



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Information received from the United States of America on
follow-up to the concluding observations on its combined
tenth to twelfth periodic reports***

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* The present document is being issued without formal editing.



I. Introduction

1. Pursuant to the Committee's request in paragraph 66 of its Concluding Observations, the United States provides the following information pertaining to the Committee's recommendations in paragraphs 36 (maternal mortality and sexual and reproductive health), 50(e) (indigenous peoples), and 52(a) (migrants, refugee, asylum-seekers and stateless persons).

II. Follow-up Information

A. Follow-up information relating to paragraph 36 of the concluding observations CERD/C/USA/CO/10-12

Maternal Mortality and Sexual and Reproductive Health

2. Paragraph 36, Maternal Mortality and Sexual and Reproductive Health, recommends that the United States take further steps to eliminate racial and ethnic disparities in the field of sexual and reproductive health and rights, while integrating an intersectional and culturally respectful approach in, for instance, policies and programs aimed at removing barriers to access to comprehensive sexual and reproductive health services, and those aimed at reducing the high rates of maternal mortality and morbidity affecting racial and ethnic minorities, including through midwifery care. The Committee also recommends that the State party take all measures necessary, at the federal and state levels, to address the profound disparate impact of the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* on women of racial and ethnic minorities, indigenous women, and those with low incomes, and to provide safe, legal, and effective access to abortion in accordance with the State party's international human rights obligations. It further recommends that the State party take all measures necessary to mitigate the risks faced by women seeking abortions and by health providers assisting them, and to ensure that they are not subjected to criminal penalties. In that respect, the Committee draws the State party's attention to the World Health Organization's Abortion Care Guideline.

3. The United States acknowledges that there is significant work ahead to eliminate racial and ethnic disparities in the field of sexual and reproductive health and rights, while integrating an intersectional and culturally respectful approach in service of reproductive health and rights for our nation. The Biden-Harris Administration is committed to this work as a core underpinning of our national priority to advance equity.

4. The United States is facing a longstanding maternal health crisis. Our country's maternal mortality rate is the highest of any developed nation in the world and more than double the rate of peer countries, and most pregnancy-related deaths are considered preventable. Systemic barriers, together with a failure to recognize, respect and listen to patients of color, has meant that Black and American Indian/Alaska Native (AI/AN) women, regardless of income or education, experience a greater share of these grave outcomes. Cutting the rates of maternal mortality and morbidity, reducing the disparities in maternal health outcomes, and improving the overall experience of pregnancy, birth, and postpartum for people across the country is a key priority to support health and wellbeing.

5. On June 24, 2022, the White House issued the White House Blueprint for Addressing the Maternal Health Crisis that contains 50 actions that over a dozen agencies will undertake to help improve maternal care. These actions are organized under five guiding objectives: 1) increasing access to and coverage of comprehensive high-quality maternal health services, including behavioral health services; 2) ensuring those giving birth are heard and are decisionmakers in accountable systems of care; 3) advancing data collection, standardization, harmonization, transparency, and research; 4) expanding and diversifying the perinatal workforce; and 5) strengthening economic and social supports for people before, during, and after pregnancy.

6. In the year since the Blueprint was issued, the Biden-Harris Administration has taken significant steps to make progress on all these goals. For example, the U.S. Department of

Health and Human Services (HHS) has worked to create state-led maternal health task forces bringing the voices of key leaders and pregnant and postpartum individuals together; to support action plans that focus on improving community systems and services; to implement innovative approaches to improve maternal health outcomes and reduce disparities for patients at highest risk in health centers; and to train new certified nurse midwives and increase the availability of doula services in the communities they serve. HHS also created a national maternal mental health hotline (1-833-TLC-MAMA) that offers direct, confidential emotional and mental health support to pregnant women and new parents, provided by trained counselors. Furthermore, HHS has encouraged states to extend postpartum coverage for a full year after pregnancy in the Medicaid and Children’s Health Insurance Program, and, as of June 2023, 35 states and the District of Columbia have extended such health care coverage.

7. The United States acknowledges that, while its whole-of-government approach has led to important policy and program advancements to improve maternal health outcomes, our maternal health crisis has been exacerbated by challenges stemming from judicial decisions that diminish access to high-quality, patient-centered reproductive health care. On the same day that the White House issued the Blueprint, the U.S. Supreme Court issued its decision in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022).

8. The Biden-Harris Administration strongly disagrees with the *Dobbs* decision, which overturned nearly fifty years of precedent. The right to choose is fundamental, and reproductive health care decisions should be made between a woman and her doctor, not politicians. The *Dobbs* decision has led to devastating consequences that undermine access to reproductive health care in the United States. Reproductive health care access has become fragmented as some states have imposed extreme and dangerous abortion bans that put the health and lives of women in jeopardy, force women to travel hundreds of miles for care, and threaten to criminalize doctors for providing the health care that their patients need and that they are trained to provide.

9. The decision has had, and will continue to have, an immediate and irreversible impact on the lives of people across the country and has already been shown to have a disproportionate impact on women of racial and ethnic minorities, indigenous women, and those with low incomes. One analysis shows that more than 36 million women of reproductive age reside in states that have banned or are likely to ban abortion. Of those women, 15.4 million are women of color and 12.5 million are women who are economically insecure. The decision, and the actions of state and local officials in its wake, are having a disproportionate impact on the health and safety of women of color and women with low incomes.

10. In the wake of the *Dobbs* decision, the President established an interagency Task Force on Reproductive Healthcare Access to coordinate the Biden-Harris Administration’s efforts to defend reproductive rights, including the implementation of three Executive Orders and a Presidential Memorandum on reproductive care.

11. HHS issued guidance reminding hospitals of the requirements under the Emergency Medical Treatment and Labor Act (EMTALA), and Secretary Becerra sent letters to providers reiterating that EMTALA preempts state law restricting access to abortion in certain emergency situations.¹ The U.S. District Court in Idaho issued a preliminary injunction blocking the enforcement of Idaho’s abortion ban as applied to medical care required by EMTALA after the Department of Justice (DOJ) filed a lawsuit seeking to enjoin

¹ The Northern District of Texas issued an injunction prohibiting certain applications of the EMTALA Guidance issued on July 11, 2022 and Secretary Becerra’s accompanying July 11, 2022 letter. *Texas v. Becerra*, No.5:22-cv-185H (N.D. Tex.). HHS is complying with the court’s injunction that: (1) the defendants may not enforce the Guidance and Letter’s interpretation that Texas abortion laws are preempted by EMTALA; and (2) the defendants may not enforce the Guidance and Letter’s interpretation of EMTALA—both as to when an abortion is required and as to EMTALA’s effect on state laws governing abortion—within the State of Texas or against members of the American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG) and the Christian Medical and Dental Association (CMDA).

Idaho's ban to the extent it makes abortion a crime even when necessary to prevent serious harm to the health of pregnant patients.

12. The Food and Drug Administration (FDA) and DOJ are defending access to mifepristone, a safe and effective drug used in medication abortion that FDA first approved more than twenty years ago, and FDA's independent, expert judgment in court—including in a lawsuit in Texas that attempts to eliminate access nationwide. The Administration will continue to stand by FDA's decades-old approval of the medication and by FDA's ability to review, approve, and regulate a wide range of prescription medications. DOJ is also working to monitor state and local laws and enforcement actions that may infringe on federal protections of reproductive rights. DOJ is evaluating appropriate actions in response to those laws, including filing affirmative lawsuits, filing statements of interest, and intervening in private litigation.

13. The Department of Veterans Affairs (VA) issued an interim final rule to allow VA to provide abortion counseling and, in certain circumstances, abortion care to Veterans and VA beneficiaries. VA provides abortion services when the health or life of the patient would be endangered if the pregnancy were carried to term or when the pregnancy is a result of rape or incest. When working within the scope of their federal employment, VA employees may provide authorized services regardless of state restrictions. DOJ will support and provide representation to any VA employees who states attempt to prosecute for violations of state abortion laws where those providers were appropriately carrying out their duties under VA's interim final rule. HHS launched the ReproductiveRights.gov public awareness website to provide timely and accurate information on people's right to access reproductive health care, including contraception, abortion services, and health insurance coverage, as well as how to file a patient privacy or nondiscrimination complaint. DOJ also launched justice.gov/reproductive-rights, a webpage that provides a centralized online resource of the Department's work to protect access to reproductive health care services under federal law.

14. Various U.S. government departments and agencies have also worked to protect and expand access to contraception, which is an essential component of reproductive health care that has only become more important in the wake of the Dobbs decision and the ensuing health care crisis. Key actions include: clarifying contraception coverage requirements under the Affordable Care Act; expanding contraceptive care for active duty military service members and other Military Health System beneficiaries; promulgating new regulations to expand contraceptive access and coverage as well as to strengthen patient privacy and non-discrimination for patients and providers; and investing additional resources to bolster the capacity of health care providers to deliver reproductive health services.

15. To safeguard patient privacy and sensitive health information, HHS issued a proposed rule to strengthen privacy protections under the Health Insurance Portability and Accountability Act (HIPAA). This rule would prevent an individual's information from being disclosed to investigate, sue, or prosecute an individual, a health care provider, or a loved one simply because that person sought, obtained, provided, or facilitated legal reproductive health care, including abortion. By safeguarding sensitive information related to reproductive health care, the rule will strengthen patient-provider confidentiality and help health care providers give complete and accurate information to patients. In addition, the Federal Communications Commission (FCC) launched a new guide for consumers on best practices for protecting their personal data, including geolocation data, on mobile phones. And the Department of Education issued guidance to over 20,000 school officials to remind them of their obligations to protect student privacy under the Family Educational Rights and Privacy Act (FERPA). The guidance encourages school officials to consider the importance of student privacy, including health privacy, with respect to disclosing student records.

16. DOJ enforces the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248, also known as the FACE Act, which prohibits the use of force, threats of force, physical obstruction, and property damage intended to injure, intimidate, or interfere with reproductive health services. Enacted in 1994, the FACE Act established federal criminal penalties and civil remedies for violent, threatening, obstructionist, or damaging conduct that targets patients, providers, and facilities based upon the provision of reproductive health

services; and supplemented the penalties available under then-existing federal criminal statutes such as the Hobbs Act, the Travel Act, and federal arson and firearms statutes.

17. Enforcement of the FACE Act is a DOJ priority. Since January 2021, DOJ has charged 18 cases involving a total of 48 defendants with FACE Act-related violations (“FACE Act-related” because some defendants have been charged with conspiracy and other related federal offenses). Most of these defendants are pending trial. In addition to criminal prosecutions, the FACE Act empowers DOJ to bring civil lawsuits to enjoin FACE Act violations, to obtain civil penalties, and to seek damages for injured persons. State attorneys general as well as patients and providers affected by FACE Act violations can likewise sue for injunctive and monetary relief. In addition, DOJ can support those suits by filing statements of interest. DOJ has secured a number of important decisions using the civil remedies of the FACE Act to win permanent injunctive relief against persons who violated the Act in the context of blockades, threats, and other obstructive conduct. The statute protects all patients and providers who are obtaining or providing reproductive health services and facilities that provide reproductive health services, including pro-life pregnancy counseling services and any other pregnancy support facility providing reproductive health care.

18. The actions outlined above are not an exhaustive representation of the Administration’s efforts to promote women’s health, to protect access to safe and legal abortion and to mitigate the risks faced by women seeking abortions and the health providers assisting them. Departments and agencies across the U.S. government continue to monitor and evaluate strategies that are responsive to and in support of sexual and reproductive health and rights as a central component of the national strategy to advance equity, including racial justice and gender equity and equality.

B. Follow-up information relating to paragraph 50 (e) of the concluding observations CERD/C/USA/CO/10-12

Indigenous Peoples

19. Paragraph 50(e) recommends that the United States take additional measures and provide adequate funding to implement statutes and policies that address the crisis of missing and murdered indigenous peoples (MMIP). The United States is actively and aggressively addressing this issue.

20. The White House declared May 5, 2022 and 2023 as Missing or Murdered Indigenous Persons Awareness Day to remember victims and acknowledge survivors and families. The Biden-Harris Administration is committed to working with Tribal Nations and Native communities to achieve justice and healing. Also on May 5, 2022, the Secretary of the Interior and the Attorney General announced members of the Not Invisible Act Commission (Commission), a cross-jurisdictional advisory committee composed of law enforcement, tribal leaders, federal partners, service providers, family members of missing or murdered individuals, and most importantly, survivors. The 40 federal and non-federal Commission members will make recommendations to Congress and federal agencies, including the Department of Interior (DOI) and DOJ, to improve intergovernmental coordination and establish best practices for state, tribal, and federal law enforcement; bolster resources for survivors and victim’s families; and combat the missing or murdered indigenous persons crisis. The Commission is currently holding field hearings across the United States to hear directly from officials, survivors, subject matter experts, and the public in areas most affected. The Commission will deliver its final recommendations in October 2023. See <https://www.doi.gov/priorities/strengthening-indian-country/not-invisible-act-commission>.

21. Pursuant to Executive Order 14053 (E.O. 14053), Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People, issued in November 2021, DOJ, DOI, and HHS were instructed to take actions to address the MMIP crisis, and report to the President on their efforts. As a result of E.O. 14053, DOJ and DOI released a new comprehensive federal law enforcement strategy in July of 2022. The strategy identifies five pillars that are essential to a comprehensive approach to combatting this crisis in Indian Country: (1) improving federal interagency

coordination; (2) strengthening federal investigations and prosecutions; (3) improving intergovernmental coordination and support; (4) improving federal response to victims, survivors, and families; and (5) increasing public awareness and outreach. The report also provides an overview of ongoing and future work in furtherance of each pillar. See Federal Law Enforcement Strategy to Prevent and Respond to Violence Against American Indians and Alaska Natives, Including to Address Missing or Murdered Indigenous Persons (July 2022), <https://www.justice.gov/tribal/page/file/1553226/download>.

22. Also in furtherance of E.O. 14053, the Federal Bureau of Investigation (FBI) and the DOI Assistant Secretary for Indian Affairs signed a 2022 agreement to provide for the effective and efficient administration of criminal investigations in Indian Country. The agreement supports the unified response to the MMIP crisis. Under the agreement, the Bureau of Indian Affairs Office of Justice Services (BIA/OJS) and the FBI are cooperating on investigations and sharing information and investigative reports. The two agencies will also establish written guidelines outlining jurisdiction and investigative roles and responsibilities for investigators from the BIA, FBI, and Tribal law enforcement agencies. The agreement requires that all BIA, FBI, and Tribal law enforcement officers receive training on trauma-informed, culturally-responsive investigative approaches. Under the agreement, which will support the unified response to the MMIP crisis, the agencies are creating a system for all federal partners to assist and/or investigate missing or murdered cases in Indian Country. FBI field offices have established regional initiatives to understand the MMIP issues within their areas of responsibility and better assist the family members of victims. For example, the FBI Albuquerque Office has established a publicly available list, updated monthly, of Native Americans identified as missing in New Mexico and the Navajo Nation. The FBI Phoenix Office, along with the BIA, tribal law enforcement, and the National Missing and Unidentified Persons System (NamUs), have held events in Indian Country for family members to report MMIP persons to law enforcement.

23. Within the first 100 days of the Biden-Harris Administration, the Secretary of the Interior launched the Missing and Murdered Unit (MMU) in the Bureau of Indian Affairs Office of Justice Services. The MMU has marshalled law enforcement resources to focus on the MMIP crisis, including combatting human trafficking. Headquartered in Albuquerque, New Mexico, the MMU has established 17 offices in 11 states, with the expected addition of seven additional office locations in the future. Each office is staffed by at least one agent dedicated to solving MMIP cases. The MMU is currently working with United States Attorneys' Offices and state law enforcement officials to establish standard law enforcement response protocols throughout Indian Country. At the 2022 Tribal Nations Summit, the FBI and DOI's BIA/OJS announced that they would embed a criminal investigator and program analysts from the MMU into the FBI headquarters unit in charge of Indian Country to facilitate MMIP case intake, which will help expedite and enhance law enforcement's approach to MMIP cases. That program analyst is currently in training on how to access FBI systems and utilize data to track MMIP and human trafficking cases. To improve transparency regarding MMIP efforts and to better support access to resources and information sharing, DOJ and DOI have established dedicated MMIP webpages.

24. In July 2022, the Deputy Attorney General issued a directive to all U.S. Attorneys and law enforcement agencies to prioritize addressing the disproportionately high rates of violence experienced by American Indians and Alaska Natives and, relatedly, the high rates of indigenous persons reported missing. Consistent with that directive and Savanna's Act, P.L. 116-165 (2020), U.S. Attorneys' Offices, in consultation with Tribes located in their districts, have developed guidelines for cases involving missing or murdered Indigenous persons and updated their operational plans to improve coordination, better support victims, and address other pressing public safety issues.

25. The United States has also been working actively with its neighboring nations on this issue. At the June 2016 North American Leaders' Summit, Canada, Mexico, and the United States decided to establish a Trilateral Working Group on Violence Against Indigenous Women and Girls (Working Group). The United States convened and hosted the first meeting of this Working Group at the White House in 2016 to address the high rates of violence against women and girls from indigenous communities as a regional concern. Canada hosted the second meeting in 2017, and Mexico hosted the 2018 meeting. The fourth meeting, hosted

by the United States in 2022, reaffirmed and advanced the trilateral commitment to exchange information on policies, programs, and promising practices to prevent and respond to gender-based violence and MMIP impacting Indigenous peoples in North America through increased access to justice and services with a human rights and culturally-responsive approach, and enhancing prevention efforts and data exchange with respect to MMIP and the human trafficking crisis. The discussion and themes identified at this meeting will help inform the fifth convening, which will be hosted by Canada in September 2023.

C. Follow-up information relating to paragraph 52 (a) of the concluding observations CERD/C/USA/CO/10-12

Migrants, Refugees, Asylum-Seekers, and Stateless Persons

26. Paragraph 52(a) recommends that the United States end mandatory detention and ensure due process for all detained non-citizens, without discrimination, including access to legal counsel. Pursuant to the Committee's request, the United States provides the following information.

27. The United States respectfully objects to the Committee's linking of mandatory detention to a lack of due process or access to legal representation. U.S. law, policy, and practices afford due process, without discrimination, to individuals who are subject to mandatory detention, including access to counsel.

28. While some noncitizens who are inadmissible or removable on certain grounds are subject to mandatory detention during the pendency of their removal proceedings, such noncitizens may challenge their inclusion in a category of noncitizens subject to mandatory detention in a hearing before an immigration judge and, if they are not subject to an expedited removal process, on appeal to the Board of Immigration Appeals and then to a federal court of appeals. Under certain federal court rulings, noncitizens subject to mandatory detention may be eligible for bond hearings before DOJ's Executive Office for Immigration Review (EOIR). Under related rulings from federal courts, detained noncitizens have the ability to challenge the lawfulness of their continued detention in court through a petition for writ of habeas corpus.

29. There is a right to counsel in removal proceedings before an immigration judge and in any administrative appeal from those proceedings, but generally at no expense to the government. Department of Homeland Security (DHS) staff provide support for EOIR programs that facilitate access to counsel through legal orientation programs and distribution of lists of pro bono legal service providers to noncitizens in DHS custody. Approximately one-third of detained respondents have representation for immigration proceedings, and DHS and DOJ have worked to increase noncitizens' access to and assistance from attorneys, including through new measures such as attorney communication booths in Customs and Border Protection (CBP) facilities and a new rule from EOIR allowing attorneys to enter limited appearances to provide assistance to noncitizens at discrete stages of removal proceedings. DHS and EOIR also allow qualified non-attorneys employed at certain approved non-governmental organizations to provide representation in applications for relief before both DHS and EOIR. Additionally, DOJ's Office for Access to Justice, re-established in 2021, works in partnership with DHS, EOIR, and other federal agencies to increase legal system access through legal representation and assistance; leverage evidence-based practices to advance legal system modernization; and protect the integrity of legal systems.

30. With regard to detention, it is incorrect to state that there is a lack of official and comprehensive data. Rather, DHS has robust data collection mechanisms and reporting systems on detention and asylum procedures and outcomes. DHS Immigration and Customs Enforcement (ICE) requires officers to maintain comprehensive noncitizen arrest, detention, and removal data in order to ensure that enforcement efforts remain focused on noncitizens convicted of crimes, who pose the greatest risk to public safety. ICE maintains some data about immigration detention on its Detention Management and ICE Statistics webpages, including the number of migrants detained and released on parole, the number of transgender detainees, and other statistics. These statistics are available at www.ice.gov/detain/detention-management.

31. With regard to detention of migrants at the Migration Operations Center (MOC) at Naval Station Guantanamo Bay, the United States disagrees with the Committee's characterization of the treatment of migrants at the MOC as arbitrary or outside the confines of the law. The United States takes very seriously the problem of irregular maritime migration, and we continue to strongly discourage it. To discourage dangerous maritime journeys, and consistent with longstanding U.S. policy, migrants who are interdicted at sea are generally repatriated to their countries of origin or departure unless they establish a credible fear of persecution or torture. Should they establish a credible fear while at sea, they are generally transferred to the MOC, where their claims may be fully assessed. Migrants who establish a well-founded fear of persecution or likelihood of torture before a U.S. Citizenship and Immigration Services (USCIS) officer are generally resettled to a third country through a process managed by the Department of State.

32. To ensure due process of law, DHS continues to work hard to address racial profiling, which it views as wrong, ineffective, and intolerable. It is a top priority for DHS to continue taking multiple steps to align DHS policy and practice with this fundamental truth. While DHS does not see evidence that racial profiling is a systemic practice within ICE or CBP, DHS is nonetheless undertaking a careful and thorough review of policies governing DHS's use of race, ethnicity, national origin, religion, gender, and other individual characteristics, and taking action on its findings. For example, the Guidelines for the Enforcement of Civil Immigration Law, which went into effect on November 29, 2021, prohibit taking into account a noncitizen's race, religion, gender, sexual orientation or gender identity, national origin, political associations, or exercise of First Amendment rights when deciding to take enforcement action. Although a federal district court in Texas vacated these Guidelines in June 2022, the U.S. Supreme Court recently reversed that decision, allowing for the reinstatement of the Guidelines.

33. In May of 2022, President Biden issued Executive Order 14074 on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety. On May 25, 2023, DOJ announced additional steps, on the one-year anniversary of the Executive Order, including updated guidance prohibiting racial profiling by federal law enforcement agencies. DHS has also issued a policy statement reaffirming its commitment to nondiscrimination in alignment with DOJ's guidance. See <https://www.dhs.gov/publication/guidance-federal-law-enforcement-agencies-regarding-use-race-ethnicity-gender-national>. E.O. 14074 applies to all departments and agencies of the U.S. federal government and addresses many different topics to promote and improve public trust in federal law enforcement, including issues of transparency, accountability, non-bias, and officer wellness. Implementation of the E.O. includes ensuring that all DHS officers receive training on implicit bias and avoiding improper profiling, and that any state, local, Tribal, or territorial officers that participate in DHS programs, such as joint task forces, also receive training on the same topic.

34. DHS also conducted a holistic review, through its Law Enforcement Coordination Council (LECC), to look at law enforcement training, techniques, and curricula, adhering to a set of key principles that include the protection of civil rights and privacy. The LECC has various members, including the DHS Office for Civil Rights and Civil Liberties (CRCL) and the DHS Privacy Office. The review had a data-driven focus on preventing implicit bias; promoting standards that prohibit profiling based on race, ethnicity, national origin, religion, sexual orientation, gender identity, or other individual characteristics; and enhancing de-escalation techniques, policies that support mental health, and strategies to increase trusted community engagement.

35. In the context of the ICE 287(g) program, DHS has long established multiple safeguards to prevent racial profiling, including through training, inspections, and investigations of complaints. The Memoranda of Agreement between DHS and local law enforcement also prohibit racial profiling. The ICE Office of Professional Responsibility (OPR) conducts a comprehensive inspection of each 287(g) program at least every two years to determine the level of compliance with applicable policies and procedures. Prior to the inspection, OPR considers 287(g) programs' compliance with civil rights and civil liberties during inspections, and reviews complaints and allegations against officers within the program. All complaints against any officers, or programs themselves, are also reviewed at

the time of the complaint. CRCL also investigates complaints related to the implementation of 287(g) programs, conducts extensive oversight, and provides proactive policy advice to ensure that the 287(g) program is implemented in a manner that protects the civil rights and civil liberties of impacted community members.

36. Notably, CRCL also receives and investigates other complaints of racial profiling by DHS components, as do other oversight offices within DHS, including the Office of the Inspector General (OIG) and the ICE and CBP Offices of Professional Responsibility.

37. Another area related to due process is the Committee's expression of concern regarding purported widespread impunity for abuses by CBP Officers' excessive use of force. The United States respectfully takes issue with the Committee's statement that impunity is widespread and wishes to draw the Committee's attention to information that DHS shared with the Committee during its August 2022 intervention. For example, DHS provided the Committee detailed information on specific oversight and accountability mechanisms for CBP officers, Use of Force data tracking, and Use of Force Review Boards, as well as noting the oversight process, including for potential discipline regarding treatment of certain Haitian migrants in Del Rio, Texas in September 2021.

38. As previously noted in August 2022, CBP has established a National Use of Force Review Board and multiple Local Use of Force Review Boards, which were created in 2015 to review all CBP Use of Force incidents. Members of the National Use of Force Review Board include CRCL, as well as the DOJ Civil Rights Division. CBP further tracks all reportable uses of force by agents and officers as well as assaults against law enforcement in a comprehensive database called the Enforcement Action Statistical Analysis and Reporting System. The system, which was initially developed in 2010, was later expanded to capture additional metrics and to help provide a better understanding of when, how, and why officers and agents use force.

39. With regard to the treatment of certain Haitian nationals in Del Rio, Texas, CBP released its Office of Professional Responsibility's investigative report on July 8, 2022, on the Accountability and Transparency page of its website. The full report can be found at <https://www.cbp.gov/document/report/cbp-office-professional-responsibility-del-rio-horse-patrol-unit-investigation>. The investigation found organizational failures and that several agents had acted inappropriately. CBP made institutional changes and instituted a disciplinary process for four agents. CRCL also investigated the situation in Del Rio and, as a result, issued recommendations for improved medical, language, food, and sanitation services.

40. On February 7, 2023, DHS also announced updates to its Use of Force Policy, as required by President Biden's Executive Order to Advance Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety. These DHS updates, under Executive Order 14074, meet or exceed the DOJ guidance on the use of force. The DHS updates include prohibitions on the use of deadly force against a person whose actions are only a threat to themselves or property; revised requirements to collect and report use of force data; and changes to law enforcement training in key areas such as deadly force, less than lethal force, de-escalation techniques, the duty to intervene, and implicit bias and profiling.

41. Finally, accountability and remedies for excessive use of force are also addressed by the DHS OIG, which receives information about all allegations of excessive use of force involving DHS employees, contractors, and programs. OIG investigations may result in criminal prosecutions, fines, civil monetary penalties, administrative sanctions, and personnel actions.

42. The United States would also like to address the Committee's statement in its Concluding Observations that there is a disparate impact of asylum-related policies on migrants of African descent and of Hispanic/Latino origin, such as criminal prosecutions for irregular entry and expulsions under Title 42, as well as the Migrant Protection Protocols. DHS takes allegations of disparate impact discrimination very seriously, and CRCL and USCIS, in particular, have looked closely at studies and complaints alleging such discrimination. CRCL understands that the overwhelming majority of persons impacted by immigration policy are people of color and has focused its immigration policy work on those

who are most vulnerable or disproportionately impacted, including migrants of African descent and of Hispanic/Latino origin. USCIS has also been reviewing and evaluating its policies to promote equity among all applicants, including those who belong to underserved communities. Finally, the Secretary of Homeland Security terminated the Migrant Protection Protocols on October 21, 2021, and DHS expulsions under the Title 42 public health order ended at 11:59 p.m. Eastern Time on May 11, 2023.
