judicially sponsored naturalization ceremonies should be added to this mandate.

Criminal Disenfranchisement

- The Obama administration should endorse and Congress should pass the Democracy Restoration Act, which would restore voting rights in federal elections to disenfranchised individuals upon their release from incarceration.²³⁶
- DOJ should investigate the disproportionate impact of criminal disenfranchisement laws on minority populations and issue a report of its findings, including data on disenfranchisement rates by race and ethnicity.
- The Bureau of Prisons should take administrative steps immediately to provide information to incarcerated individuals regarding voting rights restoration upon release and return to their home state. In addition, DOJ should require federal prosecutors to provide notice to defendants in federal criminal cases regarding the loss of their right to vote as a result of a plea agreement to any disenfranchising crime (misdemeanor or felony).

Prison-based Gerrymandering

- The U.S. Census Bureau should address the problem of prison-based gerrymandering nationally and

count incarcerated people as residents of their home communities, not as residents of prison cells.

Proof of Citizenship

The Obama administration should monitor citizenship check initiatives undertaken by states and localities, and fully utilize constitutional provisions and laws prohibiting racial and ethnic discrimination to enjoin and eliminate such policies where they disproportionately hinder minority voters from participating in elections.

Protecting Language Minority Voters

- The Obama administration should vigorously enforce the federal voting rights law, specifically, the Voting Rights Act, on behalf of language minority voters to ensure their access to the process and to eradicate discrimination against language minority voters. In order to achieve this, the administration should:
- Ramp up Section 203²³⁷ enforcement efforts through field investigations, use of monitors, demand letters, and litigation where necessary;
- Educate jurisdictions about Section 208²³⁸ as there is often confusion by poll workers about what rights Section 208 guarantees and engage in litigation where necessary; and
- Utilize Section 2²³⁹ where necessary to protect the rights of language minority voters in jurisdictions not covered by Section 203 and for languages that could not be covered by Section 203 (i.e., those that do not fall into the list of Section 203-protected groups²⁴⁰).

DC Voting Rights

- The Obama administration should support and Congress should pass legislation granting the citizens of the District of Columbia the right to full congressional representation.

Contributing Organizations: The Voting Rights Task Force is chaired by the Lawyers' Committee for Civil Rights Under Law and the NAACP Legal Defense and Educational Fund. Additional organizations that contributed to this section include the American Civil Liberties Union, Asian Americans Advancing Justice|AAJC, Brennan Center for Justice, Demos, National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, Prison Policy Initiative, and Project Vote.

A Special Focus on Women of Color

Introduction

While women are nearly half of the workforce and families depend on women's income more than ever before, women still encounter discrimination in employment, education, and access to health care and experience unacceptably high levels of domestic violence.

Economic Security

Equal Pay: Overall women earn 77 cents for every dollar earned by their male counterparts. Even as women earn degrees at higher rates than men, they continue to be paid less.^{241,242} In 2009, Congress and the Obama administration took significant action through the Lilly Ledbetter Fair Pay Act, which made clear that every paycheck affected by discrimination is a discriminatory act and ensured that workers could bring litigation to hold their employers accountable for pay discrimination for as long as they were being paid less because of discrimination. In 2014, the administration went further by prohibiting federal contractors from retaliating against employees who disclose or discuss their wages and announcing its intent to establish new regulations requiring federal contractors to submit data on compensation paid to employees.²⁴³ Also, the president ordered the Office of Personnel Management to evaluate the gender pay gap in the federal workforce.

At a time where women are nearly half of the workforce, African-American women working full time, year-round typically make 64 cents for every dollar paid to their White male counterparts, and Latina women make only 54 cents.

Minimum Wage: Women make up nearly two-thirds of all workers who are paid federal minimum wage or less (\$7.25 per hour) and nearly three-quarters of workers in tipped occupations (for whom the minimum cash wage is \$2.13 per hour). The Obama administration has taken steps to increase the pay of minimum wage workers.

The president issued an Executive Order, No. 13658, raising the minimum wage for federal contract workers to \$10.10 per hour and increasing the tipped wage for these workers until it reaches 70 percent of the regular wage. And the president has called on Congress to raise the federal minimum wage and specifically supported passage of the Minimum Wage Fairness Act. In addition, the U.S. Department of Labor (DOL) issued a regulation that extended the protection of the minimum wage and overtime laws to most home care workers, many of whom are women of color.

Twenty-two percent of minimum wage workers are women of color, compared to less than 16 percent of workers overall. These workers, often supporting families on their wages, are concentrated in occupations such as caring for children and elders, cleaning homes and offices, or waiting tables.

Time Away from Work for Caregiving and Illness: Only 12 percent of U.S. workers in the private sector have paid family leave and just 61 percent have paid sick leave. The inability to access paid time off has serious consequences: Nearly a quarter of people nationwide report that they have lost a job or have been threatened with losing their job because they needed to take time away from work to deal with a personal or family illness.²⁴⁴ And just three and a half days away from work means that the typical family without paid sick days jeopardizes their ability to buy groceries for a month.²⁴⁵

African Americans and Latinos are less likely than White workers to have access to paid sick days or to paid family leave, or even to be able to access alternative work arrangements that would allow them to address a family or medical need.²⁴⁶

Pregnancy in the Workplace: While many pregnant women are able to work through pregnancy without dif-

faculty, some women need temporary job modifications in order to continue working safely through their pregnancies. In many cases, the job modifications needed by pregnant workers are similar to the accommodations employers must provide to employees with temporary disabilities under the Americans with Disabilities Act. Women of color and immigrant women are disproportionately likely to work in some physically-demanding jobs and low-wage jobs, and thus are especially likely to need accommodations during pregnancy. Often employers refuse to make these adjustments for pregnant women, forcing women to make an impossible choice between keeping their jobs and protecting their health.²⁴⁷

Equal Access to Educational Opportunities

The proliferation of “zero tolerance” school discipline policies is having a disproportionate effect on students with disabilities, students who identify as LGBT, and students of color—particularly African-American girls. In 2011-12, 12 percent of African-American girls received an out-of-school suspension. This was more than any other group of girls (only 2 percent of White girls received an out-of-school suspension), and more than most groups of boys, with the exceptions of African-American boys (20 percent) and American Indian/Alaska Native boys (13 percent). Furthermore, nearly one in five girls of color with disabilities received an out-of-school suspension, including 19 percent of African-American girls with disabilities and 27 percent of girls of two or more races with disabilities.²⁴⁸ A study of 2006-07 data on the suspension of middle school students showed that Black girls in middle schools had the fastest growing rates of suspension of any group of girls or boys.

Discrimination in Health Care

Expanding Health Coverage through Medicaid: The Supreme Court’s decision upholding the Affordable Care Act (ACA) specifically allowed states to choose whether or not to expand eligibility in their Medicaid programs to all individuals with incomes below 138 percent of the federal poverty level. To date, 26 states and the District of Columbia have implemented this eligibility expansion, extending the health benefits and financial security of health insurance to approximately 5 million low-income Americans. If all 24 states that have yet to expand coverage through Medicaid did so, another 3.1 million low-income women would be eligible for health insurance, as would 3.9 million people of color.²⁴⁹ A National Women’s Law Center examination of data from the Centers for Disease Control and Prevention shows that uninsured low-income women do not get needed care because of cost 2.5 times as often as low-income women who have health insurance.²⁵⁰ Women of color have lower rates of contraceptive use than other

women due, in part, to costs, but , because the ACA now requires private insurance plans to cover contraception with no cost-sharing, one of the key barriers women of color face to using these services has been removed.

Reproductive Health, Contraception, and Family Planning: As of August 1, 2011, a range of contraceptive and family planning services were added to the list of preventive services covered by the ACA that would be provided without patient co-payment.²⁵¹ Recent data shows that 24 million more prescriptions for oral contraceptives were filled with no co-pay in 2013 than in 2012.²⁵² Women of color have lower rates of contraceptive use than other women due, in part, to costs, but, because the ACA now requires private insurance plans to cover contraception with no cost-sharing, one of the key barriers women of color face to using these services has been removed.²⁵³

In addition, the Medicaid program and the Title X family planning program specifically provide coverage for these services to low-income women. To date, however, seven states have failed to expand their Medicaid program or access to family planning services under Medicaid.²⁵⁴ As a result, millions of low-income women continue to go without coverage for contraceptives, and, in some states, this failure to expand contraceptive coverage disproportionately impacts women of color. For example, because of Texas’s decision not to expand eligibility for Medicaid, nearly one million people of color²⁵⁵ and 687,000 women will remain uninsured.²⁵⁶

Title X provides funding directly to health centers that offer high-quality, culturally sensitive family planning and other preventive health services to low-income women who do not have access to health care. Ninety-two percent of the approximately 5 million patients that Title X-funded clinics serve each year are women and are disproportionately Black and Hispanic or Latino.²⁵⁷ Yet between FY 2010-FY 2013, funding for Title X was cut by a total of \$39.2 million—a 12.3 percent reduction.²⁵⁸

Since women of color are less likely than other women to use contraceptives as noted above, they are at greater risk of unintended pregnancy. For example, the unintended pregnancy rate for Black women—who are more likely than other women to be poor—is almost twice the national rate. The unintended pregnancy rate for Latinas is 75 percent higher than for non-Hispanic women. These higher rates of unintended pregnancy lead to higher abortion rates. Indeed, most abortions in the U.S. are obtained by minority women. With restrictions on abortion in federal and state law proliferating, accessing abortion is becoming increasingly difficult for poor women and women of color. These barriers can

also push women later into pregnancy, increasing risks of complications and threats to their health.²⁵⁹

Section 1557: Section 1557 of the ACA prohibits discrimination in virtually all areas of the health care system on the bases of race, color, national origin, sex, age, and disability. It marks the first time that federal law contains a broad prohibition on sex discrimination in health programs or activities. Section 1557 also expands protections against other forms of discrimination in health care, including on the bases of race, color, and national origin prohibited by Title VI of the Civil Rights Act of 1964. Adopted in 2010, it represents a powerful tool for addressing the intersections of race- and sex-based discrimination that women and LGBT people of color face in the health care arena.

Barriers to Health Care for Immigrant Women: Affordable health care is out of reach for many immigrants in the U.S. because federal law restricts immigrants' eligibility for health insurance coverage and access to health care. Legislation recently introduced in Congress, the Health Equity and Access under Law (HEAL) for Immigrant Women and Families Act, would improve access to health coverage for immigrant women and their families. HEAL would allow lawfully present immigrants access to Medicaid and the Children's Health Insurance Program (CHIP) by eliminating the current five-year bar on enrollment and the restrictive list of "qualified" immigrants. In addition, it would allow Deferred Action for Childhood Arrivals (DACA) recipients to participate in health care coverage through the ACA, with access to Medicaid or CHIP.

Violence Against Women

According to the Centers for Disease Control (CDC), one in five women face rape in their lifetime.²⁶⁰ Studies show that sexual violence is dramatically underreported. Though the FBI has recently updated the definition of rape, more explicit definitions and enhanced data collection on domestic violence, dating violence, and stalking are still needed and would likely document higher numbers in violence against women statistics. In 2009²⁶¹, over 10,660 women filed sexual harassment charges with the Equal Employment Office and the state and local Fair Employment Practices agencies around the country.²⁶²

One in five women is sexually assaulted while in college—often by someone she knows.²⁶³ Sexual assaults against women in the workplace and on college campuses too often go unreported because women are embarrassed or fear repercussions or retaliation.

CDC research also documents that women of color experience intimate partner violence—which includes

physical violence, stalking and rape—at incredibly high rates over their lifetime. Fifty-four percent of women who identify as biracial, 46 percent of Alaska Native and Native American women, 44 percent of Black women, 37 percent of Latinas, 24 percent of immigrant women, and 20 percent of Asian/ Pacific Islander women experience such violence during their lifetimes. The lifetime rate for White women is 35 percent. Although the CDC's data on lesbians and bisexual women does not provide a racial breakdown, lifetime rates of physical violence, stalking, and rape are 43 percent for lesbians, 61 percent for women who identify as bisexual, as compared to 35 percent for women who identify as heterosexual.²⁶⁴ Moreover, according to the National Transgender Discrimination Survey, "Transgender women of color were particularly vulnerable to sexual assault in jail/prison. Thirty-eight percent of Black trans women, 30 percent of Native trans women, 25 percent of trans Latinas, 24 percent of multiracial trans women compared with 12 percent of White trans women respondents reported being sexually assaulted by either another inmate or a staff member in jail/prison."²⁶⁵

The Obama administration appointed the first White House Advisor on Violence Against Women to coordinate the violence against women-related activities of the federal government. Additionally, the federal government provides a significant amount of funding to states, territories and localities under two key federal laws: the Violence Against Women Act, and Family Violence Prevention Services Act. These laws provide funding for a variety of culturally specific and appropriate services, including the Culturally and Linguistically Specific Services for Victims Program, and the Tribal Sexual Assault Services Program, among others.

In March 2013, Congress passed, and President Obama signed into law, the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), historic legislation that clarifies VAWA's application to include LGBT organizations and explicitly makes LGBT organizations eligible for grant funding to assist those with same sex partners by barring states from discriminating against entities that serve LGBT people. VAWA 2013 also restores the inherent sovereignty of Indian nations to exercise concurrent criminal jurisdiction over certain non-Indian perpetrators of domestic violence and dating violence against Native women on Indian lands or who violate protection orders.

For decades, U.S. law prohibited tribal governments from prosecuting non-Native offenders who commit an estimated 88 percent of all violent crimes against Native women. This left Indian and Alaska Native nations and tribes as the only governments in the United States without legal authority to protect their own citizens from

violence perpetrated by any person. These restrictions, coupled with a lack of serious enforcement by federal and state officials having jurisdiction to do so, perpetuate a cycle of extreme rates of violence against Indian and Alaska Native women. Despite the progress made with the adoption of the most recent VAWA reauthorization, significant legal gaps continue because tribes may not prosecute non-Indian abusers until March 2015, unless approved to participate in a special pilot project. Even then, stringent requirements, coupled with lack of funding, may delay or even deter exercise of such jurisdiction by some tribes.

Because the special domestic violence criminal jurisdiction of tribes is limited under VAWA 2013 and turns on the status of the Indian lands where the crime is committed, it only applies to one of the 229 federally recognized tribes located in Alaska. Yet, Alaska Native women suffer some of the highest rates of assault in the U.S. Further, under VAWA 2013, tribes may not exercise criminal jurisdiction over non-Indians that commit domestic and sexual assaults against Native women on tribal lands unless the non-Indian has significant ties to the tribe.

On June 20, 2014, the U.S. Department of Education (DOE) proposed changes to improve the response of campus officials to hate crimes and sexual assaults. The Clery Act of 1990 mandates that colleges and universities report a wide array of crime statistics, including hate crimes. VAWA 2013 required DOE to propose expanded hate crime data collection categories and provide guidance for colleges and universities to be more transparent in their policies, procedures, and notification of the campus community about crime prevention and awareness programs. These proposed regulations should spark improvements in programs to promote awareness and prevent dating violence, domestic violence, sexual assault, and stalking at colleges and universities.²⁶⁶

Importantly, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 (HCPA) provides new federal investigative and enforcement tools to address gender-based and gender identity-based hate crimes. Over the past five years, DOJ and the FBI have engaged in a series of training sessions on the HCPA across the country. The HCPA also requires the FBI to include gender-based and gender identity-based hate crimes as part of their annual Hate Crime Statistics Act report, the nation's most comprehensive hate crime data collection program.

Recommendations

Economic Security for Women

- The U.S. Department of Labor (DOL) should increase investigative efforts to ensure that current minimum wage laws are enforced, with a focus on

workers in tipped occupations and immigrant workers; finalize regulations requiring federal contractors to submit data on compensation; and issue specific guidance for employers, clarifying the legal obligations of employers to provide reasonable accommodations to employees with medical limitations arising out of pregnancy, childbirth, or related medical conditions to the same extent that they accommodate employees with a similar inability to work.

- The Obama administration should also move swiftly to update the categorization of exempt and non-exempt workers, and should issue new requirements for federal contractors which reward those who offer paid sick days, predictable and advanced notice of schedules and other family-sustaining workplace practices that help working people to better manage their work and family responsibilities.
- The Obama administration should support, and Congress should pass, the Paycheck Fairness Act, which would require employers to demonstrate that wage differences between men and women holding the same position and doing the same work stem from factors other than sex and also prohibits retaliation against all workers who inquire about their employers' wage practices or disclose their own wages; the Family and Medical Insurance Leave Act, to establish a paid family and medical leave insurance program that would provide wage replacement to all workers when serious family and medical needs arise; the Healthy Families Act, to establish a national paid sick days standard so that workers are not forced to risk their jobs or lose income when they or their family members are ill; and the Pregnant Workers Fairness Act, which would require employers to make reasonable accommodations to employees who have limitations stemming from pregnancy, childbirth, or related medical conditions, unless the accommodation would impose an undue hardship on the employer.

Equal Access to Educational Opportunities

- The U.S. Department of Education (DOE) should conduct compliance reviews of school disciplinary practices that involve the intersection of race and gender discrimination, implicating both Title VI of the Civil Rights Act and Title IX of the Education Amendments of 1972.
- DOE should require schools and districts to collect and report more enhanced discipline data, including reasons for suspension and number of instruction days lost, disaggregated by race/ethnicity, gender, English Language Learner status, religion, national origin, sexual orientation, and disability status, and

reported in a way that enables cross-section analysis (e.g. by race and gender together), which will illuminate barriers and help target interventions.

- DOE should fund programs similar to the one in Clayton County, Georgia where juvenile court Judge Steven Teske pioneered a program to combat the school to prison pipeline. Instead of sending students to court for minor misdemeanors, he gave students warnings for first minor offenses, referrals to mediation or workshops for second offenses, and referrals to the juvenile court system only after the third offense. The program resulted in not only a drastic reduction in the number of referrals to the juvenile court system, but also an 80 percent drop in serious weapons offenses on school campuses and a more than twenty percent increase in graduation rates over a period of seven years.²⁶⁷

Discrimination in Health Care

- The U.S. Department of Health and Human Services (HHS) should promptly issue comprehensive rules implementing Section 1557 and robustly enforce this important antidiscrimination provision.
- The Obama administration should ensure that Title X can meet the needs of low-income women, by increasing funding for Title X.
- The Obama administration should urge Congress to adopt the Health Equity and Access under Law (HEAL) for Immigrant Women and Families Act, to meet the health needs of immigrant women and families.

Violence Against Women

- The Obama administration should implement the proposed changes to the Clery Act by the 2013 VAWA requiring more explicit definitions and enhanced data collection on domestic violence, dating violence, and stalking.
- The Obama administration should implement the proposed changes to the Clery Act by the VAWA to provide notice to students about the range of crime prevention and awareness programs—and other provisions that promote transparency as to policies and procedures designed to encourage accurate, prompt, and comprehensive reporting of all crimes to campus police and appropriate police agencies.
- The Obama administration should report on steps taken to stop the extreme levels of violence being inflicted on Alaska Native women, including providing funding and training programs for Indian and Alaska Native tribal law enforcement and judicial systems on handling domestic and sexual violence complaints in Native communities.

- The Obama administration should take steps (and urge legislative action where necessary) to remove systemic discriminatory legal barriers on the ability of Indian and Alaska tribes to effectively handle domestic violence, stalking, and sexual assault cases of Indian and Alaska Native women on their reservations.
- The Obama administration should collect data on the incidence of intimate partner violence among lesbian and transgender women, and such data should be disaggregated by race and ethnicity.
- The Obama administration should expand law enforcement training and public education about the new HCPA enforcement powers for gender-based and gender identity-based hate crimes and ensure that state and local law enforcement officials are now reporting these crimes to the FBI as part of their annual HCSA reports.
- The Obama administration should support prevention programs targeted at violence against transgender women of color and propose that all anti-violence laws, such as the federal Victims of Crime Act, should be revised to add LGBT-inclusive language modeled after VAWA.

Contributing Organizations: The National Women's Law Center, Legal Momentum, the National Congress of American Indians, the National Partnership for Women & Families, the American Civil Liberties Union, and the Anti-Defamation League contributed to this section.

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106. See, e.g., Valerie Strauss, *Obama administration backtracks (again) on teacher equity*, Wash. Post (Dec. 2, 2013, 6:00 AM), www.washingtonpost.com/blogs/answer-sheet/wp/2013/12/02/Obama-administration-backtracks-again-on-teacher-equity/
107. Elementary and Secondary Education Act, Section 1111(b)(8)(D) (equitable teacher assignment within states); Sec. 1112(c)(1)(L) (equitable assignment within districts).
108. See, e.g., Shilpa Banerji, *Report: States, Federal Government Not Imposing NCLB Civil Rights Provisions*, in *Diverse Education, Diverse Educ.*, July 6, 2006, <http://diverseeducation.com/article/6074/>.

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110. Office for Civil Rights, U.S. Dep’t. of Educ., Civil Rights Data Collection, Data Snapshot: School Discipline 1 (March 2014), <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf> (“While boys receive more than two out of three suspensions, black girls are suspended at higher rates (12%) than girls of any other race or ethnicity and most boys”).
111. Robert Balfanz, Vaughan Byrnes, and Joanna Fox, *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, 5 (2012), *available at* <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/sent-home-and-put-off-track-the-antecedents-disproportionalities-and-consequences-of-being-suspended-in-the-ninth-grade/balfanz-sent-home-ccr-conf-2013.pdf>
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113. Office for Civil Rights, U.S. Dep’t. of Educ., Civil Rights Data Collection (A. A. Songy Sr. Kindergarten Center, St. Charles Parish, Luling, LA; NCES ID: 220144001151) (2011), <http://ocrdata.ed.gov/Page?t=s&eid=214615&syk=6&pid=732>.
114. Office for Civil Rights, U.S. Dep’t. of Educ., *supra* note 113.
115. Balfanz, *supra* note 111.
116. *See, e.g.*, Russel J. Skiba et al., *Race is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 *Sch. Psychol. Rev.* 85, 87 (2011), *available at* <http://www.indiana.edu/~atlantic/wp-content/uploads/2011/12/Skiba-et-al.-Race-is-not-neutral.pdf>
117. *Id.* at 101
118. Emily Morgan et al., *The Council of State Governments Justice Center, The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System* ix (2014).
119. *Id.*
120. For example, a consent decree between the U.S. Department of Justice and the school district of Meridian, Mississippi, did contemplate some improvements—such as requiring training for school personnel on bias-free enforcement—but failed to impose any numerical requirements or hard deadlines. Press Release, Dep’t of Justice, Justice Department Files Consent Decree to Prevent and Address Racial Discrimination in Student Discipline in Meridian, Miss. (Mar. 22, 2013), *available at* <http://www.justice.gov/opa/pr/2013/March/13-crt-338.html>; *see also*, Press Release, Dep’t of Educ., Education Department Announces Resolution of Civil Rights Investigation of Christina School District in Wilmington, Del (Dec. 18, 2013).
121. CERD/C/USA/CO/6 ¶ 34 (citing art.5(e)(v) and art.2(2)).
122. PowerUcenter, *Tell It Like It Is: Youth Speak Out on the School to Prison Pipeline*, *available at* http://b.3cdn.net/advancement/54c290ce86e7ee7c70_3d0m6ue80.pdf
123. Office for Civil Rights, U.S. Dep’t. of Educ., Civil Rights Data Collection: Data Snapshot, School Discipline, Issue Brief No. 1 (Mar. 21, 2014) [Hereinafter DOE March 2014 Issue Brief].
124. DOE March 2014 Issue Brief.
125. *Id.*
126. *Id.*
127. Leadership Conference Educ. Fund, “Still Segregated: How Race and Poverty Stymie the Right to Education”, 7, ¶ 13 (September 2013) (internal citation omitted).
128. *Id.* at 7, ¶ 14.
129. *Id.* at 7, ¶ 15.
130. Committee on the Elimination of Racial Discrimination, *Seventh to Ninth Periodic Reports of States Parties Due in 2011: United States of America*, U.N. Doc. CERD/C/USA/7-9, 146 (Oct. 3, 2013) (hereafter, CERD/C/USA 7-9).
131. *Id.* at 45.
132. *Id.* at 44.
133. Dear Colleague Letter on School Climate and
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134. *Id.* at 11-13.
135. CERD/C/USA/7-9 46.
136. *See Plyer v. Doe*, 457 U.S. 202 (1982).
137. Dear Colleague Letter on *Plyer v. Doe*, Office for Civil Rights, U.S. Dep't of Educ. and Civil Rights Division, U.S. Dep't of Justice (May 6, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.html>
138. *Id.*
139. Dear Colleague Letter on Charter Schools, Office for Civil Rights, U.S. Dep't. of Educ. (May 14, 2014), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>
140. *Id.*
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142. In 2012, the national unemployment rate for African Americans ages twenty-five and older was 12.3 percent. The unemployment rate for Whites ages twenty-five and older was 6.1 percent. Bureau of Labor Statistics, Household Dated Annual Averages, available at <http://www.bls.gov/cps/cpsaat24.pdf>.
143. Background Checking: Conducting Criminal Background Checks slide 3, Soc'y for Human Res. Mgmt. (Jan. 22, 2010), http://www.slideshare.net/shrm/background-check-criminal?from=share_email
144. Ylan Q. Mui, Growing use of FBI Screens Raises Concerns About Accuracy, Racial Bias, Washington Post, July 29, 2013, available at http://www.washingtonpost.com/business/economy/growing-use-of-fbi-screens-raises-concerns-over-accuracy-racial-bias/2013/07/29/d201ecda-f49f-11e2-aa2e-4088616498b4_story.html.
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146. EEOC Enforcement Guidance, U.S. Equal Employment Opportunity Commission (April 25, 2012), http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm#sdendnote12sym.
147. Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, Equal Emp't Opportunity Comm'n (Apr. 25, 2012), http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.
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149. Soc'y of Human Resources Management, SHRM Survey Findings: Background Checking – The Use of Credit Background Checks in Hiring Decisions (July 19, 2012).
150. *See, e.g.*, Bd. of Governors of the Fed. Reserve Sys., Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit (2007); Fed. Trade Comm'n, Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance (2007); Robert B. Avery et al., Credit Report Accuracy and Access to Credit, Fed. Reserve Bulletin (2004); Matt Fellowes, Brookings Inst., Credit Scores, Reports, and Getting Ahead in America (2006).
151. Amy Traub, Demos, Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job 8-9 (Feb. 2013). Credit reports were developed to help lenders assess the risks associated with making a loan, not the worthiness of holding a job. A spokesperson for TransUnion, one of the major credit reporting companies, even ad-

- mitted in 2010: “We don’t have any research to show any statistical correlation between what’s in somebody’s credit report and their job performance or their likelihood to commit fraud.”
152. *See id.* at 14.
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157. 45 Fed. Reg. 65976-65991 (Oct. 3, 1980).
158. U.S. Dep’t of State, Report of the United States of America Submitted to the UN High Commissioner for Human Rights In Conjunction with the Universal Periodic Review: Response to the U.N. Human Rights Council Working Group Report Para. 112 (March 10, 2011), available at <http://www.state.gov/j/drl/upr/157986.htm>.
159. The largest national survey of transgender people to date, the National Transgender Discrimination Survey, found that 78 percent of respondents reported experiencing at least one form of harassment or mistreatment at work because of their gender identity. More specifically, 47 percent had been discriminated against in hiring, promotion, or job retention. Jaime M. Grant et al., Movement Advancement Project et al., Injustice at Every Turn 56, 53 (2011), available at <http://www.thetaskforce.org/>.
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161. *Id.*
162. Vance v. Ball State University, 133 S.Ct. 2434 (2013).
163. Nat’l Women’s Law Ctr., Fact Sheet: The Fair Employment Protection Act (Feb. 2014), available at http://www.nwlc.org/sites/default/files/pdfs/why_workers_need_stronger_protections_from_harassment.pdf.
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165. Wal-Mart v. Dukes, 564 U.S. 277 (2011).
166. Supreme Court Refuses to Allow Sex Discrimination Lawsuit against Wal-Mart to Go Forward as a Nationwide Class Action, Am. Civil Liberties Union (June 20, 2011), <https://www.aclu.org/womens-rights/supreme-court-refuses-allow-sex-discrimination-lawsuit-against-wal-mart-go-forward>.
167. Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137 (2002).
168. Alexander v. Sandoval, 532 U.S. 275 (2001); see also *Civil Rights Monitor*, Leadership Conference on Civil and Human Rights, http://www.civil-rights.org/monitor/vol12_no1/art8p1.html (last visited May 8, 2014).
169. Border Security, Economic Opportunity, and Immigration Modernization Act, S.744, 113th Cong. (2013).
170. See Carmen Comsti, *A Metamorphosis: How Forced Arbitration Arrived In The Workplace*, 35 Berkeley J. Emp. & Lab. L. 5 (2014). See also, *Forced Arbitration In The Workplace: A Symposium*, hosted by *The Berkeley Journal of Employment and Labor Law (BJELL)* and The Employee Rights Advocacy Institute For Law & Policy (The Institute), (Feb. 27, 2014) available at <http://bjell.weebly.com/>.
171. Federal Arbitration Act, Pub. L. No. 68-401(codified at 9 U.S.C. §§ 1-16 (1947)).
172. Workplace laws at risk include the Civil Rights Acts of 1964, Pub. L. No. 88-352, Age Discrimination in Employment Act, Pub. L. No. 90-202, Americans with Disabilities Act, Pub. L. No. 101-336, Fair Labor Standards Act, Pub. L. No. 81-393, Equal Pay Act, Pub. L. No. 88-38, Uniformed Services Employment and Reemployment Rights Act, Pub. L. No. 103-353, and Lilly Ledbetter Fair Pay Act, Pub. L. No. 111-2.
173. Press Release, The White House, Executive Order—Non-Retaliation for Disclosure of Compensation Information (Apr. 8, 2014), available

- at <http://www.whitehouse.gov/the-press-office/2014/04/08/executive-order-non-retaliation-disclosure-compensation-information>.
174. This information will encourage voluntary compliance with equal pay laws and assist with more focused enforcement where possible discrimination exists with taxpayer funds. FACT SHEET: Expanding Opportunity for All: Ensuring Equal Pay for Women and Promoting the Women's Economic Agenda, Office of the Press Secretary, The White House (Apr. 8, 2014), <http://www.whitehouse.gov/the-press-office/2014/04/08/fact-sheet-expanding-opportunity-all-ensuring-equal-pay-women-and-promot>.
175. Studies have shown that boosting low wages will reduce turnover and absenteeism, while also boosting morale and improving the incentives for workers, leading to higher productivity overall. Press Release, The White House, Executive Order—Minimum Wage for Contractors (Feb. 12, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors>.
176. See EEOC Litigation Statistics, FY 1997 through FY 2013, U.S. Equal Emp't Opportunity Comm'n (last viewed May 22, 2014), <http://www.eeoc.gov/eeoc/statistics/enforcement/litigation.cfm>; see also OFCCP and Equal Pay Enforcement, Office of Fed. Contract Compliance Programs, U.S. Dep't. of Labor, http://www.dol.gov/equalpay/OFCCP_EqualPayEnforcementFactSheet.pdf ("OFCCP has substantially increased the number of enforcement actions addressing pay discrimination. In FY 2011 OFCCP more than doubled the number of conciliation agreements with financial remedies for compensation cases compared to FY 2010."); see also Josh Ulman & Christi Layman, OFCCP in Overdrive, *The Higher Educ. Workplace* (Spring 2012), available at <http://www.cupahr.org/diversity/files/OFCCP%20in%20Overdrive.pdf> ("the DOL's Office of Federal Contract Compliance Programs has increased its regulatory and enforcement efforts to 'unprecedented levels' during the past year and a half").
177. The DOJ Employment Litigation Division's website lists 66 employment discrimination complaints that have been filed in the last four years, however, only six of the listed cases are systemic or "pattern-or-practice" cases, and only two of the six systemic cases challenge racially discriminatory practices. Employment Litigation Section Cases, U.S. Dep't of Justice (last viewed May 28, 2014), <http://www.justice.gov/crt/about/emp/papers.php>.
178. See discussion *infra* on class actions.
179. EEOC Reports Nearly 100,000 Job Bias Charges in Fiscal Year 2012, U.S. Equal Emp't Opportunity Comm'n (Jan. 28, 2013), <http://www.eeoc.gov/eeoc/newsroom/release/1-28-13.cfm> ("In fiscal year 2012, the EEOC filed 122 lawsuits including 86 individual suits, 26 multiple-victim suits (with fewer than 20 victims) and 10 systemic suits); see also Suzette M. Malveaux, Class Actions at the Crossroads: An Answer to Wal-Mart v. Dukes, 5 *Harv. L. & Pol'y Rev.* 375, 406 (2011) (the EEOC's effectiveness in bringing pattern or practice cases might be diminished as a result of limited resources and the U.S. Supreme Court decision, *Wal-Mart v. Dukes*).
180. Fair Employment Protection Act of 2014, H.R. 4227/S. 2133, 113th Cong. (2014) (restoring strong protections from harassment by making clear that employers can be vicariously liable for harassment by individuals with the authority to undertake or recommend tangible employment actions or with the authority to direct an employee's daily work activities).
181. The Protecting Older Workers Against Discrimination Act, H.R.2852, 113th Cong., (2013) would address the *Nassar* decision, to restore the availability of mixed motive claims under the civil rights laws.
182. Equal Employment Opportunity Restoration Act of 2012, H.R. 5978/ S. 3317, 112th Cong. (2012) (last version introduced) (restoring the right of workers to band together to challenge systemic employment discrimination following the *Wal-Mart v. Dukes* decision).
183. The Civil Justice Tax Fairness Act of 2013 H.R. 2509/S. 1224, 113th Cong. (2013) would amend the Internal Revenue Code to restore the long established tax-free treatment of non-economic damages in unlawful discrimination cases and mitigate the unfair tax burden imposed on workers receiving lump sum payments for front and back pay by allowing income averaging for those recoveries by excluding them from gross income.
184. The Arbitration Fairness Act of 2013, H.R. 1844/S. 878, 113th Cong. (2013), would amend the Federal Arbitration Act by making it unlawful for employers to impose arbitration on employees except when knowingly and *voluntarily* agreed

- to after the dispute arises or pursuant to a collective bargaining agreement. The Servicemember Employment Protection Act of 2014, S. 239, 113th Cong. (2014), would ban pre-dispute arbitration of USERRA claims.
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186. <http://www.adl.org/assets/pdf/combating-hate/2014-adl-updated-state-hate-crime-statutes.pdf>
187. *United States v. Miller*, Nos. 13–3177, 13–3181, 13–3182, 13–3183, 13–3193, 13–3194, 13–3195, 13–3196, 13–3201, 13–3202, 13–3204, 13–3205, 13–3206, 13–3207, 13–3208, 13–3214, 2014 WL 4211198 (6th Cir. 2014); *United States v. Cannon*, 750 F.3d 492 (5th Cir. 2014); *United States v. Hatch*, 722 F.3d 1193 (10th Cir. 2013); *United States v. Jenkins*, 909 F. Supp. 2d 758 (E.D. Ky. 2012); *United States v. Maybee*, 687 F.3d 1026 (8th Cir. 2012); *Glenn v. Holder*, 690 F.3d 417, (6th Cir. 2012).
188. *United States v. Miller*, Nos. 13–3177, 13–3181, 13–3182, 13–3183, 13–3193, 13–3194, 13–3195, 13–3196, 13–3201, 13–3202, 13–3204, 13–3205, 13–3206, 13–3207, 13–3208, 13–3214, 2014 WL 4211198 (6th Cir. 2014).
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190. <http://blog.adl.org/tags/hcpa>
191. <http://www.adl.org/civil-rights/adl-in-the-courts/amicus-briefs/brief-pdfs/ab-2014-us-v-miller-et-al-usca-6th-circuit.pdf>
192. <http://www.fbi.gov/about-us/cjis/ucr/data-collection-manual>
193. *See* Out of Reach, Nat’l Low Income Housing Coal. (2014), <http://nlihc.org/oor/2014>.
194. *See* Patrick Sharkey, Stuck in Place: Urban Neighborhoods and the End of Progress toward Racial Equality (2013).
195. Jacob S. Rugh and Douglas S. Massey, Racial Segregation and the American Foreclosure Crisis, 75 Am. Sociological Rev. 629 (2010).
196. Debbie Gruenstein Bocian, et al., Ctr. for Responsible Lending, Collateral Damage: The Spillover Costs of Foreclosures (2012), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/collateral-damage.pdf>.
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199. *See, e.g.*, Nat’l Immigration Forum, The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies (Aug. 2013), available at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>
200. *See, e.g.*, Daniel E. Martínez et al., Am. Immigration Council, No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse (April 2014), available at <http://bit.ly/SwNbye>; The Ctr. For Latin Am. Studies, Univ. of Ariz., In The Shadow of The Wall: Family Separation, Immigration Enforcement and Security, Preliminary Data from the Migrant Border Crossing Study (2013), available at <http://las.arizona.edu/mbc>.
201. *See, e.g.*, Southern Poverty Law Ctr., Close to Slavery: Guestworker Programs in the United States (2013), available at <http://bit.ly/1nAyuaw>; Jacinta Gonzalez and Jennifer J. Rosenbaum, New Orleans Workers’ Ctr. for Racial Justice, Deporting the Problem: Migrant Workers in the South Expose How U.S. Immigration Enforcement against Human Rights Defenders Violates the International Covenant on Civil and Political Rights (Aug. 2013), available at <http://www.guestworkeralliance.org/category/documents/>.
202. *Big Data* report at 51.
203. Government Accountability Office, *Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain*, at 40 (2010) available at: <http://www.gao.gov/products/GAO-11-146>
204. Federal Trade Commission, *Data Brokers: A Call for Transparency and Accountability* at 48 (May

- 2014) (hereinafter Data Brokers).
205. David Robinson, [As Insurers Embrace Big Data, Fewer Risks Will Be Shared](#), Equal Future (Nov. 20, 2013); Kim Gittleson, [How Big Data is Changing the Cost of Insurance](#), BBC (Nov. 14, 2013); The Economist, [How's My Driving? Gizmos that Track Driving Habits Are Changing the Face of Car Insurance](#) (Feb. 23, 2013); Clint Boulton, [Auto Insurers Bank on Big Data to Drive New Business](#), Wall Street Journal CIO Report (Feb. 20, 2013).
206. Senate Commerce Committee majority staff, *A Review of the Data Broker Industry: Collection, Use, and Sale of Consumer Data for Marketing Purposes* (2013).
207. Julia Angwin, "The Web's New Gold Mine: Your Secrets," *Wall Street Journal* (July 30, 2010).
208. FTC, *Data Brokers* at 24.
209. Concurrence of FTC Commissioner Julie Brill, *Data Brokers* at C-1.
210. The Leadership Conference, "The Persistent Challenge of Voting Discrimination: A Study of Recent Voting Rights Violations by State", 28, (June 23, 2014), <http://www.civilrights.org/press/2014/Racial-Discrimination-in-Voting-Whitepaper.pdf>.
211. This included the adoption by these jurisdictions of such discriminatory changes as: new methods of election that would have precluded citizens of color from electing candidates of their choice to the governing bodies in numerous counties, cities, and school districts; scores of redistricting plans for electing members of Congress, state legislatures, and local governing bodies that also would have diluted electoral opportunity of communities of color; and the manipulation of election rules to discourage or inhibit participation or communities of color, such as through polling place changes, changes to election dates, changes to candidate qualifications, and the failure to provide adequate bilingual election materials.
212. Since the *Shelby* decision, DOJ has only brought three cases: *United States v. State of North Carolina*, (M.D.N.C. 2013); *United States v. State of Texas*, (W.D. Tex. 2013); *United States v. State of Texas*, (S.D. Tex. 2013).
213. Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Sarah Childress, "Unprecedented" Number of Restrictive Voting Laws Being Introduced, PBS (May 31, 2012), <http://www.pbs.org/wgbh/pages/frontline/government-elections-politics/unprecedented-number-of-restrictive-voting-laws-being-introduced/>
214. The ultimate solution to address problems associated with requiring voter identification is to ensure that such laws are not introduced and passed in state legislatures. However, there are some very important voting reform measures that, if implemented, would obviate the need for voter identification, as argued by its proponents. Modernizing our nation's antiquated voter registration system would make it easier for individuals to register to vote and would ensure that registrations remain accurate and up to date. These reforms include: (1) the enactment of automatic or affirmative voter registration systems designed to capture all eligible citizens; (2) a requirement that registration remain permanent as long as a voter remains a resident within the same state; and (3) the development of fail-safe mechanisms for eligible citizens whose names are missing from voter rolls or whose registration information is inaccurate to correct these errors or omissions before and on Election Day.
215. Christopher Uggen, Sarah Shannon, & Jeff Manza, The Sentencing Project, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010 1* (2012) a, available at http://sentencing-project.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf.
216. Jean Chung, The Sentencing Project, *Felony Disenfranchisement: A Primer 2* (June 2014), available at http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf.
217. See, e.g., Paul Guerino et al., *Prisoners in 2010*, Bureau of Justice Statistics, 27 (Feb. 9, 2012), <http://www.bjs.gov/content/pub/pdf/p10.pdf>.
218. Deborah J. Vagins and Erika Wood, *The Democracy Restoration Act: Addressing A Centuries-Old Injustice*, 3-5 (Mar. 2010), available at

- <http://www.acslaw.org/files/ACS%20Issue%20Brief%20Vagins%20and%20Wood.pdf>.
219. Lauren E. Glaze & Erika Parks, *Correctional Populations in the United States, 2011*, Bureau of Justice Statistics (Nov. 2012), <http://www.bjs.gov/content/pub/pdf/cpus11.pdf>.
220. E. Ann Carson & Daniela Golinelli, *Prisoners in 2012-Advance Counts*, Bureau of Justice Statistics (July 2013), <http://www.bjs.gov/content/pub/pdf/p12ac.pdf>; see also Human Rights Watch, *Targeting Blacks—Drug Law Enforcement in the United States*, 2 (2008), available at <http://www.hrw.org/reports/2008/05/04/targeting-blacks>.
221. Three states, Florida, Iowa, and Kentucky, permanently disfranchise citizens with felony convictions unless the state approves individual rights restoration; two states, Maine and Vermont, allow all persons with felony convictions to vote, even while incarcerated; all other states fall somewhere in between. See *Voting Rights for People with Criminal Records*, Am. Civil Liberties Union, <http://www.aclu.org/map-state-felony-disfranchisement-laws> (last visited April 7, 2014) (contains a map detailing state laws).
222. Recently, bipartisan lawmakers in states with very restrictive laws, like Virginia and Kentucky, have made reforms and considered changes. See Letter from Governor, Robert F. McDonnell to the Honorable Janet V. Kelly, Secretary of the Commonwealth (May 29, 2013), available at <https://commonwealth.virginia.gov/media/1803/2013GovernorLettertoSOC.pdf>; see also Press Release, Senator Rand Paul, Sen. Paul Testifies in Support of Restoring Voting Rights; Constitutional Amendment Passes Kentucky Senate (Feb. 19, 2014), available at http://www.paul.senate.gov/?p=press_release&id=1109.
223. ACLU Factsheet: *The Democracy Restoration Act of 2014*, Am. Civil Liberties Union (2014), available at <https://www.aclu.org/racial-justice-voting-rights/aclu-factsheet-democracy-restoration-act-2014>.
224. *The Discriminatory Effects of Felony Disenfranchisement Laws, Policies and Practices on Minority Civic Participation in the United States* (2009); Lawyers' Committee for Civil Rights Under Law, *Our Broken Voting System and How to Repair It: The 2012 Election Protection Report* (2012), available at <http://www.866ourvote.org/newsroom/publications/the-2012-election-protection-report-our-broken-voting-system-and-how-to-repair-it>.
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232. *See* U.S. v. Berks Cnty., Pa., 277 F. Supp. 2d 570 (E.D. Pa. 2003); U.S. v. Osceola Cnty., Fla., 475 F. Supp. 2d 1220 (M.D. Fla. 2006); U.S. v. Alameda Co. No. 3:11-cv-03262 (N.D. Cal. Oct. 19, 2011); U.S. v. City of Boston, No. 05-11598-EGY (D. Mass. Oct. 18, 2005); U.S. v. City of Rosemead, No. 2:2005-cv-05131 (C.D. Cal. Jul. 14, 2005); Nick v. Bethel, Alaska, No. 3:07-CV-00098, 2010 WL 4225563 (D. Alaska Jan. 13, 2010).
233. According to the Census Bureau's American Community Survey, more than 60.5 million people aged 5 and over in this country speak a language other than English at home, over 40 percent of whom have difficulties speaking English. Similarly, 39 percent of naturalized citizens 5 years and over experience difficulties with the English language. *See* U.S. Census Bureau, Language Use in the United States: 2011 (Aug. 2013), available at <http://www.census.gov/prod/2013pubs/acs-22.pdf>.
234. Members of language minority communities have consistently voted at lower rates than other Americans. For example, in 2012 about 48 percent of eligible Latinos and Asian Americans cast a ballot, compared to 64.1 percent of non-Hispanic whites. The size of this gap is little-changed from ten years ago, when (in 2002) Latino turnout was 30.4 percent, Asian turnout was 31.2 percent and non-Hispanic white turnout was 49.1 percent, and from 20 years ago, when (in 1992) 51.6 percent of Latinos, 53.9 percent of Asian Americans and 70.2 percent of non-Hispanic whites cast ballots. U.S. Census Bureau, Current Population Survey, Table A-1, available at <https://www.census.gov/hhes/www/socdemo/voting/publications/historical/index.html>.
235. The Inter-American Commission on Human Rights considered a petition regarding the issue, and concluded that the United States violated petitioners' rights under the relevant articles of the American Declaration by denying them an effective opportunity to participate in their federal legislature. Report No. 98/03, Case 11.204, Statehood Solidarity Committee, Unites States (Dec. 29, 2003). Petitioners' rights to participate in the federal legislature of the United States have been limited or restricted both in law and in fact as the District's delegate is prohibited from casting a deciding vote in respect of any legislation that comes before Congress, and they had thus been denied an equal right under law in accordance with Article II of the Declaration to participate in the government of their country by reason of their place of residence, and, accordingly, their right under Articles XX of the Declaration to participate in their federal government has been limited or restricted.
236. Democracy Restoration Act of 2014, H.R. 4459, S. 2235, 113th Cong. (2014).
237. Section 203 of the Voting Rights Act requires covered jurisdictions to provide language assistance during the electoral process, and a jurisdiction is covered under Section 203 when it meets a certain threshold of a sizable language minority population that has difficulties speaking English. Voting Rights Act § 203, 42 U.S.C.A. § 1973aa-1a (West 2014).
238. Section 208 of the Voting Rights Act allows voters requiring assistance to vote by reason of blindness, disability, or inability to read or write to bring someone of their choice to assist them, so long as the assistor is not the voter's employer or agent of the employer or officer or agent of the voter's union. Section 208 applies nationwide and is particularly important for all language minority voters because it allows them to take the person of their choice into the voting booth with them to assist them in understanding the ballot. Voting Rights Act §208, 42 U.S.C.A. § 1973aa-6 (West 2014).
239. Section 2 of the Voting Rights Act of 1965 prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups. Voting Rights Act § 2, 42 U.S.C.A. §1973 (West 2014).
240. The groups covered by Section 203 of the Voting Rights Act are: American Indians, Asian Americans, Alaskan Natives, and Spanish - heritage citizens - the groups that Congress found to have faced barriers in the political process. Voting Rights Act § 203, 42 U.S.C.A. § 1973aa-1a (West 2014).
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