



September 10, 2020

Via E-mail

Mr. Clément Nyaletsossi Voule
Special Rapporteur on the Rights to Freedom of Assembly and of Association
Palais des Nations, CH-1211
Geneva 10
Switzerland
freeassembly@ohchr.org
bjebeli@ohchr.org

Re: **Human Rights Violations against Peaceful Protesters**

Dear Mr. Voule:

On behalf of Access Now and the University of Southern California Gould School of Law's International Human Rights Clinic (USC IHRC), with the support of the international law firm Foley Hoag LLP, we are writing to call your attention to the intensifying human rights violations committed by the United States Government against peaceful demonstrators in the United States. Access Now is a non-governmental organization that works to defend the digital rights of users at risk around the world through policy, advocacy, and technology support, grants, and convenings like RightsCon. The USC IHRC engages in advocacy projects to confront some of the most pressing human rights concerns in the U.S. and globally.

I. Introduction

Over the past few months, the United States Government has responded to peaceful demonstrations by deploying militarized police forces into communities without State or local official invitation or authorization. These forces have arbitrarily detained protesters in unarmed vehicles and generally suppressed the freedoms of expression, press, and assembly in major U.S. cities. Such conduct by federal officials implicate major human rights obligations, including the rights of: freedom of expression, press, and access to information;¹

¹ See International Covenant on Economic, Social and Cultural Rights, Article 1; Universal Declaration of Human Rights, Article 19; International Covenant on Civil and Political Rights, Article 19.



peaceful assembly and association;² movement;³ from arbitrary arrest and detention;⁴ non-discrimination in economic, social, and cultural rights;⁵ privacy;⁶ and from torture and cruel, inhuman or degrading treatment or punishment⁷ encompassed in the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, and the Universal Declaration of Human Rights.

As your Office is aware, the United States Government has engaged in violent crackdowns on peaceful demonstrators advocating for comprehensive reforms to combat police brutality and systemic racism as part of the broader “Black Lives Matter” social movement. Recent peaceful demonstrations began on 29 May 2020 in response to the extrajudicial killing of George Floyd, an unarmed African American man killed by police in Minneapolis, Minnesota. By 6 June 2020, demonstrations grew to include millions of people in all 50 states and dozens of cities worldwide.⁸ Amidst the surge of calls for an end to police violence, demonstrators have been subjected to unlawful arrests, arbitrary detention, cruel treatment, and suppression of freedom of expression by militarized police forces.

II. Mass Protests Against Police Brutality, Systemic Racism, and Anti-Blackness Throughout the Summer 2020

As early as 1 June 2020, in response to peaceful protests in Washington D.C., law enforcement officials began disbursing demonstrations through the use of tear-gas and particularly in Lafayette Square directly outside the White House.⁹ Despite global response to the extrajudicial killing of George Floyd, police brutality and extrajudicial killing of people of African descent by law enforcement officers continue. For example:

² See International Covenant on Civil and Political Rights, Articles 21 & 22, International Covenant on Economic, Social and Cultural Rights, Article 8; ; Universal Declaration of Human Rights, Article 20.

³ See International Covenant on Civil and Political Rights, Article 12.

⁴ See International Covenant on Civil and Political Rights, Article 9; Universal Declaration of Human Rights, Article 9.

⁵ See International Covenant on Economic, Social and Cultural Rights, Article 2.

⁶ See International Covenant on Civil and Political Rights, Article 17; Universal Declaration of Human Rights, Article 12.

⁷ See International Covenant on Civil and Political Rights, Article 7; Universal Declaration of Human Rights, Article 5.

⁸ Fabiola Cineas, *Vox News*, “Protests for Black Lives are Still Happening” (16 July 2020), available at <https://www.vox.com/2020/7/16/21325275/black-lives-matter-protests-are-still-happening>.

⁹ Mike Baker, *The New York Times*, “Federal Agents Envelop Portland Protest, and City’s Mayor, in Tear Gas” (23 July 2020), available at <https://www.nytimes.com/2020/07/23/us/portland-protest-tear-gas-mayor.html>.



- On 7 August 2020, a Georgia State Patrol trooper fired a single shot that killed a 60-year-old Black man during a traffic stop.¹⁰
- On 15 August 2020, law enforcement officers shot and killed a 32-year-old Black man during a traffic stop in Pasadena, California.¹¹
- On 21 August 2020, a Black man was shot ten times by local police officers in Lafayette, Louisiana.¹²
- On 23 August 2020, in Kenosha, Wisconsin, a Black man was shot seven times in the back by police officers as he was getting into his car with his children inside.¹³
- On 31 August 2020, Los Angeles sheriff deputies fatally shot a 29 year-old Black man when he ran away after the officers tried to stop him for a bike traffic violation.¹⁴
- On 2 September 2020, a Washington D.C. police officer killed a Black man after seeing a live-streamed video of him, who they recognized, and others with weapons in a car.¹⁵ Police tracked the vehicle and bodycam footage reveals that an officer fired one shot that fatally killed the victim.¹⁶

¹⁰ Russ Bynum, *AP News*, “Georgia trooper charged with murder in traffic stop shooting” (14 August 2020) available at <https://apnews.com/a0150795ca1837b86458791f731f88f0>.

¹¹ Richard Winton, *Los Angeles Times*, “Police Shooting Death of Black Man Prompts Protests in Pasadena” (20 August 2020), available at <https://www.latimes.com/california/story/2020-08-20/police-shooting-death-of-black-man-prompts-protests-in-pasadena>.

¹² Chandler Thorton and Dakin Andone, *CNN*, “Louisiana officials are investigating the police shooting of a 31-year-old Black man” (24 August 2020), available at <https://www.cnn.com/2020/08/22/us/trayford-pellerin-louisiana-police-shooting/index.html>.

¹³ Elliot McClaughlin and Amir Vera, *CNN*, “Wisconsin police shoot a Black man as his children watch from a vehicle, attorney says” (24 August 2020), available at <https://www.cnn.com/2020/08/24/us/kenosha-police-shooting-jacob-blake/index.html>.

¹⁴ Sarah Moon and Steve Almasy, *CNN*, “Dijon Kizzee was running from deputies when he was shot, lawyers say” (4 September 2020), available at <https://www.cnn.com/2020/09/02/us/los-angeles-dijon-kizzee-shooting/index.html>.

¹⁵ Katie Mettler, Perry Stein, and Hannah Natanson, *The Washington Post*, “D.C. police shooting of Deon Kay spurs calls for change at protests, vigil Saturday” (5 September 2020), available at https://www.washingtonpost.com/local/protests-continue-saturday-in-dc-after-police-fatally-shoot-18-year-old-deon-kay-in-southeast/2020/09/05/f72a910e-eed6-11ea-ab4e-581edb849379_story.html.

¹⁶ *Id.*



The totality of these recent tragic events have led to continuous demonstrations across the country. The recent extrajudicial shooting of a Black man prompted mass demonstrations in Kenosha, Wisconsin, while protests marked their 100th day in Portland, Oregon (further detailed below).¹⁷ In Los Angeles, demonstrations continue as advocates demand justice for the shooting of a 29-year-old Black man.¹⁸

As a response to these protests, law enforcement officials have continued to suppress advocates through the use of weapons, militia, and tear gas. For example, on 2 June 2020, videos emerged of a female protester being detained in an unmarked car by an undercover police officer in San Diego, California.¹⁹ Similar incidents have subsequently been reported. The U.S. Government response has been comprised of threats of increased state violence that reinforce the very same injustices that demonstrators are seeking to end.²⁰ High-ranking U.S. officials, such as U.S. Attorney General William Barr, have resorted to mischaracterizing peaceful protesters as “anarchists” while limiting peoples’ right to freedom of peaceful assembly, freedom of association, and freedom from threats or use of violence, harassment, persecution, intimidation or reprisals.²¹

A. Global Call for Action Following the United States’ Response to Peaceful Protesters

On 5 June 2020, this mandate joined other independent experts in issuing a joint “Statement on the Protests against Systemic Racism in the United States.”²² This statement reflected the early fears of a militarized government response to the movement for racial justice in the U.S. and call for tangible structural changes to address systemic racial inequality.²³ On 10 June 2020, this mandate joined a group of independent experts condemning

¹⁷ Gillian Flaccus, *AP News*, “Portland’s grim reality: 100 days of protests, many violent” (3 September 2020), available at <https://apnews.com/b57315d97dd2146c4a89b4636faa7b70>.

¹⁸ Laura Newberry, *Los Angeles Times*, “Demonstration over Dijon Kizzee’s fatal shooting ends with deputies, protesters clashing” (6 September 2020), available at <https://www.latimes.com/california/story/2020-09-06/dijon-kizzee-demonstration-blm-deputies-protesters-south-los-angeles>.

¹⁹ Alex Riggins, Teri Figueroa, *The LA Times*, “Video Shows Undercover San Diego Police Arresting Protester, Rushing Her into Unmarked Van” (6 June 2020), available at <https://www.latimes.com/california/story/2020-06-06/video-undercover-san-diego-police-arresting-protester-unmarked-van>.

²⁰ UNHCHR, “Statement on the Protests against Systemic Racism in the United States” (5 June 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25927&LangID=E>.

²¹ Thomas Fuller, *The New York Times*, “Judge Rejects Challenge to Federal Agents Targeting Portland Protesters” (24 July 2020), available at <https://www.nytimes.com/2020/07/24/us/portland-federal-jurisdiction-court-judge.html>.

²² UNHCHR, “Statement on the Protests against Systemic Racism in the United States” (5 June 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25927&LangID=E>.

²³ *Id.*



the U.S. Government’s crackdown on peaceful protests noting, “...abuse and excessive use of force during peaceful assemblies is inexcusable at any time but it is especially distressing when demonstrators are precisely calling for accountability on police brutality and systemic racism in policing.”²⁴ Experts condemned the use of tear gas, batons, and rubber bullets and referenced a video depicting a seventy-five year old man being pushed to the ground and severely injured by police in Buffalo, New York. Independent UN experts also spoke against the increased militarization of the U.S. Government’s response, the deployment of over 62,000 National Guard soldiers, and police attacks on journalists.²⁵

By 17 June 2020, the situation in the U.S. had escalated, triggering the Human Rights Council to convene an “Urgent Debate on Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality And Violence Against Peaceful Protests.” This debate prioritized the necessity of confronting the global legacy of colonialism and slavery in order to tackle the root causes of systemic racial inequality.²⁶ As Deputy Secretary General Amina Mohammed expressed, “Not enough can ever be said about the deep trauma and inter-generational suffering that has resulted from the racial injustice perpetrated through centuries, particularly against people of African descent. To merely condemn expressions and acts of racism is not enough. We must go beyond and do more.”²⁷ Meanwhile, George Floyd’s brother brought to light how peaceful protesters honoring his brother were met with tear gas and rubber bullets at the hands of the police.²⁸ While efforts to establish an international commission of inquiry to investigate systemic racism in law enforcement in the United States ultimately fell short, this convening signaled the beginning of international attention on the massive crackdown on U.S. protesters that was to come.

On 19 June 2020, the Human Rights Council adopted a resolution strongly condemning law enforcement’s racially discriminatory, violent practices against people of African descent and the excessive use of force against peaceful protesters. A resolution on peaceful protest in the 44th Human Rights Council session, which concluded in July 2020,

²⁴ UNHCHR, “United States: UN Experts Condemn Crackdown On Peaceful Protests And Highlight Calls To Overhaul Policing” (10 June 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25948&LangID=E>.

²⁵ *Id.*

²⁶ UN Human Rights Council, “Human Rights Council Concludes Urgent Debate On Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality And Violence Against Peaceful Protests” (18 June 2020), available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25974&LangID=E>.

²⁷ UN Geneva, “Human Rights Council Holds An Urgent Debate On Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality And Violence Against Peaceful Protests” (17 June 2020), available at <https://www.ungeneva.org/en/news-media/press/taxonomy/term/175/60215/human-rights-council-holds-urgent-debate-current-racially>.

²⁸ *Id.*



recalled this landmark resolution while further calling upon states to protect protesters “without discrimination, where necessary, against any form of threat or harassment.”²⁹ United Nations High Commissioner for Human Rights, Michelle Bachelet, called on independent experts to “...examine government responses to anti-racism peaceful protests, including the alleged use of excessive force against protesters, bystanders, and journalists.”³⁰ Fionnuala Ní Aoláin, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, urged the U.S. Government to protect the right to freedom of expression, press, association, and peaceful assembly and admonished the U.S. Government for utilizing terrorism rhetoric to describe largely peaceful protesters. Aoláin declared, “It is regrettable that the United States has chosen to respond to the protests in a manner that undermines these fundamental rights.”³¹

Most recently, on 30 July 2020, this mandate joined Special Rapporteur Aoláin and other mandates to warn of “closing digital space” amid the COVID-19 pandemic, decrying State measures that “leverage the Internet and digital technologies to quell dissent, engage in unlawful surveillance, and strip individuals of their capacity for collective action, both online and off.” The six experts further extolled “the protests movements by persons of African descent against systemic violence and institutional racism and called on technology companies to meet their responsibility to respect human rights.”³²

B. Federal Agents and Local Law Enforcement’s Use of Excessive Force Against Protestors

Amnesty International reports that from 26 May to 5 June 2020 there have been an estimated 125 separate incidents of police violence in the U.S. against peaceful protesters in 40 states and the District of Columbia.³³ On 4 August 2020, Amnesty International USA released a detailed report “documenting the widespread and egregious human rights violations by [United States] police officers against protesters, medics, journalists and legal observers who gathered to protest the unlawful killings of Black people by the police and to call for

²⁹ See UN Human Rights Council Resolution A/HRC/RES/44/20, “The promotion and protection of human rights in the context of peaceful protests” (13 July 2020), available at <https://undocs.org/A/HRC/44/L.11>.

³⁰ UN News, “Human Rights Council Calls On Top UN Rights Official To Take Action On Racist Violence” (19 June 2020), available at <https://news.un.org/en/story/2020/06/1066722>.

³¹ *Id.*

³² UNHCHR, “UN experts warn of closing digital space amid COVID-19 pandemic” (30 July 2020) available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26139&LangID=E>.

³³ Amnesty International, “USA: The World is Watching Mass Violations by U.S. Police Of Black Lives Matter Protesters’ Rights” (2020), available at <https://www.amnesty.org/download/Documents/AMR5128072020ENGLISH.PDF>.



systemic reform in May and June of 2020.”³⁴ The report highlights the use of tear gas and pepper spray by police officers as a first response during COVID-19, unnecessary and excessive force used against protesters including the use of batons, rubber bullets, and sponge rounds.³⁵ The reports include “89 cases of specific use of tear gas in cities in 34 states, and 21 incidents of unlawful use of pepper spray in 15 states and the District of Columbia.”³⁶ In light of their findings, “Amnesty International USA, is calling on Congress to pass the Protect our Protestors Act or 2020 (HR 7315).”³⁷

The U.S. Government’s crackdown on peaceful racial justice protesters, whom the government now labels as “sick and deranged anarchists and agitators,”³⁸ has become extremely violent in the past couple months. On 26 June, President Trump issued an executive order for the protection of federal monuments and buildings.³⁹ Under this order, the U.S. Government sent federal officers, including U.S. Marshals, agents from Customs and Border Protection and Immigration and Customs Enforcement, and agents from the Federal Protective Service, to Portland, Oregon; Seattle, Washington; and Washington, D.C. in July under the pretense of protecting federal buildings and quelling riots.⁴⁰ In spite of calls from local officials to leave the city, federal agents remained and lashed out at peaceful protesters, medics, and press officers with excessive force and the use of tear gas, batons, pepper balls, and “less-lethal” weapons. Federal agents also forcibly detained protesters in unmarked vehicles and used rapid deployment teams to violently suppress demonstrations.⁴¹ *The New York Times*

³⁴ Amnesty International, “USA: Law enforcement violated Black Lives Matter protesters’ human rights, documents acts of police violence and excessive Force” (2020) available at <https://www.amnesty.org/en/latest/news/2020/08/usa-law-enforcement-violated-black-lives-matter-protesters-human-rights/>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Mike Baker and Zolan Kanno-Youngs, *The New York Times*, “Federal Agencies Agree to Withdraw From Portland, with Conditions” (31 July 2020), available at <https://www.nytimes.com/2020/07/29/us/protests-portland-federal-withdrawal.html>.

³⁹ The White House, “Executive Order on Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence” (26 June 2020), available at <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-american-monuments-memorials-statues-combating-recent-criminal-violence/>.

⁴⁰ Mike Baker, Thomas Fuller and Sergio Olmos, *The New York Times* “Federal Agents Push Into Portland Streets, Stretching Limits of Their Authority” (31 July 2020), available at <https://www.nytimes.com/2020/07/25/us/portland-federal-legal-jurisdiction-courts.html?auth=linked-google>.

⁴¹ US Human Rights Network, “Federal Officers Violate Protestors’ Human Rights In Portland” (28 July 2020), available at <https://ushrnetwork.org/news/242/100/Federal-officers-violate-protestors-human-rights-in-Portland?emci=d056dd88-fcd0-ea11-9b05-00155d03bda0&emdi=929b9215-fed0-ea11-9b05-00155d03bda0&ceid=7964700>.



reported that federal officers, armed with batons and riot gear, flooded the streets surrounding the federal courthouse in Portland while firing flash grenades and tear gas. Even while local officials such as the Attorney General attempted to pursue legal action to drive out federal agents from the city, over sixty arrests took place and citizens were charged with dozens of federal criminal offenses. For over sixty nights, protesters in Portland have been tear gassed by federal agents. The mayor of Portland who called the federal deployment an abuse of authority was also teargassed by federal officials.⁴²

On 15 July 2020, a protestor was abducted in a white van by armed men dressed in camouflage while participating in a protest demonstration. He was never informed of the reason for his arrest and was given no record or paperwork upon his release.⁴³ Video footage emerged of a U.S. Navy veteran being beaten and teargassed.⁴⁴ Another man was struck in the head with an impact munition by police, suffering severe skull fractures and serious facial injuries.⁴⁵ A “Wall of Moms” and “Wall of Dads” has developed with hundreds of mothers and fathers linking arms and protesting against the presence of federal forces.⁴⁶ Several street medics in Portland, represented by the ACLU, are pursuing legal action against the Department of Homeland Security, U.S. Marshals Service, and the City of Portland for brutally attacking them with rubber bullets, pepper spray, tear gas, and batons while attending to peaceful protesters.⁴⁷

While there is no comprehensive total of the amount of protesters injured or detained in Portland, UN Human Rights Office Spokesperson, Ms. Throssell, expressed, “Peaceful demonstrations that have been taking place in cities in the U.S., such as Portland, really must be able to continue without those participating in them - and also, the people reporting on

⁴² Mike Baker, Thomas Fuller and Sergio Olmos, *The New York Times*, “Federal Agents Push Into Portland Streets, Stretching Limits of Their Authority” (31 July 2020), available at <https://www.nytimes.com/2020/07/25/us/portland-federal-legal-jurisdiction-courts.html?auth=linked-google>.

⁴³ Thomas Fuller, *The New York Times* “Judge Rejects Challenge to Federal Agents Targeting Portland Protesters” (24 July 2020), available at <https://www.nytimes.com/2020/07/24/us/portland-federal-jurisdiction-court-judge.html>.

⁴⁴ John Ismay, *The New York Times* “A Navy Veteran Had a Question for the Feds in Portland. They Beat Him in Response” (22 July 2020) available at <https://www.nytimes.com/2020/07/20/us/portland-protests-navy-christopher-david.html>.

⁴⁵ Sergio Olmos, Mike Baker and Zolan Kanno-Youngs, *The New York Times*, “Federal Agents Unleash Militarized Crackdown on Portland” (17 July 2020), available at <https://www.nytimes.com/2020/07/17/us/portland-protests.html>.

⁴⁶ Mike Baker, Thomas Fuller and Sergio Olmos, *The New York Times* “Federal Agents Push Into Portland Streets, Stretching Limits of Their Authority” (31 July 2020), available at <https://www.nytimes.com/2020/07/25/us/portland-federal-legal-jurisdiction-courts.html?auth=linked-google>.

⁴⁷ American Civil Rights Union, “ACLU Sues Feds, Portland Police For Attacking Medics At Protests” (22 July 2020), available at <https://www.aclu.org/press-releases/aclu-sues-feds-portland-police-attacking-medics-protests>.



them, the journalists - risking arbitrary arrest or detention, being subject to unnecessary, disproportionate or discriminatory use of force, or suffering other violations of their rights.”⁴⁸ In New York, a video of an eighteen year old transgender woman, depicted her being forcibly detained by plainclothes police officers and placed in an unmarked vehicle during an anti-police brutality demonstration. She was later charged with criminal mischief for damaging police cameras and making graffiti. While the New York Police Department maintained that unmarked vehicles are standard procedure for “warrant squad” arrests, these tactics closely resemble those of federal agents in Portland.⁴⁹

1. Increased Tension in Portland, Oregon as City Reached 100th Day of Protests

During the month of July, tensions rose in Portland, Oregon, as federal agents occupied the streets. On 29 July, 2020, Oregon and the U.S. Government agreed to withdraw federal agents from Portland, and clashes between demonstrators expressing divergent views simmered down with smaller protests of 100 to 200 people. A week after the agreement, on 7 August 2020, *Oregon Public Broadcasting* reported that some federal forces remained, but were not generally active during the protests that week.⁵⁰ As federal agents took a step back, local officers continue to respond to protesters with the use of excessive force. On 19 August 2020, Portland police “said they fired crowd control munitions and tear gas” into a crowd of 200 people.⁵¹ As tensions grew again during the last week of August, Portland officers responded with violence.⁵² For example, there is a “video of an officer chasing down and tackling a protester and then punching him repeatedly in the face.”⁵³ Federal leaders, including President Trump, have said that federal agents will not be fully withdrawn until local officials contain the unrest.⁵⁴ In addition, the U.S. Marshals Services has deputized some Portland state troopers, and the Mayor of Portland has sent the deputized state troopers into the city, allowing

⁴⁸ UN News, “Human Rights Office Decries Disproportionate Use Of Force In US Protests” (24 July 2020), available at <https://news.un.org/en/story/2020/07/1068971>.

⁴⁹ Mihir Zaveri and Michael Gold, *The New York Times* “Video of N.Y.P.D. Pulling Protester Into Unmarked Van Draws Criticism” (30 July 2020), available at <https://www.nytimes.com/2020/07/28/nyregion/nypd-protester-van.html>.

⁵⁰ Conrad Wilson and Jonathan Levinson, *Oregon Public Broadcasting*, “Some federal forces poised to leave Portland, others could remain through election” (7 August 2020), available at <https://www.opb.org/article/2020/08/07/federal-officers-leave-portland-election/>.

⁵¹ Reuters, *VOANews*, “Portland Police Use Tear Gas After Declaring Riot for 2nd Night,” (20 August 2020), available at <https://www.voanews.com/usa/portland-police-use-tear-gas-after-declaring-riot-2nd-night>.

⁵² Gillian Flaccus, *AP News*, “Portland’s grim reality: 100 days of protests, many violent” (3 September 2020), available at <https://apnews.com/b57315d97dd2146c4a89b4636faa7b70>.

⁵³ *Id.*

⁵⁴ Mike Baker, *The New York Times*, “As Federal Agents Retreat in Portland, protestors Return to Original Foe: Local Police” (2 August 2020), available at <https://www.nytimes.com/2020/08/02/us/portland-protests.html>.



for arrested protestors to be federally prosecuted.⁵⁵ This move appears to be a tactic by the Mayor to get around the newly elected Portland prosecutor, who has dismissed hundreds of cases against protesters.⁵⁶ President Trump has also recently renewed his threats to send back federal agents.⁵⁷

2. *Tensions in Kenosha, Wisconsin Erupt After Law Enforcement Shooting*

On 23 August 2020, in Kenosha, Wisconsin, two police officers shot a Black man in the back seven times as he was getting in the car after attempting to break up a fight.⁵⁸ The shooting occurred with the victim's three younger children in their car.⁵⁹ While he was receiving medical attention for injuries that left him paralyzed from the waist down, the victim was shackled to his hospital bed and under the watch of armed guard for several days after the shooting.⁶⁰ Advocates responded to the shooting with protests, and were met with aggressive and excessive police force, and "[t]he National Guard [was] called to the city".⁶¹ On 24 August 2020, *CNN* reported that the protesters that gathered at the Kenosha courthouse were met by police in riot gear, an armored vehicle was on the scene, and police threw gas into the crowd.⁶² During the night of 24 August 2020, as tensions rose, protestors threw water bottles at police officers and officers subsequently used chemical irritant and rubber bullets on the crowd.⁶³

⁵⁵ Faiz Siddiqui, Fenit Nirappil, and Mark Berman, *The Washington Post*, "After summer of chaos and confrontation, Portland braces again for more unrest" (3 September 2020), available at https://www.washingtonpost.com/national/after-summer-of-chaos-and-confrontation-portland-braces-again-for-more-unrest/2020/09/03/e7507eec-ee18-11ea-b4bc-3a2098fc73d4_story.html.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Elliot McClaughlin and Amir Vera, *CNN*, "Wisconsin police shoot a Black man as his children watch from a vehicle, attorney says" (24 August 2020), available at <https://www.cnn.com/2020/08/24/us/kenosha-police-shooting-jacob-blake/index.html>.

⁵⁹ *CNN*, "Jacob Black is paralyzed from the waist down, his father says" (25 August 2020), available at https://www.cnn.com/us/live-news/jacob-blake-kenosha-wisconsin-shooting-08-25-2020/h_a1b64cca97f5e27f97856dcffc428a60.

⁶⁰ John Eligon, Sarah Mervosh, and Richard A. Oppel Jr., *The New York Times*, "Jacob Blake Was Shackled in Hospital Bed After Police Shot Him" (28 August 2020), available at <https://www.nytimes.com/2020/08/28/us/jacob-blake-shackles-assault.html>.

⁶¹ Elliot McClaughlin and Amir Vera, *CNN*, "Wisconsin police shoot a Black man as his children watch from a vehicle, attorney says" (24 August 2020), available at <https://www.cnn.com/2020/08/24/us/kenosha-police-shooting-jacob-blake/index.html>.

⁶² *Id.*

⁶³ Erin Ailworth and Julie Wernau, *The Wall Street Journal*, "Kenosha, Wis., Protests Over Jacob Blake Police Shooting Turn Violent" (24 August 2020), available at <https://www.wsj.com/articles/violence-flares-in-kenosha-wis-after-video-shows-police-shooting-black-man-11598278903>.



On 26 August, 2020, a 17 year-old civilian opened fire on multiple protestors in Kenosha. Cellphone videos showed police officers engaging with and thanking armed civilians for being on the streets before the shooting.⁶⁴ On 28 August 2020, two Kenosha residents and college students described their experience being shoved into unmarked vehicles and transported to holding cells without being charged.⁶⁵ One of them stated that she was not allowed to make a phone call for over 24 hours and fellow detainees were denied medical care and bathroom access in the jail.⁶⁶ A group of volunteers that serve food to protestors was arrested at a Kenosha gas station.⁶⁷ Bystanders' cell phone videos captured law enforcement officers in unmarked vehicles arresting the volunteers with their guns drawn.⁶⁸ Officers did not identify themselves, and the volunteers were put in holding cells where they did not have water or phone access.⁶⁹

C. Journalists and Medics Targeted in the Wake of Protests

Journalists reporting live from peaceful demonstrations have also been the target of brutal police forces. Even after displaying press credentials, reporters in states such as California, Minnesota, Kentucky, Florida, Nevada, and New York have been harassed, arrested, and violently attacked by police during racial justice protests. President Trump's recent comments describing the news media as the "enemy of the people" and U.S. journalists as part of the "lamestream media" comprised of "truly bad people with a sick agenda," further reflect the U.S. Government's resolve to continue violating press freedom.⁷⁰ Some reports indicate over three hundred instances of attacks on journalists during protests.⁷¹ In response to

⁶⁴ Mark Guarino, Mark Berman, Jaelyn Peiser and Griff Witte, *The Washington Post*, "17-year-old charged with homicide after shooting during Kenosha protests, authorities say" available at <https://www.washingtonpost.com/nation/2020/08/26/jacob-blake-kenosha-police-protests/>.

⁶⁵ Adam Mahoney, *The Guardian*, "Kenosha marches on as protestors describe 'kidnap' by federal agents" (29 August 2020), available at <https://www.theguardian.com/us-news/2020/aug/29/kenosha-jacob-blake-protesters-police>.

⁶⁶ *Id.*

⁶⁷ Derek Hawkins, *The Washington Post*, "Video shows activists in Kenosha arrested by officers who jumped out of unmarked vehicle" (27 August 2020), available at <https://www.washingtonpost.com/nation/2020/08/27/video-shows-activists-kenosha-arrested-by-officers-who-jumped-out-unmarked-vehicle/>.

⁶⁸ *Id.*

⁶⁹ Harmeet Kaur, *CNN*, "Kenosha police arrested volunteers who were on their way to deliver food to protestors" (31 August 2020), available at <https://www.cnn.com/2020/08/31/us/kenosha-police-arrest-volunteers-food-trnd/index.html>.

⁷⁰ Marc Tracy and Rachel Abrams, *The New York Times*, "Police Target Journalists as Trump Blames 'Lamestream Media' for Protests" (12 June 2020), available at <https://www.nytimes.com/2020/06/01/business/media/reporters-protests-george-floyd.html>.

⁷¹ Sergei Klebnikov, *Forbes*, "Journalists Targeted While Covering Protests: 328 Press Freedom Violations And Counting" (6 June 2020), available at



this, the ACLU has filed a class action lawsuit in Minnesota and called for the cessation of violence against journalists.⁷² In a 1 June open letter, organizations such as The Society of Professional Journalists, Reporters Without Borders, the Committee to Protect Journalists, and the National Press Club, called on police to “...persuade your colleagues, commanders and chiefs, and the mayors and governors who direct them, to halt the deliberate and devastating targeting of journalists in the field.”⁷³ In addition to this, street medics have also been specifically targeted in New York, North Carolina, and Texas. The unjustified use of excessive force against street medics sent to provide first aid to protesters jeopardizes the health and safety of both medics and demonstrators that rely on their assistance.⁷⁴

D. Use of Technology & Social Media to Violate Protestors’ Digital Rights

Chilling effects on the right to protest also take digital form and extend to online environments, in particular via law enforcement’s use of information and communications technologies. From local police to the federal government, authorities abused surveillance tools to monitor lawful political activity during the recent round of protests. Examples show the repurposing of tools intended for other ends: the Department of Homeland Security’s use of drones, airplanes, and helicopters purchased for its customs and border enforcement to instead monitor Black Lives Matter protests in more than 15 cities;⁷⁵ video footage captured by “smart streetlights” in San Diego, installed to monitor traffic and environmental conditions, used instead to persecute protesters;⁷⁶ and social media monitoring and police procurement of Twitter data regarding protests, including the location data of peaceful demonstrators.⁷⁷ On 7

<https://www.forbes.com/sites/sergeiklebnikov/2020/06/04/journalists-targeted-while-covering-protests-279-press-freedom-violations-and-counting/#15efaafd184f>.

⁷² Brian Stelter, *CNN Business*, “ACLU files suit on behalf of journalists in Minnesota” (3 June 2020), available at <https://www.cnn.com/2020/06/03/media/aclu-minnesota-journalists-lawsuit/index.html>.

⁷³ Charles Davis, *Business Insider*, “Journalists demand end to harassment after US police launch over 100 attacks on the press this past weekend” (1 June 2020), available at <https://www.businessinsider.com/journalists-demand-end-harassment-after-police-launch-over-100-attacks-2020-6>.

⁷⁴ Jonathan Pedneault, Human Rights Watch, “Police Targeting ‘Street Medics’ at US Protests” (17 June 2020), available at <https://www.hrw.org/news/2020/06/17/police-targeting-street-medics-us-protests#>.

⁷⁵ Zolan Kanno-Youngs, *The New York Times*, “U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance,” (19 June 2020), available at <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>.

⁷⁶ The City of San Diego, “San Diego to Deploy World’s Largest City-Based ‘Internet of Things’ Platform Using Smart Streetlights” (22 Feb 2017), available at <https://www.sandiego.gov/mayor/news/releases/san-diego-deploy-world%E2%80%99s-largest-city-based-%E2%80%98internet-things%E2%80%99-platform-using-smart>; See also Jack Morse, *Mashable*, “Police Used ‘Smart Streetlights’ To Surveil Protesters, Just As Privacy Groups Warned,” (30 June 2020), available at <https://mashable.com/article/police-surveil-black-lives-matter-protesters-smart-streetlights>.

⁷⁷ Sam Biddle, *The Intercept*, “Police Surveilled George Floyd protests with help from Twitter-affiliated startup Dataminr,” (9 July 2020), available at <https://theintercept.com/2020/07/09/twitter-dataminr-police-spy->



August 2020, the New York Police Department sent dozens of officers to arrest a Black Lives Matter activist at his home, for allegedly yelling in an officer's ear with a bullhorn.⁷⁸ Officers arrived at the activist's home equipped with riot gear and were seen holding a report titled "Facial Identification Section Informational Lead Report" that included a picture of the activist from one of his social media accounts.⁷⁹ While the NYPD confirmed the use of facial recognition software, they noted that the technology compares surveillance videos with arrest photos and did not comment on use of social media images.⁸⁰

The Washington Post also reports that the U.S. Department of Homeland Security has accessed protesters' electronic messages and has been regularly monitoring such messages and compiling them in an "intelligence report."⁸¹ These violations of the fundamental human right to privacy also interfere with the exercise of a range of other rights, including the right to protest. The UN Human Rights Committee General Comment 37 protects the freedom of online assembly and remote participation and, as this Office has articulated, "By focusing extensively on the intersection of digital technologies and the right to peaceful assembly, General Comment 37 sets out a clear framework to protect this fundamental right in the digital era."⁸²

[surveillance-black-lives-matter-protests](#). See also Rachel Levinson-Waldman and Ángel Díaz, *Brookings*, "How to reform police monitoring of social media" (9 July 2020), available at <https://www.brookings.edu/techstream/how-to-reform-police-monitoring-of-social-media/>.

⁷⁸ James Vincent, *The Verge*, "NYPD used facial recognition to track down Black Lives Matter activist," (18 August 2020), available at <https://www.theverge.com/2020/8/18/21373316/nypd-facial-recognition-black-lives-matter-activist-derrick-ingram>.

⁷⁹ *Id.*

⁸⁰ *Id.*; see also George Joseph and Jake Offenhardt, *The Gothamist*, "NYPD Used Facial Recognition Technology In Siege Of Black Lives Matter Activist's Apartment," (14 August 2020), available at <https://gothamist.com/news/nypd-used-facial-recognition-unit-in-siege-of-black-lives-matter-activists-apartment>.

⁸¹ Abigail Hauslohner, Eugene Scott, and Alex Horton, *The Washington Post*, "DHS Analyzed Protester Communications Despite Comments to the Contrary" (31 July 2020), available at <https://www.washingtonpost.com/nation/2020/07/31/protests-live-updates/>.

⁸² United Nations OHCHR, "UN Human Rights Committee publishes interpretation on the right of peaceful assembly," (29 July 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26133&LangID=E>; see also United Nations OHCHR, "UN expert welcomes landmark protection for online assembly," (29 July 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26134&LangID=E>; See also, United Nations OHCHR, "Report on the rights to freedom of peaceful assembly and of association: The Digital Age," (17 May 2019), available at <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/DigitalAge.aspx>.



E. Instances of Looting, Damage, and Violence By Some Protesters Do Not Outweigh Largely Peaceful Protests or Demonstrators' Rights

While the majority of protesters have been peaceful, some Portland protesters set local offices on fire, participated in looting, and threw rocks, water bottles, and fireworks at federal officers.⁸³ Some protesters have resorted to shining lasers at federal agents to block their view of the crowd. Twenty-eight federal law enforcement officers have allegedly been injured as a result of the Portland protests.⁸⁴ More recently, the Kenosha protests resulted in at least \$2 million worth of city damage, and the mayor is asking for \$30 million from the state in order to repair the city in the aftermath of the protests.⁸⁵ *ABC 7 News* reports nearly 100 buildings have been damaged and 40 destroyed.⁸⁶ During the month of August, there were clashes between demonstrators and right-wing activists, who came into Portland to confront Black Lives Matter supporters and host rallies supporting the police.⁸⁷ On 29 August 2020, a caravan of President Trump supporters came into the downtown area, some of which shot paintballs and sprayed bear repellent at protestors attempting to block the street.⁸⁸ Fights broke out, and as a result, one man affiliated with a right-wing group was killed.⁸⁹ The shooting suspect was later killed by officers in the U.S. Marshals task force as they were attempting to arrest him.⁹⁰

⁸³ Thomas Fuller, “Judge Rejects Challenge to Federal Agents Targeting Portland Protesters” *The New York Times*, (24 July 2020), available at <https://www.nytimes.com/2020/07/24/us/portland-federal-jurisdiction-court-judge.html>.

⁸⁴ Kate Conger and Nicholas Bogel-Burroughs, *The New York Times*, “Fact Check: How Violent Are the Portland Protests?” (28 July 2020), available at <https://www.nytimes.com/2020/07/28/us/portland-protests-fact-check.html>.

⁸⁵ Noreen Nasir and Michael Tarm, *ABC News*, “Kenosha unrest causes \$2M in damage to city-owned property” (1 September 2020), available at <https://abcnews.go.com/US/wireStory/kenosha-unrest-2m-damage-city-owned-property-72747127>.

⁸⁶ Alexis McAdams, *ABC 7 Chicago*, “Kenosha unrest damages more than 100 buildings, at least 40 destroyed, alliance says” (2 September 2020), available at <https://abc7chicago.com/kenosha-shooting-protest-looting-fires/6402998/>.

⁸⁷ Mike Baker, Julie Bosman and Richard A. Oppel Jr., *The New York Times*, “As Guns Get Drawn at Protest Sites, Demonstrators Fear a Volatile New Phase” (1 September 2020), available at <https://www.nytimes.com/2020/09/01/us/portland-kenosha-protests-clashes.html>.

⁸⁸ Gillian Flaccus, *AP News*, “Portland’s grim reality: 100 days of protests, many violent” (3 September 2020), available at <https://apnews.com/b57315d97dd2146c4a89b4636faa7b70>.

⁸⁹ Mike Baker, *The New York Times*, “One Person Dead in Portland After Clashes Between Trump Supporters and Protesters” (30 August 2020), available at <https://www.nytimes.com/2020/08/30/us/portland-trump-rally-shooting.html>.

⁹⁰ Fenit Nirappil, Matt Zapposky, and Mark Berman, *The Washington Post*, “Portland on edge after suspect in weekend killing is fatally shot by police” (4 September 2020), available at https://www.washingtonpost.com/national-security/portland-on-edge-after-suspect-in-weekend-killing-is-fatally-shot-by-police/2020/09/04/0e6f08d4-eed9-11ea-99a1-71343d03bc29_story.html.



In Seattle, Washington, thousands of protests against the federal deployment of troops in Portland featured fires, smashed windows of businesses, and approximately fifty-nine Seattle police officers injured by explosive devices set off by protesters. Meanwhile, police officers pepper sprayed protesters, threw flash grenades into the demonstration, and rode their bicycles into crowds.⁹¹ The existence of a relatively small number of protesters engaged in vandalism and violence does not mean the protests were non-peaceful, or relieve the state of its duty to protect protesters and their fundamental rights. Yet, across the board, law enforcement has exhibited a disproportionate amount of force in response to overwhelmingly peaceful protests. This is partly due to the fact that, by the U.S. Government’s own admission, federal law enforcement agents deployed to various U.S. cities are not properly trained in how to de-escalate mass demonstrations. Some of the agents sent to control protests are trained on how to bust drug trafficking rings – not peaceful protests.⁹² Thus, they lack the requisite training to safely disperse crowds and resort to the use of batons, “less-lethal” weapons, and incessant tear gassing.⁹³

F. Use of Military-Grade Weapons and Techniques Against Protestors

Federal law enforcement’s response to peaceful protests has featured military style weaponry such as armored vehicles, combat gear, and rifles. Often times, these federal agents operate without the proper badge identification or body cameras often required at the local level.⁹⁴ Military grade equipment such as flash grenades, chemical irritants, and Air Force drones have been utilized to monitor and quell protests in various cities.⁹⁵ Meanwhile, police have been responding to demonstrations in riot gear and firing “non-lethal” projectiles and tear gas at protesters, reflecting the alarming shift towards a more militarized police force in

⁹¹ Kate Conger and Nicholas Bogel-Burroughs, *The New York Times*, “Fact Check: How Violent Are the Portland Protests?” (28 July 2020), available at <https://www.nytimes.com/2020/07/28/us/portland-protests-fact-check.html>.

⁹² Sergio Olmos, Mike Baker and Zolan Kanno-Youngs, *The New York Times*, “Federal Officers Deployed in Portland Didn’t Have Proper Training, D.H.S. Memo Said” (21 July 2020), available at <https://www.nytimes.com/2020/07/18/us/portland-protests.html>.

⁹³ US Human Rights Network, “Federal Officers Violate Protestors’ Human Rights In Portland” (28 July 2020), available at <https://ushrnetwork.org/news/242/100/Federal-officers-violate-protestors-human-rights-in-Portland?emci=d056dd88-fcd0-ea11-9b05-00155d03bda0&emdi=929b9215-fed0-ea11-9b05-00155d03bda0&ceid=7964700>.

⁹⁴ Peter Hermann, *The Washington Post*, “Humvees, helicopters and the National Guard: D.C. officials push back on show of federal force on city streets” (4 June 2020), available at https://www.washingtonpost.com/local/public-safety/humvees-helicopters-and-the-national-guard-dc-officials-push-back-on-show-of-federal-force-on-city-streets/2020/06/04/235f032c-a5c6-11ea-b473-04905b1af82b_story.html.

⁹⁵ Terry Gross, *NPR*, “Militarization of Police Means U.S. Protesters Face Weapons Designed For War” (1 July 2020), available at <https://www.npr.org/2020/07/01/885942130/militarization-of-police-means-u-s-protesters-face-weapons-designed-for-war>.



the U.S. that began in the 1960s.⁹⁶ This has escalated tensions between protesters and the police as the Trump administration lifts Obama era limits to the re-allocation of surplus federal military equipment to local law enforcement. Some of this equipment has been used in war zones such as Iraq, Afghanistan, and Yemen and is now being directed to peaceful protesters advocating for racial equality.⁹⁷

The arbitrary arrest and detention of peaceful protesters has been condemned by the UN Human Rights Office. Spokesperson Ms. Throssell declared that the detention of racial justice protesters by unidentified police officers, "...is a worry because it may place those detained outside the protection of the law, and may give rise to arbitrary detention and other human rights violations."⁹⁸ The UN Human Rights Office has urged for the proper identification of federal agents, the right to remedy for protesters who have been victimized by excessive force, and the prompt and independent investigation into allegations of human rights violations.⁹⁹ The U.S. Government has dismissed concerns. When questioned about the use of tear gas on peaceful protesters, U.S. Attorney General William Barr admitted that certain tactics were inappropriate yet offered the excuse, "The problem when these things sometimes occur is, it's hard to separate people."¹⁰⁰

G. Global Alarm at Rising in Authoritarianism in the U.S.

These recent incidents of violence and suppression signal rising authoritarianism in the United States and has alarmed the world. Although the United States agreed to withdraw federal troops and transition back to local law enforcement in Portland,¹⁰¹ some have remained

⁹⁶ Philip McHarris, *The Washington Post*, "Why Does The Minneapolis Police Department Look Like A Military Unit" (28 May 2020), Available at <https://www.washingtonpost.com/outlook/2020/05/28/explaining-militarized-police-response-protesters-after-killing-george-floyd/>.

⁹⁷ Andrew W. Lehren, Didi Martinez, Emmanuelle Saliba and Robert Windrem, *NBC News*, "Floyd Protests Renew Debate About Police Use Of Armored Vehicles, Other Military Gear" (20 June 2020), available at <https://www.nbcnews.com/news/us-news/floyd-protests-renew-debate-about-police-use-armored-vehicles-other-n1231288>.

⁹⁸ UN News, "Human Rights Office Decries Disproportionate Use Of Force In US Protests" (24 July 2020), available at <https://news.un.org/en/story/2020/07/1068971>.

⁹⁹ *Id.*

¹⁰⁰ Kate Conger and Nicholas Bogel-Burroughs, *The New York Times*, "Fact Check: How Violent Are the Portland Protests?" (28 July 2020), available at <https://www.nytimes.com/2020/07/28/us/portland-protests-fact-check.html>

¹⁰¹ Mike Baker, *The New York Times*, "As Federal Agents Retreat in Portland, protestors Return to Original Foe: Local Police" (2 August 2020), available at <https://www.nytimes.com/2020/08/02/us/portland-protests.html>.



and there is a threat to send more agents back to the Portland.¹⁰² The United States also recently deployed federal agents to Kenosha, Wisconsin, amid protests following the officer-involved shooting and the civilian shooting of protestors.¹⁰³ Moreover, recent incidents in New York and Kentucky as well as the U.S. Government's new "Operation Legend" indicate the continuation of police violence and restriction of freedom of peaceful assembly.¹⁰⁴ Additionally, in Louisville Kentucky, over one hundred protesters were detained for trespassing during a demonstration aimed at holding the police officers that killed Breonna Taylor, an unarmed Black woman who was murdered in her home, accountable.¹⁰⁵ In August, 2020, President Trump unveiled the expansion of "Operation Legend," a law enforcement initiative designed to allow federal agents to work with local officials to combat violent crime, to Chicago, Illinois and Albuquerque, New Mexico.¹⁰⁶ The U.S. Government sent approximately one hundred and fifty federal agents to Chicago for sixty days.¹⁰⁷ The U.S. Government distinguishes this initiative from the federal agents sent to Portland by claiming that these officials will be sent for the purpose of protecting cities from violent crime and gun violence rather than controlling protests or protecting federal buildings.¹⁰⁸ The mayor of Chicago has already vocalized grave concerns over the deployment of federal troops to the city in light of recent violence in Portland.¹⁰⁹

¹⁰² Gillian Flaccus, *AP News*, "Portland's grim reality: 100 days of protests, many violent" (3 September 2020), available at <https://apnews.com/b57315d97dd2146c4a89b4636faa7b70>.

¹⁰³ Carline Linton, *CBS News*, "Federal agents being sent to Kenosha, Wisconsin after protests turn deadly" (26 August 2020), available at <https://www.cbsnews.com/news/kenosha-wisconsin-fbi-agents-sent-after-deadly-shooting/>.

¹⁰⁴ Mike Baker and Zolan Kanno-Youngs, *The New York Times*, "Federal Agencies Agree to Withdraw From Portland, with Conditions" (31 July 2020), available at <https://www.nytimes.com/2020/07/29/us/protests-portland-federal-withdrawal.html>.

¹⁰⁵ Fabiola Cineas, *Vox News*, "Protests for Black Lives are Still Happening" *Vox News*, (16 July 2020), available at <https://www.vox.com/2020/7/16/21325275/black-lives-matter-protests-are-still-happening>.

¹⁰⁶ The United States Department of Justice, "Attorney General William P. Barr Joins President Donald J. Trump to Announce Expansion of Operation Legend" (22 July 2020), available at <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-joins-president-donald-j-trump-announce-expansion-operation>.

¹⁰⁷ Zolan Kanno-Youngs, *The New York Times* "Homeland Security Leaders on Defensive Amid Calls to Withdraw From Portland" (21 July 2020), available at <https://www.nytimes.com/2020/07/21/us/politics/homeland-security-portland-oregon.html>; *see also* Jeremy Gerner, *Chicago Tribune*, "Chicago's FBI boss seeks to calm city over Operation Legend" (7 August 2020), available at <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-fbi-boss-presser-20200807-gj54fekvs5g7jzmncd5va3npi-story.html>.

¹⁰⁸ Evan Perez and Geneva Sands, *CNN News*, "Trump administration preparing to send federal agents to Chicago" (20 July 2020), available at <https://www.cnn.com/2020/07/20/politics/trump-administration-federal-agents-chicago/index.html>.

¹⁰⁹ *Id.*



With the Presidential elections expected in November 2020, unchecked violent suppression of peaceful protests could cause an imminent rise in U.S. authoritarianism as the human rights violations committed by the United States Government continue to intensify. The political undercurrent fueling these recent actions also must not go unnoticed. President Trump explicitly noted that federal law enforcement was sent to specific cities “run by liberal Democrats.”¹¹⁰ Furthermore, following the civilian shooting of three protestors in Kenosha, President Trump refused to condemn the shooting and stated that it appeared the gunman had been acting in self-defense.¹¹¹ President Trump continues to incite with dangerous language and “has praised his supporters who have descended on the city while lashing out at local leaders.”¹¹² For example, President Trump called the caravan of his supporters that confronted protestors with paintballs in Portland “GREAT PATRIOTS!” in a tweet while he called protestors in Washington D.C. “Disgraceful Anarchists” in another tweet.¹¹³ The U.S. Human Rights Network has warned that President Trump may be using federal agents to intentionally provoke confrontation with peaceful protests for his own political agenda.¹¹⁴ On 30 August 2020, President Trump tweeted that “[t]he only way you will stop the violence in the high crime Democrat run cities is through strength!”¹¹⁵ One of President Trump’s senior advisors said in an interview that “[t]he more chaos and anarchy and vandalism and violence reigns, the better it is for the very clear choice on who’s best on public safety and law and order.”¹¹⁶ The Republican National Convention also featured a video with imagery of protests including a scene from a Catalonia independence protest in Spain in October 2019 with cars, street signs,

¹¹⁰ *Id.*

¹¹¹ America Reckons, *NPR*, “Trump Defends Kenosha Shooting Suspect” (31 August 2020), available at <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/08/31/908137377/trump-defends-kenosha-shooting-suspect>.

¹¹² Fenit Nirappil, Matt Zapotosky, and Mark Berman, *The Washington Post*, “Portland on edge after suspect in weekend killing is fatally shot by police” (4 September 2020), available at https://www.washingtonpost.com/national-security/portland-on-edge-after-suspect-in-weekend-killing-is-fatally-shot-by-police/2020/09/04/0e6f08d4-eed9-11ea-99a1-71343d03bc29_story.html.

¹¹³ Allan Smith, *NBC News*, “Trump praises right-wing supporters, rails against protestors after unrest in Portland” (30 August 2020), available at <https://www.nbcnews.com/politics/donald-trump/trump-rails-against-protesters-following-unrest-portland-n1238808>.

¹¹⁴ US Human Rights Network, “Federal Officers Violate Protestors’ Human Rights In Portland” (28 July 2020), available at <https://ushrnetwork.org/news/242/100/Federal-officers-violate-protestors-human-rights-in-Portland?emci=d056dd88-fcd0-ea11-9b05-00155d03bda0&emdi=929b9215-fed0-ea11-9b05-00155d03bda0&ceid=7964700>.

¹¹⁵ Allan Smith, *NBC News*, “Trump praises right-wing supporters, rails against protestors after unrest in Portland” (30 August 2020), available at <https://www.nbcnews.com/politics/donald-trump/trump-rails-against-protesters-following-unrest-portland-n1238808>.

¹¹⁶ Philip Rucker, Colby Itkowitz, Felicia Sonmez, and John Wagner, *The Washington Post*, “Trump attacks Biden and casts himself as an insurgent in his acceptance speech” (27 August 2020), available at <https://www.washingtonpost.com/elections/2020/08/27/republican-national-convention-live-updates/>.



and trash on fire in a street.¹¹⁷ The video narrator says that “[t]his is a taste of Biden’s America.”¹¹⁸

III. Call for Relief and Recommendations

The current situation requires the immediate, sustained, and coordinated attention of the international community. We greatly appreciate all of the aforementioned actions taken by the Special Procedures of the Human Rights Council. In light of the mounting evidence of worsening human rights violations, we respectfully request that your Office take follow-up action to halt the violence and hold those responsible for violations accountable.

We respectfully request that your Office increase its efforts and coordination with other Special Rapporteurs and call on the Government of the United States to cease the arbitrary arrests and violent attacks on peaceful protesters while respecting U.S. obligations under international human rights law, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment; and the Universal Declaration of Human Rights.

We respectfully request that your Office call on the U.S. Government to, among other things:

1. Respect the right to peaceful assembly, association, and protest,¹¹⁹ and ensure that federal, state, and local law enforcement abide by international law enforcement standards and cease the use of excessive force when responding to public demonstrations;¹²⁰
2. Respect the right to freedom of expression;¹²¹

¹¹⁷ Ali Gostanian and Caitlin Fichtel, *NBC News*, “RNC airs video clip of ‘Biden’s America’ — it was actually Barcelona” (28 August 2020), available at <https://www.nbcnews.com/politics/2020-election/rnc-airs-video-clip-biden-s-america-it-was-actually-n1238565>.

¹¹⁸ *Id.*

¹¹⁹ International Covenant on Civil and Political Rights, Article 21 (“The right of peaceful assembly shall be recognized.”).

¹²⁰ *See, e.g.*, UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms.

¹²¹ *See, e.g.*, International Covenant on Civil and Political Rights, Article 19(2) (“Everyone shall have the right to freedom of expression”).



3. Respect the right to freedom of movement;¹²²
4. Respect the right to non-discrimination;
5. Respect the right to privacy;
6. Release, or legitimately charge and try, all those who have been arrested in connection with racial justice protests;
7. Ensure that arrests and detentions are conducted in accordance with international human rights standards and domestic law, and that all security forces are trained on those norms;¹²³
8. Ensure that access to the internet is not blocked, limited, or shut down and that the media may freely operate during protests;¹²⁴
9. Provide information regarding all those who have been detained or arrested,¹²⁵ and ensure that they have access to legal counsel, family, and medical assistance;¹²⁶
10. Publicly urge that federal, state, and local law enforcement end the practice of detaining protesters in unmarked vehicles;
11. Refrain from engaging in unlawful surveillance and using the Internet and digital technologies to restrict fundamental freedoms, reduce civic space, and target civil society actors and human rights defenders, including protest organizers and participants;

¹²² See, e.g., International Covenant on Civil and Political Rights, Article 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”).

¹²³ See generally, e.g., Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, Article 11 (“Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention, or imprisonment in any territory under its jurisdiction, with a view to preventing any case of torture.”).

¹²⁴ Access Now, “Targeted, Cut Off, And Left In The Dark: The #KeepItOn report on internet shutdowns in 2019” (February 21, 2020), available at <https://www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf>.

¹²⁵ See, e.g., United Nations General Assembly, Resolution 3/173 (9 Dec. 1998), Principle 15 (“communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”).

¹²⁶ International Covenant on Civil and Political Rights, Article 14.



12. Halt and provide a remedy for all instances of torture or other inhumane treatment;¹²⁷
13. Halt attacks and detention of journalists and medics;
14. Limit the militarization of law enforcement and the use of federal law enforcement without local authorization;
15. Refrain from applying anti-terrorism rhetoric as a political tool to demonize and mischaracterize peaceful protesters;
16. Initiate an impartial and independent investigation of instances of human rights violations, and promptly and fairly prosecute or extradite those responsible for violations;¹²⁸

Specifically, we also request that you:

17. Highlight, in the next Annual Report to the Human Rights Council and General Assembly, the worsening human rights violations in the United States;
18. Send a Communication to the Government of the United States and call for an immediate, thorough, and impartial investigation into alleged human rights violations, including the recent arbitrary arrests and violent attacks of innocent protesters, journalists and medics; and
19. Seek a visit to the United States, and press on appeal to the Government to grant unimpeded access for the United Nations Human Rights Council, as well as other human rights actors to further investigate the nature of federal, state, and local law enforcement response to racial justice protesters.

We thank you for your continued attention to this matter.

¹²⁷ See generally Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, Article 12 (“Each state party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”), and Articles 13,14, 16.

¹²⁸ See, e.g., International Covenant on Civil and Political Rights, Article 2; Human Rights Committee, General Comment 31, para. 15 (“A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”).



Sincerely,

Christina Hioureas
Chair, United Nations Practice Group
Counsel, Foley Hoag LLP
On behalf of Access Now

Peter Micek
General Counsel
Access Now

Hannah Garry
Clinical Professor of Law and Director
USC Gould School of Law's International
Human Rights Clinic