

Racial Profiling, Excessive Use of Force, and the Criminal Justice System

Concluding Observations 8, 17, and 20

The American criminal-legal system perpetuates the racial and economic discrimination that has been commonplace in the United States for centuries.

African Americans make up approximately 13 percent of the U.S. population, but 38 percent of the federal prison population. Latinos account for approximately 19 percent of the U.S. population, but 30 percent of people in federal prisons. Black men are incarcerated at a rate nearly six times that of White men, and Latino men are incarcerated at a rate 2.3 times that of White men.

The uprisings of summer 2020 after the murder of George Floyd laid bare the urgent need to address racial inequities in how Black communities are policed and the structural changes that are necessary to transform policing in America and bring about accountability and transparency — whether it’s racial profiling and pretextual traffic stops, excessive force, or data collection and reporting. And while some small progress has been made, there is a critical need for the United States to address the inequities that exist in how Black communities experience and are treated by police and the broader criminal-legal system. This must be done through both the administrative and legislative branches of government at the federal, state, and local levels.

Racial profiling in the context of law enforcement must be addressed at all levels to ensure police discretion does not put even more Black and Brown people behind bars. This includes changing how the federal government addresses traffic safety to prevent the utilization of pretextual stops to target people of color. Law enforcement officers use this strategy frequently, stopping on average 50,000 motorists per day across the country, which adds up to more than 20 million stops per year. These stops disproportionately impact people of color. For example, White drivers are 20 percent less likely to be stopped than Black drivers as a share of the population. When stopped, White

drivers are searched 1.5 to two times less often than Black drivers but are more likely to have drugs, guns, or other contraband.

Police must also be held accountable for their use of force — the force that is too often life-threatening to members of the public. Between 2015 and 2022, the police killed 7,426 people, 40 percent of whom were people of color. Black people are more than three times as likely as White people to be killed during a police encounter. One way to hold police departments accountable for their egregious actions is by guaranteeing the collection of robust and accurate data. Currently, there is no national requirement for collecting and reporting police activity data, leading to a lack of oversight and accountability.

Recommendations

Racial Profiling

- The U.S. Department of Justice (DOJ) should revise the “Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity” issued in 2014 to close all gaps.
- DOJ should issue revised guidance explicitly prohibiting data-gathering and “mapping” of racial, ethnic, and religious communities. The FBI should discontinue this practice of “mapping,” provide transparency on how its “mapping” operation has been developed and deployed, and publicly disclose maps it has produced.

- DOJ should use Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968 to condition federal funds to law enforcement agencies on whether the agency has adopted policies prohibiting racial profiling.
- Congress should take legislative action to prohibit racial profiling.

Pretextual Stops and Traffic Enforcement

- The U.S. Department of Transportation and National Highway Traffic Safety Administration should shift responsibility away from law enforcement for traffic safety, including ending engagement with non-funded programs like the Data-Driven Approaches to Crime and Safety.

Police Use of Force

- DOJ should establish national categories and definitions of law enforcement use of force so departments can collect and report data in a standardized way.
- The administration, politicians, civil rights advocates, and communities should demand changes that will address accountability loopholes like qualified immunity and require a higher standard for justification for use of force.

Data Collection and Reporting

- DOJ should require robust data collection and reporting on federal police-community encounters and law enforcement activities.
- DOJ should require that all data collection captures all demographic categories and can be disaggregated.
- DOJ should collect and make public all important police activity data. Data collection and reporting should be robust and mandatory for all federal agencies and state and local departments that receive federal grant funds. Data should remain publicly available by jurisdiction.
- DOJ should fully implement the Death in Custody Reporting Act of 2013.
- DOJ should fully implement Title VI and require all federally funded programs in the criminal-legal system to comply with Title VI.
- State and local governments should make police activity reporting mandatory and available to the public.

Read the full report, “[Holding the Line: Combating Racial Discrimination in a Divided America](https://civilrights.org/CERD2022),” here: civilrights.org/CERD2022.