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# *Falling Further Behind: Combating Racial Discrimination in America*

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## **July 2014**

Shadow report of The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights with the Lawyers' Committee for Civil Rights Under Law and the National Association for the Advancement of Colored People (NAACP)

For review of United States' Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination

85<sup>th</sup> Session of the Committee on the Elimination of All Forms of Racial Discrimination, Geneva 11 Aug 2014–29 Aug 2014

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## Acknowledgements

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We would also like to note the national organizations that are joining in support of this report: 9 to 5, American Association of People with Disabilities, American Association for Access, Equity and Diversity, Bazelon Center for Mental Health Law, Conference of Black Mayors, Equal Justice Society, Human Rights Campaign, Human Rights First, Japanese American Citizens League, National Association of Human Rights Workers, National Gay and Lesbian Task Force, National Law Center on Homelessness and Poverty, National Partnership for Women & Families, PFLAG National, Poverty & Race Research Action Council, Prison Policy Initiative, South Asian Americans Leading Together (SAALT), and the United Steelworkers.

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Finally, we would like to thank the Overbrook Foundation for its financial support of this initiative.

In releasing this report, our goals are to offer a positive vision for implementation of CERD with concrete policy goals that provide a blueprint for reforming our laws and policies to better combat racial discrimination in the United States.

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

Wade Henderson, President and CEO  
The Leadership Conference on Civil and Human Rights  
The Leadership Conference Education Fund

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# *Table of Contents*

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<b>1</b>	<b>Foreword</b>
<b>3</b>	<b>Introduction</b>
<b>4</b>	<b>Relevant CERD Articles</b>
<b>6</b>	<b>Discrimination in the Criminal Justice System</b>
<b>12</b>	<b>Discrimination in Education</b>
<b>17</b>	<b>Discrimination in Employment</b>
<b>22</b>	<b>Discrimination in Housing</b>
<b>25</b>	<b>Discrimination in Immigration Policy</b>
<b>28</b>	<b>Discrimination in Voting</b>
<b>34</b>	<b>Discrimination against Women of Color</b>
<b>40</b>	<b>Recommendations</b>
<b>47</b>	<b>Endnotes</b>

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## Foreword

*Wade Henderson*  
*President and CEO*  
*The Leadership Conference Education Fund*  
*The Leadership Conference on Civil and Human Rights*

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I am pleased to submit this report prepared by The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights. The Leadership Conference is a coalition charged by its diverse membership to promote and protect the civil and human rights of all persons in the United States. The Leadership Conference's more than 200 national organizations represent persons of color, women, children, organized labor, persons with disabilities, the elderly, the lesbian, gay, bisexual, and transgender (LGBT) community, and major religious groups. Since its inception, The Leadership Conference has worked to ensure that all persons in the United States are afforded civil and human rights protections under the U.S. Constitution and in accordance with international human rights norms. The Leadership Conference Education Fund serves as the education and research arm of The Leadership Conference, building public will for federal policies that promote and protect the civil and human rights of all persons in the United States.

Sixty years after *Brown v. Board of Education*, 50 years after the Civil Rights Act, and 20 years after the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 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, "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 4<sup>th</sup> 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. Using international human rights norms and treaties to advocate for domestic civil and human rights can help identify gaps in our laws and suggest different approaches to solutions.

The Leadership Conference has been actively engaged with CERD for more than a decade. We have helped prepare shadow reports, monitored the U.S. presentations in Geneva, and pushed for its implementation here in the United States. We know that the preparation of the report by the U.S. government provides an important opportunity for a comprehensive review of our own laws and policies and for advocating for eliminating remaining discriminatory barriers. Shadow reports are an opportunity for civil society to put forward a positive vision for implementation of CERD with concrete policy goals that provide a blueprint for reforming our laws and policies to better combat racial discrimination in the United States. We hope that this report will provide the CERD Committee with additional information that will inform its review and lead to concrete concluding observations and recommendations to the government. As such, this report is an important tool in our arsenal for social change.

While the United States has been working to reclaim its leadership on international human rights matters, so much remains to be done. We must reform our racially and ethnically discriminatory criminal justice system. We need

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to build a truly equitable, diverse, high-quality education system that educates each and every 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 remove barriers to employment and create affirmative opportunities for career advancement for people of color, who continue to make up a large percentage of the low-wage workforce. In particular, we need to specifically address the needs of low-income women of color who are often struggling to support their families. We need to fix our broken immigration system and protect the rights of immigrants working in the United States. 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 access to voting. 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 that fully meets the Paris Principles.

These are big challenges. But at The Leadership Conference, we strongly believe that civil and human rights must be measured by a single yardstick, both at home and abroad. We hope that this report will be useful to the international community in assessing U.S. compliance with CERD and that it serves as a public education tool to aid in protecting and promoting racial justice throughout the United States.



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## Introduction

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1. This report supplements the submission of the government with additional information and offers recommendations for actions that will, if adopted, enhance the government's ability to comply with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). We hope it will assist the United Nations Committee in evaluating compliance and in creating its own recommendations to bolster U.S. commitments to ending all forms of racial discrimination.
  2. 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.

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## Relevant CERD Articles

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3. CERD sets forth comprehensive guidelines to promote equality and racial justice. The treaty provides that the state actor may take special measures for the advancement of minority groups, and that the state actor ensure that its policies avoid creating or perpetuating segregation. Specifically:
- Article 1 defines discrimination to include practices with discriminatory effects, even if not intentionally discriminatory and provides that special measures may be taken to secure advancement.
  - Article 2(1) emphasizes the need for State Parties to undertake by all means a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.
  - Article 2(1)(c) “undertakes effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”
  - Article 2(1)(d) emphasizes the state’s responsibility to end and prohibit by all means, including legislation, racial discrimination by any person, group or organization.
  - Article 2(2) aims to “ensure the adequate development and protection of certain racial groups or individuals belonging to them...[to guarantee] them the full and equal enjoyment of human rights and fundamental freedoms.”
  - Article 5(a) addresses the right to equal treatment before the tribunals and all other organs administering justice.
  - Article 5(b) addresses the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.
  - Article 5(c) requires State Parties “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... political rights, in particular the right to participate in elections-to vote and to stand for- election on the basis of universal and equal suffrage.”
  - Article 5(e)(i) highlights workers’ rights in the areas of free choice to employment, just and favorable conditions of work, protection against unemployment, equal pay for equal work, and just and favorable remuneration.
  - Article 5(e)(ii) addresses the right to form and join trade unions.
  - Article 5(e)(iii), requires state actors to undertake the elimination of housing discrimination, including unintentional practices with discriminatory effects, and to eradicate segregation.
  - Article 5(e)(v) affirms the right to education is guaranteed to all “without distinction as to race, colour, or national or ethnic origin.”
  - Article 6 requires State Parties to assure everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other state institutions, against any acts of racial discrimination
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which violate his human rights and fundamental freedoms contrary to this convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

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## Discrimination in the Criminal Justice System

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### **2008 Concluding Observations of the Committee**

¶ 14. *The Committee recommends that “the State party strengthen its efforts to combat racial profiling at the federal and state levels, inter alia, by moving expeditiously towards the adoption of the End Racial Profiling Act, or similar federal legislation.”*

¶ 20. *The Committee recommends that “the State party take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs administering justice, including further studies to determine the nature and scope of the problem, and the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination.”*

¶ 21. *The Committee recommends that “the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.”*

¶ 23. *The Committee recommends that “the State party undertake further studies to identify the underlying factors of the substantial racial disparities in the imposition of the death penalty, with a view to elaborating effective strategies aimed at rooting out discriminatory practices. The Committee wishes to reiterate its previous recommendation... that the State party adopt all necessary measures...to ensure that death penalty is not imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers.”*

¶ 25. *The Committee recommends that “the State party increase significantly its efforts to eliminate police brutality and excessive use of force against persons belonging to racial, ethnic or national minorities, as well as undocumented migrants crossing the U.S.-Mexico border, inter alia, by establishing adequate systems for monitoring police abuses and developing further training opportunities for law enforcement officials. The Committee further requests the State party to ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.”*

### **Introduction**

4. 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<sup>1</sup>, 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.<sup>2</sup>

### **Discriminatory Law Enforcement and Prosecutorial Practices**

5. *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.<sup>3</sup> Racial profil-

ing 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. Although the Department of Justice (DOJ) issued guidance in 2003 outlawing the use of race and ethnicity by federal law enforcement as an element of suspicion absent any suspect-specific information, the guidance contains a blanket exception for national and border security. Moreover, it does not cover profiling based on religion or national origin and is not applicable to, nor binding on, state or local law enforcement.<sup>4</sup>

6. *“Stand Your Ground” Laws:* During the past decade, 22 states have adopted “stand your ground laws.”<sup>5</sup> “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. The passage and implementation of “stand your ground” laws has 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.<sup>6</sup>
7. 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.<sup>7</sup> 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.<sup>8</sup>
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 its recent report to the 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.<sup>9</sup>
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.<sup>10</sup>
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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> In 2010, states spent an estimated \$346 million on misconduct-related civil judgments and settlements, not including sealed settlements, court costs, and attorney fees.<sup>15</sup> For example, the New York Police Department was recently found liable for a pattern and practice of racial profiling and unconstitutional stop-and-frisks.<sup>16</sup>
11. Additionally, abuses by the U.S. Customs and Border Protection (USCBP), the largest federal law enforcement workforce, have recently come to light.<sup>17</sup> 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.<sup>18</sup>
12. DOJ’s Special Litigation Section investigates state and local law enforcement agencies for compliance with federal civil rights law, including claims of police misconduct.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> Criminal prosecution of police for misconduct is even rarer, compounded by the “code of silence” under which police refuse to testify or cover up evidence, making the investigation and prosecution of these cases extremely difficult.<sup>22</sup> Prosecution, conviction, and incarceration rates are all much lower than those for ordinary citizens.<sup>23</sup>

13. *Impact of Prosecutorial Discretion on Individuals of Color:* Prosecutorial discretion has disproportionately negative effects on defendants of color.<sup>24</sup> Black and Hispanic defendants, all else being equal, are more likely than Whites to be sentenced to terms of incarceration.<sup>25</sup> And according to the U.S. Sentencing Commission, “differences in charging and plea practices have contributed to [federal] sentencing disparities.”<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> Black and Hispanic defendants also are less likely to be diverted from incarceration as a punishment.<sup>29</sup>
14. In August 2013, DOJ announced a new policy to guide prosecutorial discretion in U.S. attorneys’ offices, which aims 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.<sup>30</sup>

### Disparities in Sentencing

15. *Sentencing Inequity:* Today, African Americans and Latinos comprise approximately 60 percent of imprisoned individuals. African-American males are six times more likely to be incarcerated than non-Hispanic White males. For Black males in their 30s, one in every 10 is in prison or jail on any given day. Hispanic males 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.<sup>31</sup> 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.”<sup>32</sup>
16. 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.<sup>33</sup> Moreover, minorities comprised three-quarters of those serving a mandatory sentence for a federal drug trafficking offense.<sup>34</sup> In those instances in which relief from the mandatory minimum penalty occurred, it occurred least often for Black offenders.<sup>35</sup> In fact, Black offenders were the most likely to serve a mandatory minimum sentence as compared to any other group of federal offenders.<sup>36</sup>
17. The 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.<sup>37</sup>
18. 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.<sup>38</sup> Not only do these enhancements fail to meet the intended goal of deterring harmful activity away from particular places,<sup>39</sup> 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.<sup>40</sup>

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19. *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.<sup>41</sup> Today people of color account for 55 percent of those awaiting execution.<sup>42</sup> It is well-documented that the likelihood of receiving a death sentence increases exponentially if the victim is White.<sup>43</sup> 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.”<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup>
20. The government has highlighted recent steps across the country toward the abolition of the death penalty (Para. 23). 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

21. 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.
22. *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.<sup>47</sup> 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,<sup>48</sup> 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.<sup>49</sup>
23. *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.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup>
24. *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.<sup>53</sup>
25. 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.



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## Juvenile Justice

26. *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,<sup>54</sup> though the full impact is difficult to ascertain because there are no systematic approaches to collecting this information in a disaggregated manner.<sup>55</sup>
27. 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.<sup>56</sup> 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.
28. *Juveniles Serving Sentences of Life Without Parole:* In its 2008 Concluding Observations, the 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.”<sup>57</sup> The United States remains the only country in the world that continues to sentence juveniles to life in prison with no chance for parole.<sup>58</sup> The majority of youth sentenced to life without parole are concentrated in just five states: California, Louisiana, Massachusetts, Michigan and Pennsylvania.<sup>59</sup>
29. Despite the U.S Supreme Court’s decisions in *Graham v. Florida* and *Miller v. Alabama*,<sup>60</sup> 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.<sup>61</sup> One study found that Blacks comprised approximately 60 percent of those serving a LWOP sentence, and Latinos comprised approximately 14 percent.<sup>62</sup> 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.”<sup>63</sup>
30. 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.<sup>64</sup> The study found that an additional 28.9 percent of those surveyed were in facilities without sufficient programming or had completed all available programming.<sup>65</sup> 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.<sup>66</sup>

## Recommendations\*

### 31. Discriminatory Law Enforcement and Prosecutorial Practices

- a) The Department of Justice (DOJ) should revise its June 2003 guidance on racial profiling to clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of profiling. Specifically, the revised guidance should be expanded to include prohibitions on profiling based on national origin and religion.
- b) 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.
- c) The Obama administration should support, and Congress should pass, an anti-racial profiling law, such as the End Racial Profiling Act.
- d) DOJ should investigate state law enforcement agencies that enforce “stand your ground” laws in a way that disproportionately harms defendants of color.
- e) 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.

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### 32. Disparities in Justice System and Sentencing

- a) 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.
- b) 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.
- c) 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.

### 33. Barriers to Re-Entry

- a) 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.
- b) 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.
- c) 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.<sup>67</sup>

### 34. Juvenile Justice

- a) The government should disaggregate data on the number of juveniles imprisoned in adult facilities, including demographic data and time spent in solitary confinement.
- b) The government should utilize the 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.
- c) 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.

\*These recommendations were formulated by The Leadership Conference on Civil and Human Rights and contributors to this section. The Leadership Conference Education Fund, a 501(c)(3) organization, takes no position on any legislative proposal.

*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.*

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## Discrimination in Education

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### **2008 Concluding Observations of the Committee**

¶ 17. *The Committee recommends that “the State party undertake further studies to identify the underlying causes of de facto segregation and racial inequalities in education, with a view to elaborating effective strategies aimed at promoting school desegregation and providing equal educational opportunity in integrated settings for all students. In this regard, the Committee recommends that the State party take all appropriate measures, including the enactment of legislation—to restore the possibility for school districts to voluntarily promote school integration through the use of carefully tailored special measures adopted in accordance to article 2, paragraph 2, of the Convention.”*

¶ 34. *The Committee recommends that “the State party adopt all appropriate measures—including special measures in accordance with article 2, paragraph 2, of the Convention—to reduce the persistent ‘achievement gap’ between students belonging to racial, ethnic or national minorities and white students in the field of education, inter alia, by improving the quality of education provided to these students. The Committee also calls upon the State party to encourage school districts to review their “zero tolerance” school discipline policies, with a view to limiting the imposition of suspension or expulsion to the most serious cases of school misconduct, and to provide training opportunities for police officers deployed to patrol school hallways.”*

### **Introduction**

35. In the six decades since the Supreme Court, in *Brown v. Board of Education*, held racial segregation in education to be unconstitutional,<sup>68</sup> 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.
36. Despite this progress, what has remained unchanged is the pervasive racial injustice in the United States’ 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.
37. 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.<sup>69</sup>



38. 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.<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup>

### Racial Segregation

39. Sixty years after the *Brown* decision, segregated schools are the norm for the majority of Black and Latino students. 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.<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup>
40. 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.
41. Concentrated poverty often coincides with racial segregation, and this both exacerbates the effects of racial isolation and complicates efforts to secure effective remedies.<sup>76</sup> 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.<sup>77</sup> 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].”<sup>78</sup> This “double segregation” has a deep lifelong 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.<sup>79</sup>

### Resource Inequity

42. Minority students, to an overwhelming degree, disproportionately attend underfunded and under-resourced schools.<sup>80</sup> 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.”<sup>81</sup>
43. 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 ten days of the school year, and none meet all state licensing and certification requirements.<sup>82</sup> 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 ten days of the school year, and 86.5 percent of teachers meet all state licensing and certification requirements.<sup>83</sup> 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.<sup>84</sup>
44. 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 per-

cent offered Algebra II—a key course for college preparation—compared with 83 percent of schools with the lowest Black and Latino student enrollment.<sup>85</sup> As a result, minority students are either unprepared for university-level curricula or are unable to attend college altogether.<sup>86</sup> Even comparing similar courses, majority-minority schools tend to teach a less demanding curriculum than wealthier, non-minority schools.<sup>87</sup>

45. 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.<sup>88</sup> 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.<sup>89</sup> 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.<sup>90</sup> In New York City, the New York Police Department employs more than 5,000 “School Safety Agents” who patrol the city’s public schools.<sup>91</sup> By contrast, there are only 3,100 guidance counselors employed in New York City schools.<sup>92</sup> 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.<sup>93</sup>
46. These problems have been worsened 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.<sup>94</sup>
47. In 2011, the 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 NGOs 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.
48. 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.”<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup>

### **Discriminatory Discipline**

49. 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.<sup>98</sup> 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.<sup>99</sup> 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.<sup>100</sup> 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.<sup>101</sup> 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.”<sup>102</sup>

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50. Even among those students suspended, White students averaged only 6.6 days of suspension, while Black students averaged 7.4 days of suspension.<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup>
  51. 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.<sup>106</sup> The report urges schools to use such methods only as a last resort.<sup>107</sup>
  52. Although the federal government has taken some steps—discussed below—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.<sup>108</sup>

### Minority Juveniles and the School-to-Prison Pipeline

53. In its 2008 Conclusions, the 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.”<sup>109</sup>
54. 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.<sup>110</sup> Similarly, a 2014 DOE study found that “Black students are suspended and expelled at a rate three times greater than White students.”<sup>111</sup> The study noted that, on average, 4.6 percent of White students are suspended, compared to 16.4 percent of Black students.<sup>112</sup> 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.<sup>113</sup> 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.”<sup>114</sup> Black students are 3.5 times more likely to be suspended than their White peers.<sup>115</sup>
55. 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.”<sup>116</sup> 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.”<sup>117</sup>

### Progress and Steps toward Resolution

56. Notwithstanding the shortcomings discussed above, it is worth recognizing the steps taken recently by the current administration toward fulfilling its moral and legal obligations. In its own report, the United States emphasized its 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. The United States highlighted a 2011 amendment to the ESEA to promote reform through “rigorous and comprehensive state-developed plans” to improve access to and the quality of education for all students (Para. 146).<sup>118</sup>
57. Likewise, the United States has also rightfully noted its efforts to increase diversity and eliminate discrimination through DOE’s formation of the Equity and Excellence Commission in 2011 (Para. 45).<sup>119</sup> OCR has circulated best practices to prevent and mitigate student interactions with the school-to-prison pipeline and zero tolerance policies.<sup>120</sup> It has also issued guidance regarding discipline;<sup>121</sup> significantly, the department indicated that, in addition to discipline policies which treat racial minority students differently than White students, it

would find discipline policies which have a disparate impact on racial minority students to contravene obligations under Title IV and Title VI of the Civil Rights Act of 1964.<sup>122</sup> Finally, the United States emphasizes, and deserves praise for, a nearly \$100 billion commitment to fund the “Race to the Top” program and financial aid for postsecondary education.<sup>123</sup> These efforts illustrate the U.S. 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.

58. Beyond all this, two further steps by the U.S. government 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 Supreme Court struck down a Texas statute denying undocumented immigrants access to public education as a violation of the Equal Protection clause of the Fourteenth Amendment.<sup>124</sup> 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).<sup>125</sup> Therefore, for example, districts may not require birth certificates or social security numbers.<sup>126</sup>

59. Second, DOE has issued important guidance on how civil rights laws apply to public charter schools.<sup>127</sup> 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.<sup>128</sup>

60. 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

61. 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.
62. 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.
63. The departments of Justice and Education 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.
64. 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.

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## Discrimination in Employment

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### **2008 Concluding Observation of the Committee**

¶28. *The Committee recommends that “the State party take all appropriate measures, including increasing the use of ‘pattern and practice’ investigations, to combat de facto discrimination in the workplace and ensure the equal and effective enjoyment by persons belonging to racial, ethnic and national minorities of their rights under article 5 (e) of the Convention. The Committee further recommends that the State party take effective measures, including the enactment of legislation, such as the proposed Civil Rights Act of 2008,—to ensure the right of workers belonging to racial, ethnic and national minorities, including undocumented migrant workers, to obtain effective protection and remedies in case of violation of their human rights by their employer.”*

### **Introduction**

65. 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**

66. *Discrimination against Unemployed Workers:* The 2008 - 2009 recession exacerbated the existing wealth gap between Whites and communities of color.<sup>129</sup> While the recession affected the entire population, the current unemployment rate for African Americans is roughly double the rate for Whites.<sup>130</sup> 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.
67. *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.<sup>131</sup> Furthermore, some even screen out applicants with arrest records that did not lead to a conviction.<sup>132</sup> 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.<sup>133</sup> In 2008, Hispanics were arrested for federal drug charges at a rate of approximately three times their proportion of the general population.<sup>134</sup>
68. In 2012, the Equal Employment Opportunity Commission (EEOC) adopted enforcement guidance on the use of criminal background checks in hiring.<sup>135</sup> 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 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.<sup>136</sup>

69. *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.<sup>137</sup> 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.<sup>138</sup> The use of poor credit to cut off employment opportunities has had a disparate impact on minorities.<sup>139</sup> 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.<sup>140</sup>

### **Affirmative Opportunities for Career Access and Advancement**

70. Women and minorities constitute a significant percentage of the workforce overall, yet they are severely underrepresented in high-wage male dominated occupations. For example, while women are over half of the workforce, they make up only 2.6 percent of all construction workers.<sup>141</sup> Black men are 9.7 percent of the employed male workforce, but only 6.1 percent of the construction workforce.<sup>142</sup>
71. *Equal Employment Opportunity in Apprenticeship*: In 1978, the U.S. Department of Labor (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.<sup>143</sup> While minority numbers have increased, discrimination and other barriers have held their numbers lower than in the general workforce.
72. *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 percent<sup>144</sup> and minority goals based on the 1980 Standard Metropolitan Statistical Area or Economic Area.<sup>145</sup> 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**

73. 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,”<sup>146</sup> 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).
74. 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.<sup>147</sup> 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.<sup>148</sup> 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.<sup>149</sup>
75. 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.

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## Ensuring Access to the Courts

76. 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.
77. 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.<sup>150</sup> 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.<sup>151</sup>
78. 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.<sup>152</sup> 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.
79. 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.<sup>153</sup> 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.<sup>154</sup>
80. 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,<sup>155</sup> 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.<sup>156</sup> 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.<sup>157</sup> 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.
81. 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.<sup>158</sup> 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,<sup>159</sup> which was enacted to regulate voluntary agreements between commercial parties with equal bargaining power.<sup>160</sup>

## Progress to Date

82. The government has taken many steps to alleviate the problems arising from discrimination in employment. 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.<sup>161</sup> 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.<sup>162</sup>

83. 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 order<sup>163</sup> raising the minimum wage to \$10.10 an hour for federal contract workers.
84. Additionally, during FY 2012, the EEOC resolved a total of 254 of its employment discrimination lawsuits against private sector employers, as cited in paragraph 113. In 2012, the EEOC resolved 430 systemic employment discrimination charges that concerned race or national origin (Para. 119). 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 (Para. 118).
85. The government has worked to remove existing barriers to equal employment opportunity in the government for Asian Americans and Pacific Islanders and African Americans (Para. 104). 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.
86. DOL has required private companies to increase minority participation and fairness in the workplace (Para. 115). 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 (Para. 120).
87. However, while DOL recently has been more aggressive in enforcing noncompliant government contractors and the EEOC has initiated well over 100 cases against private employers, including a number of systemic cases,<sup>164</sup> 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.<sup>165</sup> In addition, as noted above, recent Supreme Court rulings have limited the ability of private plaintiffs to bring class actions,<sup>166</sup> highlighting the importance of government enforcement to eradicate systemic discrimination.<sup>167</sup>

## Recommendations\*

### 88. Barriers to Obtaining Employment

- a) 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.
- b) 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).

### 89. Affirmative Opportunities for Career Access and Advancement

- a) To improve access to higher-skilled and higher paying jobs in nontraditional careers for women and minorities, the 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.
- b) The DOL should update the long overdue Equal Employment Opportunity in Apprenticeship Regulations without further delay and enforce them with both incentives and penalties.



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## 90. Ending Employment Discrimination for LGBT People of Color

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

## 91. Ensuring Access to the Courts

- a) 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.
- b) 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,<sup>168</sup> the Protecting Older Workers Against Discrimination Act,<sup>169</sup> the Equal Employment Opportunity Restoration Act,<sup>170</sup> Civil Justice Tax Fairness Act,<sup>171</sup> and the Arbitration Fairness Act.<sup>172</sup>

\*These recommendations were formulated by The Leadership Conference on Civil and Human Rights and contributors to this section. The Leadership Conference Education Fund, a 501(c)(3) organization, takes no position on any legislative proposal.

*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.*

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## Discrimination in Housing

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### **2008 Concluding Observations of the Committee**

¶ 10. *The Committee recommends that “the State party review the definition of racial discrimination used in the federal and state legislation and in court practice, so as to ensure...that it prohibits racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect.”*

¶ 16. *The Committee “urges the State party to intensify its efforts aimed at reducing the phenomenon of residential segregation based on racial, ethnic and national origin, as well as its negative consequences for the affected individuals and groups.”*

### **Introduction**

92. U.S. constitutional protections fall short of meeting CERD’s definition of discrimination, by, for example, omitting practices with discriminatory effects if not proven to be intentional.<sup>173</sup>
93. However, U.S. civil rights law provides additional protections from racial discrimination. For example, the Fair Housing Act applies to private, as well as government, actors and encompasses a discriminatory effects standard. Additionally, the Fair Housing Act requires that the government take affirmative measures to remediate discrimination and segregation in the implementation of its housing programs.<sup>174</sup> While this law potentially provides a strong tool for CERD compliance, additional action is needed to ensure full enforcement and implementation (including through regulations, guidance, and program redesign).
94. Title VI of the Civil Rights Act of 1964 prohibits discrimination in federally funded programs (including housing programs), but falls short of its potential as a tool for CERD compliance. “Discriminatory effects” discrimination is not privately enforceable under Title VI. While federal agencies generally have regulations implementing Title VI, the Department of the Treasury (which runs the Low Income Housing Tax Credit program) lacks any such civil rights regulations.

### **The Impact of Housing Segregation**

95. 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.<sup>175</sup> 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.<sup>176</sup> These inequities were exacerbated by the economic downturn, and in particular, by the impact of predatory lending practices and residential foreclosures on minority communities.
96. 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.

97. 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

98. 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.<sup>177</sup> This has led to the massive loss of wealth built over generations in communities of color.<sup>178</sup>
99. 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.<sup>179</sup> 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.
100. 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.<sup>180</sup>

### Progress to Date

101. In its 2013 national CERD submission, the U.S. highlighted the application of the discriminatory effects standard under the Fair Housing Act and the Equal Credit Opportunity Act. (Para. 8, 10, 124, 125.) The government noted instances of successful civil rights enforcement by HUD and the Department of Justice, as well as the Department of Housing and Urban Development's 2013 issuance of a discriminatory effects regulation implementing the standard. (Para. 10, 126, 127, 128.) The government described the role of federal housing assistance programs in subsidizing affordable housing, highlighting the Baltimore Housing Mobility Program's success. (Para. 39.) In addition, the government also described its efforts in addressing the problem of homelessness. (Para. 40.)
102. 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

#### 103. Housing Segregation

- a) HUD should increase the number of complaints using the discriminatory effects standard to challenge discriminatory lending practices.
- b) There should be a meaningful independent evaluation of all HUD housing and community development programs for their impacts on residential segregation.

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- c) 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.
  - d) The Obama administration should engage in meaningful implementation of the affirmatively furthering obligation (including finalization of the regulation, if not yet issued).
  - e) 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).
  - f) 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.
  - g) 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.
  - h) 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.
  - i) The Obama administration should issue a regulation that details what constitutes racial harassment by housing providers and other tenants under the Fair Housing Act.

#### **104. Foreclosure Crisis and Unfair Lending Practices**

- a) HUD and the financial regulatory agencies should issue guidance on compliance with the obligation to maintain and market REO properties in a nondiscriminatory manner.
- b) 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).
- c) 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.
- d) 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.
- e) 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.*

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## Discrimination in Immigration Policy

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### **2008 Concluding Observations of the Committee**

¶ 24. *The Committee requests “the State party to ensure that non-citizens detained or arrested in the fight against terrorism are effectively protected by domestic law, in compliance with international human rights, refugee and humanitarian law.”*

¶ 25. *The Committee recommends that “the State party increase significantly its efforts to eliminate police brutality and excessive use of force against persons belonging to racial, ethnic or national minorities, as well as undocumented migrants crossing the U.S.-Mexico border, inter alia, by establishing adequate systems for monitoring police abuses and developing further training opportunities for law enforcement officials. The Committee further requests the State party to ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.”*

¶ 28. *The Committee recommends that “the State party take effective measures, including the enactment of legislation... to ensure the right of workers belonging to racial, ethnic and national minorities, including undocumented migrant workers, to obtain effective protection and remedies in case of violation of their human rights by their employer.”*

### **Introduction**

105. 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. The federal government recently surpassed the two million mark for removals conducted since President Obama took office, more than any other administration in the same period of time. Even more recently, concerns about heavy-handed immigration enforcement have been highlighted 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.
106. At any given time, the 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.<sup>181</sup> The recent surge in unaccompanied alien children arriving at the U.S. border only heightens our concerns about humane detention policies and procedures.

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107. In general, there remain widespread complaints of abusive conduct by law enforcement agents against both immigrants and citizens in the southwest border region. 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.”<sup>182</sup>
108. Whether it was Chinese immigrants in the 19<sup>th</sup> 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.<sup>183</sup>

### Progress to Date

109. 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. (Para. 162-166.) Additionally, the report discusses immigrant guest worker protections in paragraphs 121-123, emphasizing that all U.S. workers, regardless of immigration status, are offered substantial protections under U.S. labor and employment laws, as well as mentioning the Migrant Worker Partnership Program, which was created to assist the 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 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 (Para. 94).

### Recommendations

110. The 113<sup>th</sup> 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, there are numerous policy reforms that could be implemented by executive action.
111. 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: 1) 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; 2) 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); 3) provide an administrative appeal process for immigrants who faced such procedures; and 4) 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.
112. When immigrants stand up for basic labor and civil rights protections, they should never be undercut by immigration enforcement practices. The Obama administration should: 1) clarify and publicize the processes for immigrants involved in labor and civil rights cases to obtain immediate immigration status and work authorization; 2) prohibit civil immigration or criminal arrests of workers in the context of workplace enforcement actions; 3) look into labor and civil rights complaints before I-9 or other worksite enforcement actions; and 4) prevent employers from abusing I-9 or E-Verify procedures to violate workers’ rights.
113. The Obama administration should fine tune the 2012 Deferred Action for Childhood Arrivals (DACA) policy, which removed the threat of deportation for many immigrants who had no say in their legal status, so as to eliminate unnecessary cutoffs that deprive some deserving immigrants of relief. The administration should also follow the successful model of DACA by creating similar administrative relief programs for other categories of immigrants who are otherwise law-abiding and have strong ties to family, community, or work here in the United States.



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114. The Obama administration should replace the overbroad 2011 civil enforcement priorities memo with DHS-wide guidance that limits and better defines the priority categories.
  115. The Obama administration should build upon the prosecutorial discretion memoranda issued by former ICE Director John Morton and his predecessors by: 1) ensuring the memoranda apply to all of DHS, not just to ICE; 2) creating a presumption of hardship for people with ties to the country; 3) applying deferred action with work authorization (not just administrative closure) to compelling cases; 4) giving timeframes for the grants of discretion, to provide recipients with some stability; 5) evaluating the use of prosecutorial discretion at each stage of the enforcement process; 6) treating some requests for prosecutorial discretion in groups, for example, workers in certain labor situations; 7) ensuring agency compliance with memos governing victims and sensitive locations cases; and 8) establishing a review process at DHS headquarters.
  116. 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.
  117. 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.
  118. In addition, the Obama administration should end the Secure Communities program, the 287(g) program, the use of detainees, and other ICE ACCESS programs that encourage the use of profiling and undermine public safety.
  119. The Obama administration should: 1) end the Operation Streamline program; 2) implement all recommendations on use of force from the Police Executive Research Forum, and strengthen oversight and accountability regarding inappropriate use of force; 3) roll back the U.S. Customs and Border Protection’s (CBP) claimed 100-mile authority; 4) create enforceable standards and provide effective oversight for CBP short-term holding facilities; 5) carefully limit the use of drones; 6) equip all CBP officers with lapel cameras; and 7) 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.
  120. 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.*

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## Discrimination in Voting

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### **2008 Concluding Observations of the Committee**

¶ 10. *The Committee recommends that “the State party review the definition of racial discrimination used in the federal and state legislation and in court practice, so as to ensure... that it prohibits racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect.”*

¶ 27. *The Committee recommends that “the State Party adopt all appropriate measures to ensure that the denial of voting rights is used only with regard to persons convicted of the most serious crimes, and that the right to vote is in any case automatically restored after the completion of the criminal sentence.”*

### **Introduction**

121. 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***

122. 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.

123. Under Section 5 of the VRA, the 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.

124. 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.



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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.<sup>184</sup>

125. 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.<sup>185</sup> As Associate Justice Ruth Bader Ginsburg observed in her dissent from the *Shelby* decision, “[t]hrowing out pre-clearance 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.”
126. 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.
127. 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.
128. 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. However, it is unclear whether this legislation will be brought to a vote in Congress this year.
129. 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.<sup>186</sup>

### Photo ID

130. Since 2012, more than 40 states have attempted to implement requirements that voters show photo identification prior to casting a vote during an election.<sup>187</sup> 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 in order 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.<sup>188</sup>

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## National Voter Registration Act Enforcement

131. 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.
132. 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

133. 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.<sup>189</sup> Nationwide one in 13 African Americans of voting age have lost the right to vote—a rate four times the national average.<sup>190</sup> Available data suggests criminal disenfranchisement laws may also disproportionately impact Latino citizens because of their overrepresentation in the criminal justice system.<sup>191</sup> Many of the current criminal disenfranchisement laws proliferated in the Jim Crow era and were intended to bar minorities from voting.<sup>192</sup> The United States continues to lead the world in the rate of incarcerating its own citizens.<sup>193</sup> 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.”<sup>194</sup>
134. In the 2008 Concluding Observations, the committee expressed continuing concern about “the disparate impact that existing felon disenfranchisement laws have on a large number of persons belonging to racial, ethnic and national minorities” and noting “particular concern that in some states, individuals remain disenfranchised even after the completion of their sentences.”<sup>195</sup> In fact, the United States is one of the few western democratic nations that excludes such large numbers of people from the democratic process. Almost half of European countries preserve the right to vote for all incarcerated persons and a smaller number of countries impose a time limited ban on voting for a few categories of prisoners.<sup>196</sup>
135. 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.<sup>197</sup> Although voting rights restoration is possible in many states, and some recent progress has been made,<sup>198</sup> it is frequently a difficult process that varies widely across states.<sup>199</sup> 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.<sup>200</sup> While Attorney General Holder’s recent statements in support of the easing of restoration requirements<sup>201</sup> 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.<sup>202</sup> 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.<sup>203</sup>

## Prison-based Gerrymandering

136. 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

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typically located. Only four states have passed legislation to end the practice of prison gerrymandering internally.<sup>204</sup>

### **Proof of Citizenship**

137. Citizenship checks have a racially discriminatory effect on Americans' ability to cast ballots and participate in democratic processes. Americans of color are disproportionately likely to lack the kinds of documents accepted as proof of citizenship.<sup>205</sup> 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 U.S. 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.
138. 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.<sup>206</sup> 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.<sup>207</sup>

### **Protecting Language Minority Voters**

139. 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.<sup>208</sup> Citizens who are not yet fluent in English<sup>209</sup> 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.<sup>210</sup>

### **DC Voting Rights**

140. 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.<sup>211</sup> 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\***

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

- a) 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.

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#### 142. Photo ID

- a) 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.
- b) 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.

#### 143. National Voter Registration Act Enforcement

- a) The 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.
- b) 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.
- c) 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.

#### 144. Criminal Disenfranchisement

- a) 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.<sup>212</sup>
- b) 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.
- c) 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).

#### 145. Prison-based Gerrymandering

- a) 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.

#### 146. Proof of Citizenship

- a) 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.

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#### 147. Protecting Language Minority Voters

- a) 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:
1. Ramp up Section 203<sup>213</sup> enforcement efforts through field investigations, use of monitors, demand letters, and litigation where necessary;
  2. Educate jurisdictions about Section 208<sup>214</sup> as there is often confusion by poll workers about what rights Section 208 guarantees and engage in litigation where necessary; and
  3. Utilize Section 2<sup>215</sup> 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 groups<sup>216</sup>).

#### 148. DC Voting Rights

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

\*These recommendations were formulated by The Leadership Conference on Civil and Human Rights and contributors to this section. The Leadership Conference Education Fund, a 501(c)(3) organization, takes no position on any legislative proposal.

*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.*



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## Discrimination against Women of Color

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### **2008 Concluding Observations of the Committee**

¶ 17. *The Committee recommends that “the State party undertake further studies to identify the underlying causes of de facto segregation and racial inequalities in education, with a view to elaborating effective strategies aimed at promoting school desegregation and providing equal educational opportunity in integrated settings for all students. In this regard, the Committee recommends that the State party take all appropriate measures, including the enactment of legislation,—to restore the possibility for school districts to voluntarily promote school integration through the use of carefully tailored special measures adopted in accordance to article 2, paragraph 2, of the Convention.”*

¶ 26. *The Committee recommends that “the State party increase its efforts to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities.”*

¶ 28. *The Committee recommends that “the State party take all appropriate measures, ... to combat de facto discrimination in the workplace and ensure the equal and effective enjoyment by persons belonging to racial, ethnic and national minorities of their rights under article 5 (e) of the Convention. The Committee further recommends that the State party take effective measures, including the enactment of legislation, such as the proposed Civil Rights Act of 2008,—to ensure the right of workers belonging to racial, ethnic and national minorities, including undocumented migrant workers, to obtain effective protection and remedies in case of violation of their human rights by their employer.”*

¶ 33. *The Committee recommends that “the State party continue its efforts to address persistent racial disparities in sexual and reproductive health. in particular by: Improving access to maternal health care, family planning, pre- and post- natal care and emergency obstetric services, inter alia, through the reduction of eligibility barriers for Medicaid coverage; Facilitating access to adequate contraceptive and family planning methods; and Providing adequate sexual education aimed at the prevention of unintended pregnancies and sexually-transmitted infections.”*

### **Introduction**

149. 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**

150. *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). 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.

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151. Since the filing of its CERD report, 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, 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.
152. *Equal Pay*: 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. This is significantly less than the 77 cents all women working full time are paid. 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.<sup>217</sup> Also, the president ordered the Office of Personnel Management to evaluate the gender pay gap in the federal workforce.
153. *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. 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.<sup>218</sup> And 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.<sup>219</sup> 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.<sup>220</sup>
154. *Pregnancy in the Workplace*: While many pregnant women are able to work through pregnancy without difficulty, some women need temporary job modifications in order to continue working safely through their pregnancies. 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. 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. 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.<sup>221</sup>

### **Equal Access to Educational Opportunities**

155. The proliferation of “zero tolerance” school discipline policies is having a disproportionate effect on girls 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.<sup>222</sup> 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**

156. *Section 1557*: Section 1557 of the Affordable Care Act (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.

157. *Expanding Health Coverage through Medicaid:* The Supreme Court's decision upholding the 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.<sup>223</sup> 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.<sup>224</sup>
158. *Reproductive Health, Contraception, and Family Planning:* Women of color have lower rates of contraceptive use than other women due, in part, to costs.<sup>225</sup> The ACA now requires private insurance plans to cover contraception with no cost-sharing, removing one of the key barriers women of color face to using these services. Recent data shows that 24 million more prescriptions for oral contraceptives were filled with no co-pay in 2013 than in 2012.<sup>226</sup>
159. 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.<sup>227</sup> 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 1 million people of color<sup>228</sup> and 687,000 women will remain uninsured.<sup>229</sup>
160. 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.<sup>230</sup> Yet between FY 2010-FY 2013, funding for Title X was cut by a total of \$39.2 million—a 12.3 percent reduction.<sup>231</sup>
161. 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, 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.<sup>232</sup>
162. *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

163. According to the Centers for Disease Control (CDC), 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.<sup>233</sup> 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."<sup>234</sup>

164. 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.
165. 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.
166. 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.
167. 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.
168. In addition, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 (HCPA) provided new federal investigative and enforcement tools to address gender-based and gender identity-based hate crimes. Over the past three 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\*

### 169. Economic Security for Women

- a) The Department of Labor 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.

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- b) 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.
  - c) 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.

#### **170. Equal Access to Educational Opportunities**

- a) The 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.
- b) 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, 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.

#### **171. Discrimination in Health Care**

- a) The Department of Health and Human Services should promptly issue comprehensive rules implementing Section 1557 and robustly enforce this important antidiscrimination provision.
- b) The Obama administration should ensure that Title X can meet the needs of low-income women, by increasing funding for Title X.
- c) 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.

#### **172. Violence Against Women**

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) 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.

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\*These recommendations were formulated by The Leadership Conference on Civil and Human Rights and contributors to this section. The Leadership Conference Education Fund, a 501(c)(3) organization, takes no position on any legislative proposal.

*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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## Recommendations\*

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Below is a compilation of all the recommendations in the report.

### **Criminal Justice**

#### ***Discriminatory Law Enforcement and Prosecutorial Practices***

- The Department of Justice (DOJ) should revise its June 2003 guidance on racial profiling to clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of profiling. 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 Federal Communications Commission 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 disfranchising convictions, and oppose restrictions for those on parole or probation or with unpaid fees or fines.

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- 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.\*

### ***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 Department of Education's (DOE) 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.

### **Education**

- 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. The Department of Education (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 Justice and Education departments 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**

#### ***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 adoption of, 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***

- In order to improve access to higher skilled and higher paying jobs in nontraditional careers for women and minorities, the 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.
- DOL should update its 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 the Department of Labor should adopt

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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 non-discrimination 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 urge Congress 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, the Protecting Older Workers Against Discrimination Act, the Equal Employment Opportunity Restoration Act, Civil Justice Tax Fairness Act, and the Arbitration Fairness Act.

## **Housing**

### ***Housing Segregation***

- The 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.

## Immigration Policy

- 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: 1) 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; 2) 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); 3) provide an administrative appeal process for immigrants who faced such procedures; and 4) 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: 1) clarify and publicize the processes for immigrants involved in labor and civil rights cases to obtain immediate immigration status and work authorization; 2) prohibit civil immigration or criminal arrests of workers in the context of workplace enforcement actions; 3) look into labor and civil rights complaints before I-9 or other worksite enforcement actions; and 4) prevent employers from abusing I-9 or E-Verify procedures to violate workers' rights.
- The Obama administration should fine tune the 2012 Deferred Action for Childhood Arrivals (DACA) policy, which removed the threat of deportation for many immigrants who had no say in their legal status, so as to eliminate unnecessary cut-offs that deprive some deserving immigrants of relief. The administration should also follow the successful model of DACA by creating similar administrative relief programs for other categories of immigrants who are otherwise law-abiding and have strong ties to family, community, or work here in the U.S.
- The Obama administration should replace the overbroad 2011 civil enforcement priorities memo with DHS-wide guidance that limits and better defines the priority categories.
- The Obama administration should build upon the prosecutorial discretion memoranda issued by former U.S. Immigration and Customs Enforcement (ICE) Director John Morton and his predecessors by: 1) ensuring the memoranda apply to all of the Department of Homeland Security (DHS), not just to ICE; 2) creating a presumption of hardship for people with ties to the country; 3) applying deferred action with work authorization (not just administrative closure) to compelling cases; 4) giving timeframes for the grants of discretion, to provide recipients with some stability; 5) evaluating the use of prosecutorial discretion at each stage of the enforcement process; 6) treating some requests for prosecutorial discretion in groups, for example, workers in certain labor situations; 7) ensuring agency compliance with memos governing victims and sensitive locations cases; and 8) establishing a review process at DHS Headquarters.
- The Obama administration should require a bond hearing for anyone detained, shortly after being taken into custody and again upon being held for more than 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 Secure Communities program, 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: 1) end the Operation Streamline program; 2) implement all recommendations on use of force from the Police Executive Research Forum, and strengthen oversight and accountability regarding inappropriate use of force; 3) roll back the U.S. Customs and Border Protection's (CBP) claimed

100-mile authority; 4) create enforceable standards and provide effective oversight for CBP short-term holding facilities; 5) carefully limit the use of drones; 6) equip all CBP officers with lapel cameras; and 7) 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.

## **Voting**

### ***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.
- The 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.

### ***National Voter Registration Act Enforcement***

- 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. The 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 urge Congress to pass the Democracy Restoration Act, which would restore voting rights in federal elections to disenfranchised individuals upon their release from incarceration.\*
- 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, the Department of Justice 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).

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### ***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 203 enforcement efforts through field investigations, use of monitors, demand letters, and litigation where necessary;
  - Educate jurisdictions about Section 208 as there is often confusion by poll workers about what rights Section 208 guarantees and engage in litigation where necessary; and
  - Utilize Section 2 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 groups).

### ***DC Voting Rights***

- The Obama administration should support passage of laws granting the citizens of the District of Columbia the right to full congressional representation.

### ***Women of Color***

#### ***Economic Security for Women***

- The 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 urge Congress to adopt 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 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

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Language Learner status, 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.

### ***Discrimination in Health Care***

- The Department of Health and Human Services 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 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.

\*These recommendations were formulated by The Leadership Conference on Civil and Human Rights and contributors to this report. The Leadership Conference Education Fund, a 501(c)(3) organization, takes no position on any legislative proposal.

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## Endnotes

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  13. Nat'l Police Misconduct Reporting Project, 2010 Annual Report, *available at* <http://www.policemisconduct.net/statistics/2010-annual-report/> (last accessed June 11, 2014) [hereinafter NPMRP].
  14. *Id.*
  15. *Id.*
  16. *See* Floyd v. City of New York, 813 F. Supp. 2d 417 (S.D.N.Y. 2011).
  17. Brian Bennet, Border agency removes its own chief of internal affairs, L.A. Times, June 6, 2014, <http://www.latimes.com/nation/la-na-border-patrol-20140610-story.html>.
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  19. The Special Litigation Section can, for example, review the practices of law enforcement agencies that may be violating people's federal rights pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. If a law enforcement agency receives federal funding, the Special Litigation Section can investigate pursuant to the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, and Title VI of the Civil Rights Act of 1964, which forbid discrimination on the basis of race, color, or national origin by agencies receiving federal funds. It may act if it finds a pattern or practice by the law enforcement agency that systemically violates people's rights. Harm to a single person, or isolated action, is usually not enough to show a pattern or practice that violates these laws. Overview: Conduct of Law Enforcement Agencies, U.S. Dep't of Justice, <http://www.justice.gov/crt/about/spl/police.php>.
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96. *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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104. *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>.
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108. For example, a consent decree between the Justice Department 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).
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121. Dear Colleague Letter on School Climate and Discipline, Office for Civil Rights, U.S. Dep’t. of Educ. and Civil Rights Division, U.S. Dep’t of Justice, (Jan. 8, 2014), [www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf).
122. *Id.* at 11-13.
123. CERD/C/USA/7-9 46.
124. *See Plyer v. Doe*, 457 U.S. 202 (1982).
125. 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>.
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127. 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>.
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137. Soc’y of Human Resources Management, SHRM Survey Findings: Background Checking – The Use of Credit Background Checks in Hiring Decisions (July 19, 2012).
138. *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).
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155. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).
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160. 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.
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- Information (Apr. 8, 2014), *available at* <http://www.whitehouse.gov/the-press-office/2014/04/08/executive-order-non-retaliation-disclosure-compensation-information>.
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165. 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>.
166. *See* discussion *infra* on class actions.
167. 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*).
168. 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).
169. 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.
170. 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).
171. 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
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- from gross income.
172. 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.
173. *Village of Arlington Heights v. Metropolitan Housing Development Corp*, 429 U.S. 252 (1977).
174. 42 U.S.C. § 3608.
175. *See* Out of Reach, Nat'l Low Income Housing Coal. (2014), <http://nlihc.org/oor/2014>.
176. *See* Patrick Sharkey, *Stuck in Place: Urban Neighborhoods and the End of Progress toward Racial Equality* (2013).
177. Jacob S. Rugh and Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 *Am. Sociological Rev.* 629 (2010).
178. 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>.
179. National Fair Housing Alliance, *The Banks are Back – Our Neighborhoods are Not: Discrimination in the Maintenance and Marketing of REO Properties* (Apr. 2012) (numerous HUD administrative complaints filed against Bank of America, Deutsche Bank, US Bank, Wells Fargo).
180. *See, e.g.*, Ingrid Gould Ellen and Keren Mertens Horn, *Furman Ctr. for Real Estate and Urban Pol'y at N. Y. Univ., Do Federally Assisted Households Have Access to High Performing Public Schools?* (Nov. 2012), available at [http://www.prrac.org/full\\_text.php?item\\_id=12623&newsletter\\_id=0&header=Current%20Projects](http://www.prrac.org/full_text.php?item_id=12623&newsletter_id=0&header=Current%20Projects).
181. *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>.
182. *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>.
183. *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/>.
184. 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>.
185. 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
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- 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.
186. 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).
  187. 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/>.
  188. 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.
  189. 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://sentencingproject.org/doc/publications/fd\\_State\\_Level\\_Estimates\\_of\\_Felon\\_Disen\\_2010.pdf](http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf).
  190. Jean Chung, *The Sentencing Project, Felony Disenfranchisement: A Primer 2* (June 2014), available at [http://sentencingproject.org/doc/publications/fd\\_Felony%20Disenfranchisement%20Primer.pdf](http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf).
  191. *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>.
  192. 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>.
  193. 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>.
  194. 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](http://www.hrw.org/reports/2008/05/04/targeting-blacks) (2008), available at <http://www.hrw.org/reports/2008/05/04/targeting-blacks>.
  195. Concluding observations of the Committee on the Elimination of Racial Discrimination, U.N. Doc. CERD/C/USA/CO/6 (May 2008).
  196. Laleh Ispahani, *Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and Other Democracies 3* (2006), available at <http://www.aclu.org/votingrights/exoffenders/25663pub20060525.html>.
  197. Three states, Florida, Iowa, and Kentucky, permanently disenfranchise 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



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- 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).
198. 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](http://www.paul.senate.gov/?p=press_release&id=1109).
199. 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>.
200. 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>.
201. In February 2014, Attorney General Holder called upon state leaders and elected officials to pass reforms to restore voting rights. Although the called for reforms are more limited than those provided in the Democracy Restoration Act, they are welcome statements from the DOJ. Attorney General Eric Holder, Remarks on Criminal Justice Reform at Georgetown University Law Center (Feb. 11, 2014), *available at* <http://www.justice.gov/iso/opa/ag/speeches/2014/ag-speech-140211.html>.
202. Am. Civil Liberties Union, Voting Rights for People with Criminal Records, <http://www.aclu.org/map-state-felony-disfranchisement-laws> (last visited April 7, 2014) (contains a map detailing state laws).
203. The DOJ proposal includes restoring the right to vote for all who have served their terms in prison or jail, completed their parole or probation, and paid their fines. Attorney General Eric Holder, Remarks on Criminal Justice Reform at Georgetown University Law Center (Feb. 11, 2014), *available at* <http://www.justice.gov/iso/opa/ag/speeches/2014/ag-speech-140211.html>.
204. Those states include California, Delaware, Maryland, and New York.
205. E.g., Brennan Ctr. for Justice at NYU Sch. of Law, Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification 2 (2006), *available at* [http://www.brennancenter.org/dynamic/subpages/download\\_file\\_39242.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_39242.pdf); Matt A. Barreto et al., Rates of Possession of Valid Identification, and Public Knowledge of the Voter ID Law in Pennsylvania 34-35, Table 1, Table 3 (July 16, 2012), *available at* <http://www.aclupa.org/downloads/BarretoReport.pdf>; Matt A. Barreto and Gabriel R. Sanchez, Rates of Possession of Accepted Photo Identification, Among Different Subgroups in the Eligible Population, Milwaukee County, Wisconsin 25-26, 44, 46, Table 14, Table 16 (April 23, 2012), *available at* <http://www.aclu.org/files/assets/062-10-exhibitjexpertreport.pdf>.
206. Eric Lipton and Ian Urbina, In 5-Year Effort, Scant Evidence of Voter Fraud, N.Y. Times at A1, April 12, 2007, *available at* <http://www.nytimes.com/2007/04/12/washington/12fraud.html?pagewanted=all>.
207. Gonzalez Plaintiffs' Proposed Findings of Fact No. 603, Gonzalez v. Arizona, No. CV 06-1268-PHX-ROS (D. Ariz., May 9, 2006).
208. *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).
209. 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
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- 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>.
210. 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>.
  211. 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.
  212. *Democracy Restoration Act of 2014*, H.R. 4459, S. 2235, 113th Cong. (2014).
  213. 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).
  214. 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).
  215. 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).
  216. 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).
  217. 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>.
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  219. Tom W. Smith and Jibum Kim, *Nat'l Opinion Research Ctr., Univ. of Chi., Paid Sick Days: Attitudes and*



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