



**Submission on U.S. Government Responses to Anti-Racism Peaceful Protests
for the United Nations High Commissioner for Human Rights'
Report Pursuant to Human Rights Council Resolution A/HRC/RES/43/1 (19 June 2020)**

4 December 2020

I. Introduction

The University of Southern California Gould School of Law International Human Rights Clinic ([USC IHRC](#)), and [Access Now](#), with the support of the international law firm [Foley Hoag LLP](#), welcome this opportunity to submit relevant information to the United Nations High Commissioner for Human Rights for consideration for her report to the Human Rights Council's forty-seventh session in June 2021 pursuant to Human Rights Council Resolution A/HRC/RES/43/1 (19 June 2020) on the "Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers." The USC IHRC engages in advocacy projects to confront some of the most pressing human rights concerns in the U.S. and globally. Access Now is a non-governmental organization that works to defend and extend the digital rights of users at risk around the world through policy, advocacy, and technology support, grants, legal interventions, and global convenings like RightsCon.

This Submission responds to the High Commissioner's [call for inputs](#) for the preparation of her report pursuant to Resolution 43/1 and specifically addresses, with respect to the United States, the request for: "Information concerning Government responses to anti-racism peaceful protests, within the meaning of resolution 43/1, including the alleged use of excessive force against protesters, bystanders and journalists, as well as applicable laws, regulations, policies, practices and other measures, and their impact and effectiveness."

As detailed in this Submission,¹ the extrajudicial killing of George Floyd on 25 May 2020, an unarmed Black man in Minneapolis, Minnesota, sparked national and global demonstrations

¹ Section II of this Submission provides an overview of law enforcement's response to anti-racism peaceful protests, including use of excessive and discriminatory force, arbitrary arrests, arbitrary detention and cruel treatment. Section III addresses increased militarization of law enforcement and intervention by federal agents into protests. Section IV documents treatment of journalists, medics and legal observers to protests. Section V notes increased surveillance and violation of protesters' digital rights. Section VI highlights use of inflammatory language by U.S. officials inciting violence against peaceful protests. Section VII outlines the U.S. domestic legal framework impacting upon the rights of peaceful protesters. Section VIII concludes with recommendations to the High Commissioner for her Resolution 43/1 report. Finally, Annexes A and B to this Submission provide links to sources with further detailed information on the topics addressed in this Submission.

calling attention to and condemning structural racism and police brutality.² The United States Government responded to these peaceful demonstrations by deploying militarized police forces into communities without state or local official invitation or authorization. These forces have used excessive and discriminatory force, arbitrarily detained protesters, and generally suppressed the freedoms of expression and opinion, association and assembly, and the right to privacy in major U.S. cities.

II. Response to Peaceful Protests by Law Enforcement: An Overview

Amidst the surge of calls for an end to police violence, peaceful demonstrators have been subjected to excessive and discriminatory use of force, unlawful arrests, arbitrary detention, cruel treatment, and suppression of freedom of expression by militarized police forces.

A. Excessive & Discriminatory Use of Force

From June 2020 to November 2020, law enforcement officers across the United States have engaged in excessive and discriminatory use of force against individuals protesting structural racism and police brutality against people of African Descent. As early as 1 June 2020, law enforcement officers used batons and other less lethal weapons such as rubber bullets, sponge rounds, tear gas, and pepper balls to disperse demonstrators. [The Guardian](#) reported that nearly 1,000 instances of police brutality took place during demonstrations protesting structural racism. This includes 500 instances of police using less lethal-rounds, pepper spray, and tear gas. Often, this excessive use of force was law enforcement's first response to assemblies rather than a necessary and proportional response, as noted by [Amnesty International](#).

Protesters from protected groups such as Black, Brown, and LGBTQ+ individuals were especially subjected to excessive use of force by law enforcement. In Indianapolis, Indiana, a [video](#) showed police officers beating a Black woman with their batons and shooting at her several times with rubber bullets while other protesters nearby yelled, "Why her? Why her?" In New York City, a [Black transgender woman was brutality thrown](#) to the ground before she was detained by plain clothed officers and shoved into an unmarked van. Protesters nearby rushed to her aid while the men detaining the woman yelled, "Back up! Back up!" before she was thrown into the van.

² On 8 June 2020, Access Now and the USC IHRC signed onto a [coalition letter](#) from the families of George Floyd, Breonna Taylor, Michael Brown and Philando Castile, together with over 600 rights groups to the United Nations Human Rights Council requesting a Special Session on the Escalating Situation of Police Violence and Repression of Protests in the United States. On 3 August 2020, Access Now joined 144 families of victims of police violence and over 360 civil society organizations in a [letter](#) to the High Commissioner for Human Rights with recommendations for implementation of Resolution 43/1 following the Council's Urgent Debate of 17 June 2020 on current racially inspired human rights violations. On 10 September 2020, our organizations submitted an [Urgent Appeal](#) to the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Mr. Clément Nyaletsossi Voule, on the human rights situation at protests across the United States following George Floyd's death. On 2 November 2020, our organizations co-sponsored a [virtual side event](#) at the 75th Session of the United Nations General Assembly on "Structural Racism, Police Violence, and the Right Protest." Finally, the USC IHRC joined 20 other U.S. based civil society coalitions in a [letter](#) calling for international attention and action with respect to systemic anti-Black racism and making recommendations for the U.S.'s Universal Periodic Review before the Human Rights Council on 9 November 2020.

Other instances of police violently attacking spectators and protesters were widely reported and many were digitally recorded. For example, in Buffalo, New York, [video](#) showed a 75-year old man pushed to the ground by law enforcement officers; minutes later blood flowed under the man's head as policemen walk by. In Portland, Oregon, a [video](#) captured an officer chasing down and tackling a protester and then punching him repeatedly in the face. In the Bay Area, California, an [officer sicced his dog](#) on a protester in an effort to arrest the protester. The protester sustained severe bite injuries on his knees and hands. In Brooklyn, New York, an officer [ripped off a protester's face mask](#) and pepper sprayed him in the face. In Salt Lake City, Utah, [a video](#) showed local officers pushing an elderly man to the ground who was simply standing near a bus stop with his cane. These brutal instances of excessive use of force by law enforcement are non-exhaustive and protesters have been consistently targeted over the past several months during assemblies calling attention to structural racism. Furthermore, the important role of digital documentation for monitoring law enforcement, and the use of such evidence to raise awareness and achieve remedy, underscores the need to protect rights in both offline and online environments.

As law enforcement responded to assemblies protesting structural racism with violence and force, their response to counter-protesters or assemblies identified as “alt-right” rallies was strikingly different. [The Guardian](#) reported nearly 19 individual instances in which officers were permissive towards the alt-right. While officers have been quick to respond aggressively to protesters against structural racism, they seldom responded with the same vigor when counter-protesters incited violence within the assemblies. In some instances, law officers have showed comradery and gratitude towards counter-protesters. For example, in Kenosha, Wisconsin, during a Black Lives Matter protest, [cellphone videos showed](#) police officers engaging with and thanking armed counter-protesters for being on the streets.

B. Arbitrary Arrests Without Charge or Under Baseless Charges

Law enforcement officers also impinged on anti-racism demonstrators' rights to peaceful assembly through arbitrary arrests. In the first weeks of protests, between 27 May and 12 June, law enforcement in 48 U.S. cities apprehended [more than 14,000 people in protest-related arrests](#). Some arrested protesters were [never charged](#) or informed of the reason for their arrest. Many were charged with [misdemeanors](#) including curfew violations, theft or property damage, unlawful assembly, traffic violations, weapons crimes, and other charges.

Since the protests this past summer, federal and local prosecutors have pursued charges against demonstrators. While some of these individuals were agitators, many were not. [ACLEDCrisis Monitor](#) reports that from 26 May to 14 November 2020, 93.74% of protests were non-violent. And yet, nearly [60 instances](#) of arbitrary arrests under the guise of “unlawful assembly” took place during the summer protests. Moreover, these charges, fines, and imprisonment could have [lasting impact](#) on Black Lives Matter demonstrators, including affecting their ability to vote, obtain housing or jobs, given the fact that they will remain on criminal records in most states.

Some protesters have been subjected to federal charges. For example, the U.S. Marshals Services deputized some Portland state troopers who were empowered to arrest [protesters to be federally prosecuted](#) to circumvent local officials who refused to charge them. Further, the Department of Justice released a [statement](#) that over 300 individuals in 29 states face federal

charges. Some of these federal charges include [misdemeanors](#), which are typically handled at the state and local level. At the same time, while the U.S. Justice Department is pursuing charges against protesters, they have not charged perpetrators of police brutality or opened investigations into police departments.

C. Arbitrary Detention & Cruel Treatment

Another method law enforcement officers have used during Black Lives Matter protests includes arbitrary detention. In several cities across the United States, officers without identification forcibly apprehended protesters in unmarked vehicles. This tactic, similar to arbitrary arrests, suppresses demonstrators' right to peaceful assembly. Further, nearly [11 instances of "kettling,"](#) or forced containment of large crowds in a confined area, have been reported. [Human Rights Watch reports](#) that in a predominately Black and Brown neighborhood in the Bronx, New York, police kettled protesters using their bicycles to prevent them from moving or leaving ten minutes before curfew. Police then resorted to force once curfew started, including instances of baton beatings, physical aggression, and using pepper spray directly at protesters' faces. For example, in Portland, Oregon, a protester was [abducted in a white van by armed men dressed in camouflage](#) while participating in a protest demonstration and [federal agents forcibly detained protesters](#) in unmarked vehicles. In Kenosha, Wisconsin, [two college-age demonstrators were shoved into unmarked vehicles](#) and transported to holding cells without being charged where they were then denied access to make a phone call for over 24 hours. Also, in Kenosha, a [group of volunteers that serve food to protesters](#) was arrested at a gas station by law enforcement officers in unmarked vehicles with guns drawn. Detention conditions left some protesters without phone access, water, medical care, or bathroom access.

III. Militarization & Increased Intervention by Federal Agents

A. Local Law Enforcement

Local law enforcement officers have [responded](#) to anti-racism demonstrations with military-grade weapons and techniques, reflecting the alarming shift towards a more militarized police force in the U.S. that began in the 1960s. Some of this equipment, such as armored vehicles, combat gear, flash grenades, and chemical irritants, [have been used in war zones](#) such as Iraq, Afghanistan, and Yemen, and are now being directed at peaceful protesters advocating for racial equality. When questioned about the use of tear gas and violence on peaceful protesters, U.S. Attorney General William Barr [admitted](#) that certain tactics were inappropriate yet offered the following excuse: "The problem when these things sometimes occur is, it's hard to separate people."

Images of militarized local law enforcement officers and their use of excessive force has spread across media platforms in reports, videos, and photographs. Many of the reporters compare their experiences to war zones. A photojournalist who covered protests in Minneapolis, Minnesota, [recalled](#) his experience of seeing Minnesota State Police wearing military gear and officers in Special Weapons and Tactics (SWAT) gear policing the protests as though they were on active military duty. The photojournalist compared the experience with military soldiers dropping into Waziristan, Afghanistan.

B. Federal Agents

Without the requisite consent from local officials, the U.S. Government sent federal agents and the National Guard to provoke confrontations against peaceful protesters, particularly in cities in which the political affiliation of the mayors and local leaders are that of the Democratic Party. These federal agents were sent without proper training for monitoring protests, under the pretense of protecting federal buildings and to “quell riots”. Further, President Trump unveiled “[Operation Legend](#)” to allow for federal agents to work with local officials to “combat violent crime” [as a pretext](#) for confronting peaceful protests against racism. On 10 June 2020, UN Experts [identified](#) nearly 62,000 National Guard soldiers who were deployed to cities across the country from May to June. Since then, the federal government has deployed even more National Guard soldiers in cities around the nation.

Even though local officials have condemned this abuse of power, 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. While federal agents exercised broad discretion in use of force, [a report](#) from the Department of Homeland Security indicates that many of the deployed federal agents were never properly trained on the federal code governing their use of force in this context.

IV. Treatment of Journalists, Medics, & Legal Observers

Legal observers, volunteer medics, and 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. [US Press Freedom Tracker](#) identified nearly 390 instances of attacks on journalists during protests from May 2020 to November 2020. In one instance, a police officer [shoved a journalist](#) after she asked the officer a question. She fell and hit her head against a fire hydrant; the only reason she was not hurt was because she had on a helmet. Other egregious instances that resulted in permanent injuries have also been reported, including a freelance journalist and author, who [was permanently blinded](#) in one eye after law enforcement officers fired a kinetic impact projectile at her face.

Street medics have been specifically targeted and brutally attacked by law enforcement officers in at least seven states.³ Law enforcement officers have [targeted medics](#) clearly identified as such with tear gas, projectiles, and physical force. The unjustified use of excessive force against street medics providing first aid for anyone who needs it jeopardizes the health and safety of [everyone present at the protests](#).

V. Surveillance & Digital Rights

Authorities, including local law enforcement and federal government agencies, continue to

³ Forensic-architecture.org has recorded over 1,000 instances of violence and excessive use of force by police officers. This data reflects medics have been targeted in seven states across the country place. Available at <https://blmprotests.forensic-architecture.org/>.

abuse surveillance tools to monitor lawful political activity during Black Lives Matter demonstrations. These violations of the fundamental human right to privacy also interfere with the exercise of a range of other rights, including the right to assembly and association, and freedom of expression and opinion.

Examples show law enforcement using 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](#); video footage captured by [“smart streetlights” in San Diego](#), installed to monitor traffic and environmental conditions, used instead to [surveil protesters](#); and [police procurement of Twitter data regarding protests](#), including the location data of peaceful demonstrators. Some local police departments have allegedly used social media to track protesters, including in [New York](#) and [Pittsburg](#). For more information on threats to assembly and association in online contexts, see the recent Access Now publication, [Defending peaceful assembly and association in the digital age: takedowns, shutdowns, and surveillance](#).

VI. Inflammatory Language

The U.S. Government’s use of inflammatory language such as the rhetoric of [President Trump labeling](#) protesters as “sick and deranged anarchists and agitators,” became widespread over the course of the year. On 26 June 2020, President Trump implemented an [Executive Order on Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence](#) in which he stated, with reference to anti-racism protesters, that “rioters, arsonists, and left-wing extremists who have carried out and supported these acts have explicitly identified themselves with ideologies — such as Marxism — that call for the destruction of the United States system of government.” High-ranking U.S. officials, such as U.S. Attorney General William Barr have [intentionally misrepresented](#) peaceful protesters as “anarchists” to undermine the freedoms of expression, peaceful assembly and association, as well as freedom from threats or use of violence, harassment, persecution, intimidation or reprisals. This language has galvanized white supremacists (and similar groups) who have perpetrated intimidation tactics and lethal violence against peaceful protesters. President Trump’s use of language and manner in which he has identified peaceful protesters further drives the violent narrative. As noted by the United Nations Office of the High Commissioner for Human Rights, such [rhetoric](#) is “comprised of threats of increased state violence that reinforce the very same injustices that demonstrators are seeking to end.”

VII. United States Domestic Framework

While many state and local governments have different statutes and laws governing their respective jurisdictions, this Section provides a non-exhaustive overview of federal laws and policies affecting protesters’ rights in the United States, and the lack of accountability mechanisms for abuse of those rights.

A. U.S. Constitutional Provisions, Federal Statutes, and Caselaw

1. Freedom of Expression, Unlawful Assemblies, and Hate Speech under the First Amendment

The [First Amendment](#) of the United States Constitution guarantees the freedoms of expression and peaceful assembly. In [Gitlow v. New York](#), 268 U.S. 652 (1925), the U.S. Supreme Court held that the First Amendment also applies to state governments. The First Amendment does not protect physical violence, allowing law enforcement to intervene if a demonstrator is violent or imminently violent. However, international standards recognize that the violence of a few does not turn a peaceful demonstration into an unlawful assembly or riot. On 2 November 2020, in [McKesson v. Doe](#), the Supreme Court also recognized this principle and held that, unless state law dictates otherwise, the organizer or organization of a peaceful protest cannot be held negligently liable for the violence of other individuals at the protest. As noted in Annex B to this Submission, some states have codified unlawful assembly into their criminal codes with broad definitions and formulas for what constitutes unlawful assembly that potentially allow for interpretation and enforcement in violation of international human rights standards.

Finally, hate speech is not protected by the First Amendment. In [Brandenburg v. Ohio](#), 395 U.S. 444 (1969), the Supreme Court held that the First Amendment does not protect speech that directly incites “imminent lawless action” or is likely to produce such lawless action as has been used by high-level federal official against anti-racism peaceful protesters in the U.S. While there are federal statutes regarding hate crimes, there are no specific statutes that prohibit or expressly define hate speech.

2. Unreasonable Searches & Seizures, Excessive Force, and Privacy Rights under the Fourth Amendment

The [Fourth Amendment](#) to the U.S. Constitution provides that all persons have the right to privacy and protection from unreasonable searches and seizures. As outlined in Annex B to this Submission, the Supreme Court has held that excessive force by law enforcement constitutes a violation of the Fourth Amendment.

At the state level, legislatures have been [slow to pass use of force laws](#). In addition, privacy law has not been consistently applied with regard to surveillance and protests. Some states like California clearly protect electronic data with a [warrant requirement](#), while the Supreme Court has [protected cell phone location data](#) from warrantless access. However, in practice, law enforcement employ a variety of policies, procedures, and [tools](#) that circumvent such requirements. Consequently, during the Black Lives Matter protests, there have been recommendations on “[how to protect your smartphone](#)” circulated, and suggestions on [covering faces](#) in an age of facial recognition.

3. Due Process Rights & Equal Protection under the Fifth and Fourteenth Amendments

The [Fifth Amendment](#) to the U.S. Constitution provides, among other things, that individuals have the right to a grand jury, protection from self-incrimination and requires due process before the law. This constitutional provision is particularly relevant during arrest and

detention of demonstrators. The [Fourteenth Amendment](#) includes due process rights and the notion of equal protection before the law for all persons. As discussed above, the disparate treatment of protesters, particularly those from protected groups, advocating for racial justice and Black lives, have been met with more aggressive tactics as compared to counterdemonstrators from alt-right groups.

4. Remedies for Individuals Alleging the Deprivation of Constitutional Rights

Under the [Federal Civil Rights Act of 1871, 42 U.S.C. § 1983](#), individuals have the right to bring civil claims against state officials “acting under the color of law” alleging “the deprivation of any rights, privileges, or immunities secured by the Constitution” or federal laws. State officials “acting under the color of law” includes state and local law enforcement officers, but does not include federal law enforcement agents. However, as mentioned below in Section VII.C, qualified immunity [impedes the effectiveness of bringing a claim](#). A plaintiff must demonstrate that the right in question was “clearly established,” a high threshold that relies on past court decisions regarding established violations. Specifically, individuals must show that the right violated has been recognized by a previous court ruling that addressed the [specific context and conduct](#) in question. In practice, courts invoke the qualified immunity doctrine to protect law enforcement officers unless an individual demonstrates that their case is [identical](#) to a previous case.

In addition, [18 U.S.C. § 242](#) criminalizes the deprivation of a federal or constitutional right of an individual by an official acting under the color of state law. The challenge under this statute is proving specific intent to deprive the victim of a constitutional right per the Supreme Court’s decision in [Screws v. United States](#), 325 U.S. 91 (1945), which is a high threshold to meet.

These statutes do not apply to violations of an individual’s right by federal law enforcement officers. In [Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics](#), 403 U.S. 388 (1971), the Supreme Court held that federal agents violated an individual’s Fourth Amendment right when they entered and searched his home without a warrant, handcuffing him in front of his family, and arresting him on narcotics charges. Since then, the application of *Bivens* doctrine has allowed individuals to seek a remedy for the deprivation of a constitutional or federal right in only limited circumstances.

5. Protection of Journalists, Medics, Legal Observers under the First Amendment

The [First Amendment](#) of the United States Constitution guarantees the freedoms of speech and of the press. Even if a demonstration becomes unlawful or is dispersed, journalists, medics, and legal observers should still have the right to monitor, report, record, and provide care at demonstrations. Journalists and media are typically identifiable to law enforcement by their media badges. Under the First Amendment, the Supreme Court of the United States has ruled that states may not limit the freedom of the press. In [Richmond Newspapers Inc. v. Virginia](#), 448 US 555, 576 (1980), the Supreme Court held that journalists could not be prevented from fact gathering as the First Amendment carries with it the freedom to listen and receive information and ideas. However, despite the immense value and importance of the freedom of the press, the Supreme Court has not provided journalists with greater rights or protections. For example, in [Associated Press v. NLRB](#), 301 U.S. 103, 132-133 (1937), the Supreme Court emphasized that a

publisher is not “immune from regulation because it is an agency of the press. The publisher of a newspaper has no special immunity from the application of general laws.”

Under 42 U.S.C. § 1983, a journalist [may argue](#) that by interfering with their fact gathering without proper reasoning, the law enforcement officer violated their First Amendment rights. Although such an avenue for protecting the freedom of the press exists, this protection is often curtailed by qualified immunity. For example, in *Fordyce v. City of Seattle*, 55 F.3d 436 (1995), the Ninth Circuit Court of Appeals held that officers who arrested a journalist recording bystanders at a protest were entitled to the protection of qualified immunity. Attacks on journalists by law enforcement with impunity threaten journalists’ protected fundamental freedom of the press.

In addition, legal observers and volunteer medics remain neutral at demonstrations and should not be targeted by law enforcement. Volunteer medics provide essential care to protesters in the exercise of their rights to speech and peaceful assembly. Legal observers attend protests to monitor and document police conduct and violations of protesters’ legal rights. They typically wear gear, such as hats or shirts, to signal to police that they are observers. Like journalists, legal observers and medics’ First Amendment rights should not be restricted by law enforcement officers when participating in peaceful protests.

B. Policies & Practices

1. Operation Legend & Use of Federal Troops

On 26 June 2020, President Trump issued an [Executive Order](#) for the protection of federal monuments and buildings. 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 cities across the country under the pretense of protecting federal buildings and quelling riots. Following the Executive Order, on 8 July 2020, the federal government announced the launch of [Operation Legend](#); a law enforcement initiative created to combat violent crimes. Attorney General William Barr [insisted](#) that Operation Legend would be a different kind of operation than the tactical measures the federal government used for protests. However, under Operation Legend, the federal government deployed even more National Guard agents into cities across the country, [particularly those cities in which mass demonstrations protesting structural racism were present](#).

2. Program 1033 and Sale of U.S. Department of Defense Equipment to Local Authorities

In 1997, the U.S. Congress passed the [National Defense Authorization Act](#), which allows law enforcement agencies to acquire property for bona fide law enforcement purposes – particularly those associated with counter-drug and counter-terrorism activities. The program is also known as the “1033 Program,” which refers to the numbered section of the act that grants permanent authority to the Secretary of Defense to transfer defense material to federal, state and local law enforcement agencies.

In 2015, President Obama enacted [Executive Order 13688—Federal Support for Local Law Enforcement Equipment Acquisition](#), which applied to federal government programs that provide local law enforcements with weapons and grants. The order created the Law Enforcement

Equipment Working Group which subsequently provided recommendations regarding the types of equipment the federal government should provide to state and local law enforcement agencies. The Working Group [recommended](#), and President Obama accepted, a list of equipment prohibited from being provided to states, such as tracked armored vehicles; weaponized aircraft, vessels and vehicles; .50-caliber firearms and ammunition; grenade launchers; bayonets; and camouflage uniforms.

In June 2017, [a study revealed](#) that access to militarized equipment militarizes the local law enforcement departments on a cultural level and leads to excessive use of force. This, in effect, increases the number of civilian deaths by 129%. Despite this fact, in August 2017, President Trump revoked President Obama's Executive Order 13688 by passing the [Executive Order on Restoring State, Tribal, and Local Law Enforcement's Access to Life-Saving Equipment and Resources](#). This Order allows the federal government to provide local law enforcement departments with the equipment that Obama's Working Group recommended prohibiting, such as tracked armored vehicles and bayonets.

3. Deputizing Law Enforcement to Bring Federal Charges

Throughout the summer of 2020 protests, state troopers were deputized by the U.S. Marshals Services in Portland, Oregon, which resulted in many protesters being charged with federal crimes. [The U.S. Marshals Services](#) is a federal law enforcement department under the U.S. Department of Justice and has the authority to select deputy marshals for select tactical operations. In Portland, Oregon, the U.S. Marshals [deputized nearly 50 local state officers](#). In doing so, the state officers who normally could only press charges under state statutes, obtained the power [to arrest and press federal charges against protesters](#) when a federal interest is involved, such as harming federal property. Furthermore, these officers also have the power to press federal charges on individuals with assaulting a federal officer. This move [appears to be a tactic](#) by the Mayor to get around the Multnomah County District Attorney, who had declined to bring low-level charges against Portland protesters and has dismissed hundreds of case.

4. Use of Technology & Social Media by Law Enforcement

The United States' legal framework on the use of social media surveillance in law enforcement has yet to be fully developed. However, a [2017 survey](#) revealed that nearly 70% of law enforcement departments use social media surveillance in their investigations. Local law enforcement officers use social media platforms and machine-learning algorithm programs to target, track, and arrest individuals. One of the most prominent platforms that is [being used](#) proactively by local and federal law enforcement officers is [Dataminr](#), a social media analytics firm that uses an automated machine-learning algorithm. Through Dataminr's automated system, law enforcement officers receive alerts on their targets. This invasive investigation is not constrained by many laws and has left social media targeted protesters with little legal protection. As is now, [the legal mechanisms](#) in which an individual may seek protection is through lawsuits brought under constitutional rights to privacy, freedom of speech and association, and equal protection.

5. Over-Funding of Law Enforcement

Currently, law enforcement is the second most well-funded sector in government in the U.S. [USA Facts reports](#) that, “[o]n average, the United States spends \$340 per person per year for public policing, for a total of \$193 billion in spending in 2017. [...] Police spending accounts for 9.2% of all local government spending. This works out to \$192,940 per police officer, including part-time employees.” Of the \$193 billion dollars, local police departments allocate 68% of the funds directly to policing. Such over-funding leads to excessive weaponization of law enforcement and diverts resources that could be used for more effective, less aggressive means for monitoring of peaceful protests and for addressing systemic racism in the U.S.

C. Impact & Effectiveness

1. Lack of Oversight & Accountability

There are approximately [18,000 federal, state, county, and local law enforcement departments](#), however, there are no national standards regulating them. The Special Rapporteur on the rights to freedom of peaceful assembly and of association visited the United States in 2016 and [reported](#): “I was struck by the vast and largely unchecked discretion that government authorities enjoy to arrest, to formulate (often petty) charges, to prosecute, to invite or deflect external scrutiny and support from the Department of Justice, and to organize internal complaints handling. This leads to an inconsistent picture of policing throughout the nation. Different authorities within a jurisdiction or in neighboring jurisdictions do not share a common view or policy about policing; a lot ends up depending upon personalities.”

Another issue with oversight is the lack of independent commissions to review and investigate alleged instances of excessive or discriminatory use of force and militarized tactics by law enforcement at demonstrations. The [21st Century Task Force](#), created by former President Barack Obama, recommended that “[t]he Federal Government should create a mechanism for investigating complaints and issuing sanctions regarding the inappropriate use of equipment and tactics during mass demonstrations.”

A further problem is the lack of trust between law enforcement and the communities it is policing. The [21st Century Task Force Report](#) also provides recommendations for improving community relationships and engagement to establish positive relationships and transparency. Suggestions include collaborating with community members and implementing comprehensive policies on the use of force that include “training, investigations, prosecutions, data collection, and information sharing” in a way that is openly available for the public.

Moreover, law enforcement trainings and policies should include emphasis on topics such as de-escalation as a method to avoid use of force and to continue to promote and facilitate peaceful demonstrations. The 21st Century Task Force Report recommends that law enforcement use a layered response and have policies and procedures in place to “minimize the appearance of a military operation and avoid using provocative tactics and equipment.”

Finally, an additional issue with oversight and accountability is the widespread use of prosecutorial discretion and qualified immunity to shield law enforcement from prosecution for

alleged misconduct. Prosecutors and police often have a [close relationship](#), which impedes accountability and trust with the community. To mitigate this issue, the 21st Century Task Force Report suggests appointing external and independent prosecutors.

In addition to prosecutorial discretion, law enforcement officers may be entitled to protection of [qualified immunity](#), which requires victims to prove a violated right was “clearly established” in order to overcome the officers’ protection. This is an incredibly difficult legal standard for plaintiffs to prove. Because qualified immunity is a federal doctrine, only Congress or the Supreme Court can revoke it. In June 2020, [the Supreme Court](#) refused to hear eight cases that would have reconsidered the doctrine of qualified immunity. In July 2020, [three Senators](#) introduced a bill that originated in the House of Representatives to end qualified immunity, but no such legislation has passed. In addition, [state legislatures](#) can enact legislation to create alternative legal remedies for civil rights lawsuits against law enforcement.

Furthermore, as mentioned above, the *Bivens* doctrine limits individuals’ right to bring civil suits against federal law enforcement officers. The Supreme Court has extended *Bivens* to Fourth, Fifth, and Eighth Amendment violations in certain circumstances. In February 2020, in [Hernandez v. Mesa](#), the Supreme Court limited the application of the *Bivens* doctrine in light of the “new context” of a cross-border shooting by a federal agent. Congress [can create liability](#) for federal law enforcement officers, but has not done so to date.

2. A Federal Remedy: Reform of Police Departments Through Consent Decrees

Under [42 U.S.C. § 14141](#), the Department of Justice Civil Rights Division can investigate cases involving “a pattern or practice of conduct by law enforcement officers.” Following an investigation, the DOJ will publish a report detailing its findings. After making its findings, the DOJ can negotiate “consent decrees,” or reform agreements with the law enforcement department. As outlined in Annex B, if parties cannot agree on reforms, the DOJ will bring a lawsuit to compel reforms. Reform agreements “emphasize institutional reforms” consistent with the emphasis on systemic problems within departments.

For example, in 2014, the DOJ investigated the Ferguson Police Department (“FPD”) following the killing of Michael Brown, an 18-year-old Black teen, by a white police officer. This investigation also considered how law enforcement handled mass protests, including those calling attention to police killings and systemic racism after Brown’s killing. In its [Report on the Ferguson Police Department](#), the DOJ found that the police engaged in a pattern of First Amendment violations following large-scale protests in 2014 and called upon the FPD to “[d]evelop and implement policy and training regarding appropriate police response to activities protected by the First Amendment, including the right to observe, record, and protest police action.”

Currently, under the Trump administration, there have been [no new consent decrees](#). Notably, former Attorney General Jeff Sessions issued a [memo](#) instructing the DOJ to exercise caution before entering a consent decree. Following the killing of George Floyd in Minneapolis, the Department of Justice [could have opened an investigation](#) to look at the whole Minneapolis Police Department. Instead, as previously mentioned above, the DOJ under the Trump Administration has pursued charges against peaceful protesters.

3. *Lawsuits*

For links to recent lawsuits on behalf of protesters and journalists, please see Annex B.

VIII. Recommendations

The current situation in the United States requires the immediate, sustained, and coordinated attention of the international community. In light of the mounting evidence of human rights violations against peaceful anti-racism protesters, journalists, medics and legal observers, we respectfully request that your Office make the following observations and recommendations for the United States in your Report pursuant to Human Rights Council Resolution 43/1:

1. Comply with its treaty obligations, specifically the International Convention on the Elimination of Racial Discrimination (“ICERD”), the International Covenant on Civil and Political Rights (“ICCPR”), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”);⁴
2. Respect the rights to peaceful assembly, association, and protest;⁵ freedom of expression;⁶ freedom of movement;⁷ and privacy;⁸
3. Ensure that law enforcement officers do not inhibit peaceful assemblies;⁹
4. Ensure that assemblies with a political message enjoy a heightened level of accommodation and protection;¹⁰
5. Respect the right to non-discrimination and encourage organizations, movements, and other means of eliminating barriers between races, including peaceful demonstrations;¹¹

⁴ The US ratified ICERD in 1994, ICCPR in 1992, and CAT in 1994.

⁵ ICCPR, Article 21 (“The right of peaceful assembly shall be recognized.”); ICERD, Article 5(d)(ix).

⁶ *See, e.g.*, ICCPR, Article 19(2) (“Everyone shall have the right to freedom of expression”); ICERD, Article 5(d)(vii).

⁷ *See, e.g.*, ICCPR, 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.”); ICERD, Article 5(d)(i); Human Rights Committee, General Comment No. 37 at ¶ 99.

⁸ *See, e.g.*, Human Right Committee, General Comment No. 37 at ¶34

⁹ *See, e.g.*, Human Rights Committee, General Comment No. 37 at ¶ 74. *See also*, ICCPR, Article 21, (“No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”).

¹⁰ *See, e.g.*, Human Right Committee, General Comment No. 37 at ¶ 36 (“Given that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.”)

¹¹ *See, e.g.*, Human Right Committee, General Comment No. 37 at ¶ 24. *See also*, ICERD, Article 2(1)(e)

6. Ensure that the right to assembly of peaceful protesters is not limited or violated as a result of the violent conduct or the possibility of violent conduct of a few individuals;¹²
7. Ensure that law enforcement officers do not equate the presence of protesters' protective equipment such as gas masks or helmets as threatening or violent conduct;¹³
8. Ensure that law enforcement officers do not engage in unwarranted interference, i.e. unnecessary blocking of streets;¹⁴
9. Protect peaceful protesters from violent counter-protesters and ensure that law enforcement do not further enable counter-protesters by showing comradery;¹⁵
10. Halt the use of inflammatory language by the Federal Government and refrain from applying anti-terrorism rhetoric as a political tool to demonize and mischaracterize peaceful protesters;¹⁶
11. Revoke Executive Order on Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence to halt the use of federal agents at protests and rescind the inflammatory language used to describe anti-racism demonstrators;
12. Refrain from engaging in surveillance and using the Internet and digital technologies in ways that restrict fundamental freedoms, reduce civic space, and target civil society actors and human rights defenders, including protest organizers and participants;¹⁷
13. Enact legislation limiting the use of social media monitoring, cell-site simulators, facial recognition, and other biometric identification and surveillance tools by law enforcement officers to be in line with the international human right to privacy, including through warrant requirements;
14. Ensure that access to the internet is not blocked, limited, or shut down and that the media may freely operate during protests;¹⁸

¹² See, e.g., Human Right Committee, General Comment No. 37 at ¶ 16, 38 (“Any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned. Blanket restrictions on peaceful assemblies are presumptively disproportionate”), and ¶¶52-58.

¹³ See e.g. Human Right Committee, General Comment No. 37 at ¶ 20, 27.

¹⁴ See e.g. Human Right Committee, General Comment No. 37 at ¶ 23, (“States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.”)

¹⁵ See, e.g. Human Right Committee, General Comment No. 37 at ¶ 24 (“States must also protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public,¹⁵ counterdemonstrators and private security providers.”)

¹⁶ See, e.g., Human Right Committee, General Comment No. 37 at ¶ 50; ICERD, Article 4.

¹⁷ See, e.g., Human Right Committee, General Comment No. 37 at ¶10

¹⁸ See, e.g., Human Right Committee, General Comment No. 37 at ¶34. See also, 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>.

15. Ensure that federal, state, and local law enforcement officers receive proper training regarding the promotion of peaceful demonstrations, de-escalation tactics, minimizing use of less-lethal force, and relevant human rights standards;¹⁹
16. Enact policies that require law enforcement officers to seek to de-escalate and exhaust non-violent means before force becomes necessary as a last result;²⁰
17. Ensure that federal, state, and local law enforcement abide by international law enforcement standards and cease the use of excessive and discriminatory force when responding to public demonstrations;²¹
18. Limit the militarization of law enforcement and the use of federal law enforcement without local authorization;
19. Revoke Executive Order on Restoring State, Tribal, and Local Law Enforcement's Access to Life-Saving Equipment and Resources to prohibit the federal government from providing local law enforcement departments with military equipment, such as tracked armors;
20. Enact policies that require law enforcement to only use tactics such as "kettling," or containment of large groups, when it is necessary and proportionate to do so in order to address actual violence or an imminent threat;²²
21. Enact policies to require law enforcement to only use dispersal techniques in exceptional cases when the assembly is no longer peaceful and ensure that law enforcement follows rules on the use of force;²³
22. 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;²⁴
23. Require use of proper identification for federal agents and law enforcement officers;²⁵

¹⁹ See, e.g., UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms; see generally, Human Rights Committee, General Comment No. 37.

²⁰ See, e.g., Human Rights Committee, General Comment No. 37 at ¶ 78.

²¹ See, e.g., UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms. See also, ICERD, Article 5(b) ("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."); see generally, Human Rights Committee, General Comment No. 37.

²² See, e.g., Human Rights Committee, General Comment No. 37 at ¶ 84.

²³ See, e.g., Human Rights Committee, General Comment No. 37 at ¶ 85.

²⁴ See generally, e.g., CAT, 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."); see also Human Rights Committee, General Comment No. 37 at ¶82 ("Preventive detention of targeted individuals to keep them from participating in assemblies may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly.").

²⁵ See, e.g., Human Rights Committee, General Comment No. 37 at ¶ 90.

24. Publicly urge that federal, state, and local law enforcement end the practice of detaining protesters in unmarked vehicles;
25. Prohibit deputizing local law enforcement as a way to arrest and suppress protesters' rights to assembly;
26. Provide information regarding all those who have been detained or arrested,²⁶ and ensure that they have access to legal counsel, family, and medical assistance;²⁷
27. Release, or legitimately charge and try, all those who have been arrested in connection with racial justice protests;²⁸
28. Provide meaningful remedies for all instances of excessive force, torture, or other inhumane treatment;²⁹
29. Protect the rights of journalists, medics, and legal observers, including the right to monitor and report law enforcement conduct;³⁰
30. Enact legislation providing greater rights to journalists to further protect freedom of the press;
31. Encourage states to enact policies allocating portions of the current law enforcement budget to other resources;
32. Enact legislation that requires independent prosecutors to investigate and prosecute law enforcement officers in order to mitigate the effects of prosecutorial discretion;
33. Enact legislation that ends qualified immunity so victims who have been deprived of constitutional rights can seek meaningful remedies;
34. Revoke the Department of Justice memorandum limiting consent decrees and encourage the initiation of pattern or practice investigations;
35. Establish independent and transparent oversight of all law enforcement bodies involved with peaceful assemblies and initiate prompt, impartial, and independent investigation of instances of human rights violations, and promptly and fairly prosecute or extradite those responsible for violations;³¹

²⁶ *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.”).

²⁷ ICCPR, Article 14.

²⁸ *See, e.g.*, Human Right Committee, General Comment No. 37 at ¶82

²⁹ *See generally* CAT, 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.

³⁰ *See, e.g.*, Human Rights Committee, General Comment No. 37 at ¶ 95.

³¹ *See, e.g.*, HRC General Comment No. 37 at ¶ 29,¶ 90 (“States have an obligation to investigate effectively, impartially and in a timely manner any allegation or reasonable suspicion of unlawful use of force or other violations by law enforcement officials, including sexual or gender-based violence, in the context of assemblies”). *See also*, ICCPR, 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.”).

36. Enact legislation to provide meaningful remedies to individuals who have been deprived of a federal or constitutional right to privacy, freedom of the press or assembly, by federal law enforcement agents;
37. Call on Congress to pass the [Protect our Protesters Act of 2020](#) (HR 7315);

Specifically, we also request that you:

38. Highlight, in your Report to the Human Rights Council pursuant to resolution 43/1, the widespread human rights violations in the United States against protesters, journalists, medics, legal observers and bystanders noted in this submission;
39. Conduct public hearings and consultations, potentially facilitated by OHCHR's regional and field offices, that will provide adequate and meaningful opportunities for a wide range of voices and experiences on the human rights violations highlighted in this submission to further inform and increase the transparency and legitimacy of your Report to the Human Rights Council pursuant to resolution 43/1;
40. Seek a visit to the United States, and appeal to the Government to grant unimpeded access for your Office and the Special Procedures of the 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 for purposes of informing your Report to the Human Rights Council pursuant to resolution 43/1; and
41. Send a Communication to the Government of the United States and call for an immediate, thorough, and impartial investigation into alleged human rights violations highlighted in this submission.

Sincerely,

Hannah Garry
Clinical Professor of Law and Director

Ava Habibian
Student Attorney

Laura Penaranda
Student Attorney

USC Gould School of Law
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Peter Micek
General Counsel
Access Now

Laura O'Brien
UN Advocacy Officer
Access Now

Christina Hioureas
Counsel, UN Practice Group
Foley Hoag, LLP
On behalf of Access Now

ANNEX A:

**URGENT APPEAL TO SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF
PEACEFUL ASSEMBLY AND OF ASSOCIATION**

On September 10, 2020, [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](#) (on behalf of Access Now) – submitted an [Urgent Appeal](#) to the United Nations Special Rapporteur on the Rights to Freedoms of Peaceful Assembly and of Association, Mr. Clément Nyaletsossi Voule.

The Urgent Appeal provides further detail of the following incidents in the United States from June – August 2020 after the killing of George Floyd: extrajudicial killings of Black civilians, the violent and aggressive response of the local, state, and federal government against the peaceful protesters, the presence and use of federal agents in the assemblies, and the use of inflammatory language by the federal government.

ANNEX B:

ADDITIONAL SOURCES DOCUMENTING HUMAN RIGHTS VIOLATIONS AGAINST PEACEFUL PROTESTS³²

II. Response to Peaceful Protests by Law Enforcement: An Overview

A. Excessive Use of Force

- 3 June 2020, [Video by CNN](#) of Kansas City Police approaching a demonstrator, yelling and spraying the individual in the face with pepper spray.
- 5 June 2020, [NBC New York](#) reporting a New York Police Department officer forcibly removing a protester's mask used for protection from COVID-19 and then spraying the individual in the face with pepper spray.
- 22 July 2020, [NY Times news article](#) includes a video and reports of police officers beating a veteran and spraying him with pepper spray after he sought to meet with federal agents. The officers broke his arm, and he was taken to a nearby hospital where he received pins, screws, and plates in his hands.
- 31 July 2020, [NY Times news article](#) reports law enforcement shooting one protester in the head with a crowd-control munition, and hitting a Navy veteran repeatedly with a baton as he stood still.
- 4 August 2020, [Amnesty International USA interview](#) with a protester stating: "Every single day and night they pepper sprayed – people didn't even have to be holding a sign. If police feel like people are too close, they will come at people and do what they want... The police pepper sprayed us multiple times – like they were spraying a hose, like watering a lawn... [The pepper spray] hurts not only in the moment but also when you wake up and are coming out of shower, it's coming out of your hair and coming into your eyes." (p. 34 of the report).

A. Discriminatory Use of Force

- 26 August 2020, [cellphone videos released by Washington Post showing](#) police officers thanking armed militias for combatting protesters in Kenosha, Wisconsin.
- 14 September 2020, [Human Rights Watch news article](#) that recounts the manner in which Kenosha, Wisconsin, officers engaged in comradery with armed counter-protesters: "A group of white men, violating curfew and brandishing assault rifles, did not appear to concern Kenosha officers, who acted as though these men were partners. Police did not seem to question whether the 17-year-old among them was old enough to legally possess the gun. Even after witnesses told officers the boy had shot people, they let him walk by them. He drove home to a neighboring town and was not arrested until the following day."
- 23 October 2020, [Amnesty International USA reporting](#) several instances in which law enforcement officers either refused to protect protesters from counter-protesters, or were slow to respond to violence by counter-protesters against Black Lives Matter

³² Sources organized by relevant sections of the original Submission.

demonstrations. In many instances, the police were completely absent during Black Lives Matter protests in which counter-protest incited violence against protesters. In other instances, officers did not differentiate between peaceful protesters and agitators and arrested many peaceful protesters. (pp. 15-30 of the report).

- 29 October 2020, [The Guardian news article](#) detailing the several instances in which law enforcement officers were permissive towards the alt-right and counter-protesters. “In Olympia, Washington, a police officer posed for a photo with individuals who appeared to be members of the 3 Percenters, a rightwing militia group, while in Philadelphia, officers stood by as a group of rightwing men attacked a journalist. [...] in Washington DC, where the Ohio national guard deployed a known neo-Nazi to the anti-racism protests taking place in the city, while in Salem, Oregon, video shows an officer advising armed, white, counter-protesters on how to avoid arrest as police prepare to enforce a curfew.”

B. Arbitrary Arrests Without Charge or Under Baseless Charges

- 3 June 2020, [Video by CNN](#) of specific arrest incident in Kansas City, Missouri.
- 16 June 2020, [Washington Post article](#) about arrests in Washington D.C. during protests.
- 16 August 2020, [Guardian article](#) regarding effects of arrests and charges against Black Lives Matter protesters.
- 19 August 2020, [Time article](#) examining how protesters’ lives could be affected by charges.
- 27 October 2020, [Guardian article](#) about protesters charged and facing trial.
- 23 October 2020, [Washington Post investigation](#) into arrests at protests in 15 cities.

C. Arbitrary Detention & Cruel Treatment

- 30 September 2020, [Human Rights Watch Report](#) on an instance of “kettling” at a protest in the Bronx, New York.

III. Militarization & Increased Intervention by Federal Agents

A. Local Law Enforcement

- 30 May 2020, [video posted on Twitter](#) of San Antonio police using tear gas on a crowd of Black Lives Matter protesters.
- 30 May 2020, [video posted on Twitter](#) of Dallas, Texas, police using tear gas on a crowd of peaceful protesters.
- 30 May 2020, an LA Times reporter [recounting on Twitter](#) about being tear gassed and hit by rubber bullets by police while covering Black Lives Matter protests, in which she states she has also covered US Military War Zones in Iraq and Afghanistan but was never shot until that night.
- 30 May 2020, [video posted on Twitter](#) of Washington, D.C. officers armed in riot gear shielding off peaceful protesters from the streets.
- 2 June 2020, Washington, D.C. officers dressed in riot gear [used tear gas](#) on crowds and forcefully pushed them out of Lafayette Square in order to make way for President Donald Trump to take a photograph with a bible in front of a church.
- 5 June 2020, the federal government [sent helicopters](#) to hover over crowds of protesters in Washington, D.C., intimidating protesters.

- 6 June 2020, Albuquerque Police Department [used tear gas](#) against protesters after George Floyd demonstration.
- 17 July 2020, [NPR reports](#) and the Department of Homeland Security confirms, federal officers used unmarked vehicles to apprehend people and arrest them.
- 22 July 2020, [video posted on Twitter](#) of local officers using tear gas and impact munitions to push protesters further into downtown Portland, Oregon.
- 20 August 2020, [Portland, Oregon police](#) “said they fired crowd control munitions and tear gas” into a crowd of 200 people.

B. Federal Agents

- 2 July 2020, [U.S. News reporting](#) troops were issued military weapons and bayonets in Washington, D.C.
- 24 August 2020, [CNN reporting](#) after the shooting of a Black man in Kenosha, Wisconsin, protesters gathered at the courthouse and were met by police in riot gear and an armored vehicle. Police threw gas into the crowd.

IV. Treatment of Journalists, Medics, & Legal Observers

- 29 May 2020, [video by The Guardian](#) of a Black CNN reporter being arrested after reporting the arrest of another civilian.
- 30 May 2020, [video posted on Twitter](#) of a medic wearing a white helmet with a red cross getting arrested in Brooklyn, New York; the medic is planted on the ground with a law enforcement officer’s knee holding him down as he places handcuffs on the medic.
- 31 May 2020, [video posted on Twitter](#) of a group of medics physically transporting a visibly wounded individual to a hospital. Seconds later police open fire on the crowd.
- 5 June 2020, [video posted on Twitter](#) of law enforcement officers arresting medics dressed in scrubs in Bronx, New York.
- 6 June 2020, [reports indicated](#) 328 instances of attacks on journalists during protests.
- 12 June 2020, [NY Times news article](#) on the treatment of journalists by law enforcement officers during protests. Police shoved a journalist after she asked a question. She fell and hit her head against a fire hydrant. The only reason she was not hurt was because she had on a helmet. In another instance, a TV reporter in Louisville was hit by a pepper ball; the officer had aimed for the reporter when shooting the ball.
- 12 July 2020, [video posted on Twitter](#) reflects a medic being shoved to the ground, yanked off the curb, and then thrown again by a law enforcement officer dressed in military gear.
- 22 July 2020, The American Civil Liberties Union (ACLU) filed a [class action lawsuit](#) against the Department of Homeland Security in which well documented incidents illustrate the ways law enforcement officers targeted and attacked a group of volunteer medics.
- 4 August 2020, [Amnesty International USA](#) released a detailed report “documenting the widespread and egregious human rights violations by [United States] police officers against . . . medics, journalists and legal observers who gathered to protest the unlawful killings of Black people by the police and to call for systemic reform in May and June of 2020.” “Several members of the media were blinded by the use of kinetic impact projectiles in a series of incidents.” (p. 43 of the report). Furthermore, the report indicates several instances in which legal observers were targeted and brutally attacked or arrested. In one instance, a woman was

grabbed from the back and her hands were zip tied to her back as she was walking away from a line of protesters. In another instance, an officer told a legal observer that he did not need to advise the woman of her rights because he was not interrogating her. (pp. 49-52 of the report).

- 9 September 2020, [Video by The Hill](#) of a Los Angeles reporter tackled to the ground and arrested for rushing up to a scene in a crowd to see what was happening.

V. Surveillance & Digital Rights

- 4 August 2020, [Bloomberg Law article](#) examining how protester surveillance may test U.S. constitutional right to privacy
- 6 August 2020, [Public Source article](#) about Pittsburgh Police using social media facial recognition technology to identify and criminally charge Black Lives Matter protesters.
- 16 August 2020, [Newsweek article](#) about privacy concerns based on the federal agents' surveillance of Black Lives Matter protesters through social media monitoring.

VI. Inflammatory Language

- 12 June 2020, [NY Times article](#) documenting reporters and news photographers being roughed up, arrested and shot with projectiles while President Trump blames “Lamestream Media” for protests.
- 30 August 2020, President Trump remarks in [an Emergency Operations Briefing in Orange, Tx](#): “We sent in 1,000 National Guard, and that’s not even a big force. We could clean out — as an example, Portland: We could fix Portland in, I would say, 45 minutes.”

VII. United States Domestic Framework

A. Constitutional Provisions, Federal Statutes, and Caselaw

1. *Freedom of Expression, Unlawful Assemblies, and Hate Speech under the First Amendment*

- **State statutes regarding unlawful assembly:**
 - **California** Penal Code [Section 407](#): “Whenever two or more persons assemble together to do an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.”
 - **New York** Penal Law [Section 240.10](#): “A person is guilty of unlawful assembly when he assembles with four or more other persons for the purpose of engaging or preparing to engage with them in tumultuous and violent conduct likely to cause public alarm, or when, being present at an assembly which either has or develops such purpose, he remains there with intent to advance that purpose.”
 - **Oregon** Revised Statute [Section 131.675](#): “When any five or more persons, whether armed or not, are unlawfully or riotously assembled in any county, city, town or village, the sheriff of the county and the deputies of the sheriff, the mayor of the city, town or village, or chief executive officer or officers thereof, and the justice of the peace of the district where the assemblage takes place, or such of them as can forthwith be collected,

shall go among the persons assembled, or as near to them as they can with safety, and command them in the name of the State of Oregon to disperse. If, so commanded, they do not immediately disperse, the officer must arrest them or cause them to be arrested; and they may be punished according to law.”

- **Missouri Revised Statutes [Section 574.040](#)**: “A person commits the crime of unlawful assembly if he knowingly assembles with six or more other persons and agrees with such persons to violate any of the criminal laws of this state or of the United States with force or violence.”

2. Unreasonable Searches & Seizures, Excessive Force, and Privacy Rights under the Fourth Amendment

• U.S. Supreme Court cases regarding excessive force:

- [*Tennessee v. Garner*](#), 471 U.S. 1 (1985): Deadly force “may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”
- [*Graham v. Connor*](#), 490 U.S. 386 (1989): Applies the objective unreasonableness standard for all police use of force regardless if force is lethal or non-lethal.
- 5 June 2020, [article](#) on “How the Supreme Court Enables Police Excessive Force.”

5. Protection of Journalists, Medics, Legal Observers under the First Amendment

• U.S. Supreme Court cases regarding freedom of the press:

- [*Branzburg v. Hayes*](#), 408 US 665 (1972), reaffirmed the principle that journalists do not have the privilege of greater rights by holding that: “requiring reporters to disclose confidential information to grand juries served a ‘compelling’ and ‘paramount’ state interest and did not violate the First Amendment” because “the average citizen is often forced to disclose information received in confidence when summoned to testify in court.”
- [*Nixon v. Warner Communications, Inc.*](#), 435 US 589 (1978), reaffirmed that the “press generally has no right to information superior to that of the general public.”

C. Impact & Effectiveness

• Department of Justice Pattern or Practice Investigations:

- 8 May 2015, DOJ [one-pager on how the DOJ conducts](#) pattern or practice investigations.
- January 2017, DOJ [Civil Rights Division Report](#) from 1994-2017 with information about history and purpose of pattern or practice investigations, initiating an investigation, conducting an investigation, and negotiating reform agreements.

- 29 May 2020, *New York Times* opinion piece on “[How Cops Get Away With Murder](#)” that explains how qualified immunity deprives of remedies.

3. *Lawsuits*

- Examples of recent lawsuits filed alleging violations of protesters’ and journalists’ rights:
 - 2 June 2020, The American Civil Liberties Union of Minnesota [filed](#) a class-action [lawsuit](#) on behalf of journalists who were targeted and attacked by Minneapolis and Minnesota police.
 - 4 June 2020, protesters and Black Lives Matter DC [filed](#) a [lawsuit](#) alleging violations of their First Amendment rights to free speech and assembly and their Fourth Amendment right of freedom from unreasonable search and seizure.
 - 23 June 2020, CBS News [article](#): “At least 40 lawsuits claim police brutality at George Floyd protests across U.S.”
 - 28 June 2020, The American Civil Liberties Union, on behalf of journalists and legal observers covering protests following George Floyd’s killing in Portland, Oregon, [filed a class action lawsuit](#) against the City of Portland and its police officers.
 - 2 July 2020, Portland judge issued a [temporary restraining order](#) stating police cannot arrest, threaten to arrest or use force against a person who they know to be a journalist or legal observer.
 - 17 July 2020, The American Civil Liberties Union Foundation of Oregon [sued](#) the federal agents who were deployed to Portland, including the Department of Homeland Security and U.S. Marshals Service.
 - 22 July 2020, The American Civil Liberties Union (ACLU) has filed a [class action lawsuit](#) against the Department of Homeland Security in which well documented incidents illustrate the ways law enforcement officers targeted and attacked a group of volunteer medics.
 - 5 October 2020, five protesters who were banned from the State Capital in Iowa [filed a lawsuit](#) alleging that the ban blocked their constitutional rights to free speech, assembly, and their right to petition the government.