

***IN THE SHADOWS OF THE WAR ON TERROR:
PERSISTENT POLICE BRUTALITY AND ABUSE
IN THE UNITED STATES***

A report prepared for the United Nations Committee Against Torture
on the occasion of its review of the

**The United States of America's Second Periodic Report
to the Committee Against Torture**

April 2006

This report was prepared by U.S. non-governmental organizations (NGOs) in response to the Second Periodic Report of the United States of America to the Committee on Torture (the “Committee”) regarding its compliance with the Convention Against Torture (the “CAT” or “Convention”). In it, we focus on ongoing and pervasive police brutality and abuse in communities of color across the U.S. which, despite the Committee’s previous expression of concern about this issue, continues to take place, in violation of Articles 7 and 16 of the Convention. We refer the Committee to the report prepared by U.S. NGOs Penal Reform International and Global Rights for coverage of human rights abuses in prisons, jails and detention centers in the U.S..

The organizations participating in the preparation of this report are deeply concerned about torture and cruel, inhuman, and degrading treatment perpetrated and condoned by the U.S. government overseas in the context of the “war on terror” and U.S. occupations of Iraq and Afghanistan, as well as at Guantanamo Bay in Cuba.

However, we wish to specifically call the Committee’s attention to ongoing and pervasive violations of the Convention which continue to take place on U.S. soil, in the shadows of the U.S. government’s extraterritorial activities, at the hands of local, state, and federal law enforcement agents, and to urge the Committee to focus significant attention on abuses of human rights on U.S. soil during its review of the U.S. government’s report.

The overall climate of the U.S. government’s “war on terror” has not only fostered torture and abuse of individuals detained by local and federal law enforcement agencies in the wake of the events of September 11th,¹ as well as ongoing targeting of Arab and Muslim populations in the U.S. for abusive police practices,² it has also led to considerable abridgment of civil liberties in the U.S.,³ created a generalized climate of impunity for law enforcement officers, and contributed to the erosion of what few accountability mechanisms exist for exercise of civilian control over law enforcement agencies. As a result, police brutality and abuse persist unabated and unchecked across the country.

In its report to the Committee, the U.S. government concedes that complaints of police violence and abuse continue to be made, but states

In a country of some 280 million people with a prison population of over 2 million people it is perhaps unavoidable, albeit unfortunate, that there are cases of abuse.⁴

The U.S. maintains that existing legislation provides sufficient protection and redress to those against whom such violations are committed. The organizations who participated in the preparation of this report wish to provide the Committee with a glimpse of the full range and prevalence of police brutality in the US, as well as of the profound limitations of the remedies cited by the U.S. government in its report to the Committee.

This report focuses on three key issues: the persistent use of excessive force by law enforcement agents, often with impunity, the use of hand-held electroshock devices (“TASERS”) by local law enforcement agents, and rape and sexual assault by police officers and law enforcement agents outside of prisons or jails. Additionally, throughout

the report, we highlight the disproportionate numbers of people of color, immigrants, women, lesbian, gay, bisexual and transgender people, sex workers, and youth who are subjected to torture and cruel, inhuman and degrading treatment by law enforcement officers in the U.S. in violation of the Convention's non-discrimination provisions.

Principal Areas of Concern

- **The U.S. government's failure to regulate the use of electroshock weapons by law enforcement agents;**
- **Persistent and pervasive use of excessive force by police, causing severe mental and physical injury up to and including death;**
- **The prevalence, as yet undocumented by the U.S. government, of rape and sexual abuse of women by law enforcement officers outside of prisons and jails;**
- **The U.S. government's failure to (1) collect data on a national level in order to document, monitor and prevent violations of the Convention, (2) provide for thorough and impartial investigation of allegations of violations, (3) punish officers who commit acts of torture or cruel, inhuman and degrading treatment, and to (4) provide for adequate remedies and redress.**

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TABLE OF CONTENTS

I. Introduction	5
II. Use of Excessive Force (Article 2)	6
A. <i>The Reality: Beatings and Shootings by Law Enforcement Agents</i>	7
B. <i>The Reality: Unregulated Use of Electroshock Weapons (TASERs)</i>	12
C. <i>The Reality: Torture and Cruel, Inhuman, and Degrading Treatment During Interrogations and in Police Custody</i>	18
III. Rape & Sexual Assault	20
IV. Police Brutality in the Wake of Hurricanes Katrina & Rita	24
V. State Acquiescence to Private Acts of Torture	27
VI. Prevention, Education, Investigation and Redress (Articles 2, 10, 11, 12, 13, 14, 16)	28
B. <i>Prevention of Torture (Article 2) & Systemic Review (Article 11)</i>	31
C. <i>Education and Information (Article 10)</i>	32
D. <i>Prompt Investigation (Article 12)</i>	33
E. <i>Right to Complain & Right to Redress and Compensation (Articles 13 and 14)</i> ...	34
VII. Recommendations	38

IN THE SHADOWS OF THE WAR ON TERROR: PERSISTENT POLICE BRUTALITY AND ABUSE IN THE UNITED STATES

I. Introduction

Since the advent of the first state-sponsored police forces in the U.S. – slave patrols⁵ - the use of violence by law enforcement agents has been a feature of the American landscape. *We Charge Genocide*, a petition submitted to the United Nations by the Civil Rights Congress in 1951, documented thousands incidents of police violence against African Americans alone.⁶ Police brutality against Native Americans has also been a constant of colonial culture in the U.S..⁷ It is therefore not surprising that official studies, as well as those of domestic and international civil and human rights organizations, have consistently found that people and communities of color continue to be disproportionately subject to human rights violations at the hands of law enforcement officers, including pervasive verbal abuse and harassment, racial profiling, routine stops and frisks based solely on race and without lawful justification, use of excessive force, unjustified shootings, and torture.⁸

Increased national and international attention was brought to bear on the issue of police brutality in the U.S. in the 1990s following the release of a videotape documenting the beating of Rodney King by officers of the Los Angeles Police Department. Over the course of the ensuing decade, U.S. NGOs, including the National Association for the Advancement of Colored People (NAACP), Human Rights Watch, and Amnesty International issued a series of reports documenting widespread abuses by law enforcement agents across the country. In 2000, the U.S. Civil Rights Commission, an independent, bipartisan agency established by the U.S. Congress in 1957, reviewed the findings of its 1981 report *Who is Guarding the Guardians: A Report on Police Practices*, and concluded that “[m]any of its findings and recommendations still ring true today,” noting that “[r]eports of alleged police brutality, harassment, and misconduct continue to spread throughout the country. People of color, women, and the poor are groups of Americans that seem to bear the brunt of the abuse...”⁹

In its Concluding Observations to the Initial Report of the United States of America to the Committee Against Torture, the Committee expressed concern regarding “the number of cases of police ill-treatment of civilians” reported in the U.S., noting that “[m]uch of this ill-treatment by police ... seems to be based on discrimination.”¹⁰

In the wake of the events of September 11, 2001, and subsequent dramatic increases in law enforcement powers in the U.S. in the name of waging the “war on terror,” public attention to the conduct of law enforcement agents beyond the confines of the “war on terror” has been limited. However, as noted by one domestic NGO which documents killings by law enforcement agents, “police brutality did not die on September 11th [2001].”¹¹ In fact, a representative of the National Association for the Advancement of Colored People (NAACP) stated in 2004, “the degree to which police brutality occurs...is the worst I’ve seen in 50 years.”¹²

II. Use of Excessive Force (Article 2)

The U.S. government has failed to address the concerns raised by the Committee in its Concluding Observations to the United States Initial Periodic Report regarding “[t]he number of cases of police ill-treatment of civilians” in the U.S.¹³

During its review of the U.S. government’s Initial Report, the Committee specifically expressed concern regarding allegations of “police abuse, brutality and unnecessary or excessive use of force...inappropriate use of devices and techniques such as tear gas and chemical (pepper) spray, TASERS or ‘stun guns,’ stun belts, police dogs, handcuffs and leg shackles,”¹⁴ as well as “racial bias and discrimination against members of minorities, as reflected, *inter alia*, in statistical disparities in instances (as well as allegations) of harassment and abuse.”¹⁵ The Committee recommended that the United States “[t]ake such steps as are necessary to ensure that those who violate the Convention are investigated, prosecuted and punished, especially those who are motivated by discriminatory purposes or sexual gratification.”¹⁶

Use of excessive force by law enforcement officers against unarmed individuals, often leading to death or serious injury, remains endemic across the U.S.. While the U.S. government acknowledges the existence of police brutality in its current report to the CAT, it maintains that existing judicial remedies are sufficient to meet its obligations under Convention, stating that

“Since the Initial Report, complaints about abuse including physical injury by individual law enforcement officers continue to be made and are investigated, and, if the facts so warrant, officers are prosecuted by federal and state authorities.

...

The Department of Justice is committed to investigating all incidents of willful use of excessive force by law enforcement officers and to prosecuting federal law violations should action by local and state authorities fail to vindicate the federal interest.”¹⁷

In reality, investigations at the local and state level are often conducted by the very same law enforcement agencies which employ the officers responsible for acts of torture or cruel, inhuman or degrading treatment, or by civilian review agencies with little or no authority to discipline officers.¹⁸ Criminal charges are seldom brought against offending officers, and convictions rarely obtained.¹⁹ The federal Department of Justice, limited by the high standard of intent imposed by the legislation cited to by the U.S. in its report,²⁰ as well as the limited resources devoted to investigation and prosecution of law enforcement misconduct,²¹ is often unable or unwilling to bring federal charges against law enforcement officers who commit torture, or to initiate pattern and practice investigations of police departments with high numbers of complaints of police abuse.

A. *The Reality: Beatings and Shootings by Law Enforcement Agents*

Reports received by US NGOs indicate that law enforcement officers in the U.S. continue to engage in torture, defined under the Convention as “act[s] by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” as well as acts constituting “cruel, inhuman or degrading treatment” with alarming regularity and often with impunity. Individuals regularly report abusive searches, beatings and use of painful physical restraints, use of electro-shock weapons (“TASERs”), and killings by law enforcement agencies to national and grassroots groups monitoring police misconduct and abuse. Police brutality is particularly common in the context of law enforcement strategies used in the “war on drugs,” “quality of life” policing initiatives, and policing of protest.²²

However, few official statistics regarding the incidence and nature of the use of force by police exist. In fact, in 1999 a National Institute of Justice report concluded that “[t]he incidence of wrongful use of force by police is unknown. Research is critically needed to determine reliably, validly, and precisely how often transgressions of use-of-force powers occur.”²³ Notwithstanding this mandate from a division of its own Department of Justice, as well as statements to this effect made by members of the Committee during its review of the U.S. in 2000,²⁴ the U.S. government has yet to institute a federal data collection system documenting incidents, trends, and patterns of use of excessive force by law enforcement officers, leading to a disturbing lack of statistical information regarding the incidence of torture and cruel, inhuman or degrading treatment the U.S.. In 2000, the U.S. Commission on Civil Rights commented that “[e]xperts cite the lack of reliable national statistics on police brutality as a problem when developing policies to prevent police misconduct.”²⁵

What statistics do exist confirm that racial minorities are at disproportionate risk of torture and cruel, inhuman or degrading treatment at the hands of law enforcement. For instance, a study recently released by the U.S. government concludes that African Americans and Latino/as are more likely to report that they were searched by an officer following a traffic stop, or that force was used or threatened during contact with police.²⁶

On June 29, 2004, Gus Rugley, a 21 year old African American youth, was shot more than hundred times on Alemany Boulevard, San Francisco, after what the SFPD described as a high speed chase. The SFPD claimed that Rugley opened fire at a police car. However, the autopsy released 9 months later revealed no gun powder traces on his skin or clothing. A toxicological screen confirmed that Rugley was not under the influence of alcohol or drugs at the time of his death.²⁷

Uses of excessive force by law enforcement officers all too frequently result in the death of civilians. In New York and New Jersey alone, close to 150 people have been killed by law enforcement officers since September 11th, 2001, the majority of whom were people of color.²⁸ Two African American men died in police custody in Jacksonville, Florida in 2004 as a result of excessive force inflicted by local law enforcement officers following their arrest for minor offenses.²⁹ Another, Nathaniel Jones, was severely beaten in 2003

with metal nightsticks by Cincinnati police officers, and subsequently died in police custody. Police videotape showed officers repeatedly jabbing Mr. Jones after he had fallen to the ground.³⁰ In 2001, 19 year-old African American Timothy Jones, wanted on minor charges, was shot to death as he fled from police.³¹

In July 2003, Cau Bich Tran, a 25-year-old Vietnamese woman, was shot to death within minutes of their arrival by police responding to a call for help opening a locked door at her San Jose home. Police later claimed that they thought the vegetable peeler she was holding after she had tried to use it to open the door was a weapon.³²

Many police killings involve mentally or physically disabled individuals whose disability either impacted their ability to comply with police orders or contributed to their death as a result of the use of excessive force. For instance, on April 16, 2002, Santiago “Chago” Villanueva was experiencing an epileptic seizure at the clothing factory where he worked, leading co-workers called for an ambulance. Bloomfield, New Jersey police responded first and proceeded to handcuff him, shouted profanities and claimed that Villanueva was a drug addict, and forced him to the ground.³³ “When police arrived on the scene they saw a Black man with dreads seizing on the ground and assumed he was on drugs. Officers harassed Mr. Villanueva and insisted that he speak English. They threw him on the ground and one officer put his knee on Mr. Villanueva’s neck while another placed a knee on his back.”³⁴ Although the officers were subsequently indicted for reckless manslaughter, and a medical examiner ruled the cause of death “mechanical asphyxiation,” the charges were later dropped.³⁵ According to the Portland Independent Media Center, “[o]n April 1, 2001 Jose Mejia Poot, a 29 year old Mexican laborer who spoke little English, was shot and killed by Portland police officers at Pacific Gateway Hospital. Mejia had been taken to the psychiatric center after being arrested and beaten at a bus stop on 82nd Avenue in Portland. The TriMet bus driver called police after Mejia attempted to board the No. 72 bus twenty cents short on his fare. Numerous eyewitnesses described the excessive use of force against Mejia during his arrest at the bus stop. Days after the shooting at the hospital, a grand jury acquitted Mejia's killers of wrongdoing...”³⁶ In 2000, Detroit police shot and killed Errol Shaw, Sr. an African American man who was both deaf and mute, alleging that he was threatening them with a garden rake, even though he was 15 feet away from the officers at the time he was shot. Police further alleged that he refused to comply with their orders to drop the rake. Relatives and neighbors report that they attempted to warn the police that Mr. Shaw was deaf, to no avail.³⁷ The officer responsible for shooting Mr. Shaw was acquitted of manslaughter.³⁸

On October 8, 2002, Jihad Akbar, a 28 year-old Black gay man who suffered from a mental disability, entered the Bagdad Café in Oakland, CA while in the midst of a mental health crisis. He picked up two knives and began dancing in the street, smiling. Police responding to the scene reportedly ran up to him shouting and pointing their guns at him rather than assessing and de-escalating the situation. Two minutes later, Mr. Akbar was dead. At no time did Mr. Akbar threaten anyone with the knives he was holding. A year later, no action had been taken against the officers involved.³⁹

In a letter to the editor, Mr. Akbar's partner, a San Francisco District Attorney, asked "Why didn't the police take steps to de-escalate the situation, rather than shouting and pointing their guns at him after running right up on someone clearly in a mental health crisis? Why the immediate use of lethal force? What about pepper spray, a stun gun or shooting to disable? Many different things could have been done to stabilize the situation while protecting Jihad, the police and the public." He described Mr. Akbar as "an extraordinary person. He was an "A" student who had been football captain at Berkeley High and then graduated from UC Berkeley in 1997. He played two seasons of varsity football for Cal. He was a student leader, mentored kids from the community and volunteered as a Big Brother, a Senior Companion, and for other civil rights and service programs. He worked in juvenile justice and AIDS prevention and was deeply committed to the struggle for human rights.

But Jihad struggled with his demons too: major depression and addiction to methamphetamine. He was working hard to overcome both illnesses and, at the time of his killing, trying desperately to get into a residential treatment program. Unfortunately, the wait for a bed in a treatment facility is unconscionably long. Not long before Jihad was killed, his application for a dual diagnosis program was denied because they decided his mental illness was not severe enough."⁴⁰

Even when use of excessive force does not result in death, it often leads to "severe physical and mental pain and suffering." Almost 15 years after the Rodney King case, a strikingly similar beating took place, in which Los Angeles Police Department officers beat African American Stanley Miller 11 times about the head with a flashlight, causing substantial injury.⁴¹ After a five month investigation, prosecutors declined to file charges against the officers involved.⁴² In November 2004, Mrs. Afaf Saudi, a 68 year-old Egyptian U.S. permanent resident, was forcibly removed from a store in Greensboro, South Carolina after being accused of shoplifting. She was subsequently "hog-tied" and tossed into a police cruiser with enough force to cause her to suffer a broken shoulder, a broken rib and a mild heart attack.⁴³ In December 2004, an African American transgender woman was thrown against a wall and then to the floor with sufficient force to break her wrist by a Chicago police officer responding to a domestic dispute. Although the officer was aware that the woman's wrist was injured, he nevertheless twisted her hands in order to place them in handcuffs. She reports that she was denied medical treatment for her injury until she was released from police custody.⁴⁴ In 2003, Margarita Acosta, a 62 year-old Puerto Rican grandmother, was slapped and beaten by New York City police officers responding to a noise complaint during a Fourth of July picnic, and then shoved into a police van without her shirt or shoes.⁴⁵ In 2002, in an

incident captured on videotape, sixteen-year old African American special education student Donovan Jackson was severely beaten by officers of the Inglewood Police Department while his hands were handcuffed behind his back.⁴⁶ State assault charges against one of the officers involved were dropped after two trials in jurors were unable to reach a verdict.⁴⁷

On a cold night in January 2003, a police car pulled into the parking lot of the Little Earth public housing project in Minneapolis, Wisconsin and police officers dragged two American Indians, a man and a woman, out of the squad car. The officers proceeded to physically abuse them both, beating the man until he lay unconscious, and then left them outside in the parking lot in subzero weather. Witnesses reported that they later discovered the man's chest and head had been urinated on during the incident.⁴⁸

Such incidents are not isolated, but merely illustrative of systemic patterns of abuse observed by NGOs across the U.S., disproportionately impacting people of color, immigrants, women, lesbian, gay, bisexual, and transgender people, youth, homeless people, sex workers, and other vulnerable groups, in violation of the non-discrimination provisions of the Convention. For instance, a recent investigation by a national newspaper revealed that use of force – defined as any physical restraint causing injury up to shooting a person to death – by officers in the San Francisco Police Department was alarmingly high, and that 40% of cases in which force was used involved African Americans, who make up less than 8% of the city's population.⁴⁹ Close to 30% of outdoor sex workers and 14% of indoor sex workers who participated in studies conducted by the Sex Workers Project of the Urban Justice Center in New York City reported experiencing physical abuse at the hands of police officers.⁵⁰ Similarly, a 2002 study of female sex workers in Chicago found that police officers were identified as perpetrators of violence in a “substantial” number of cases.⁵¹ *Stonewalled: Police Misconduct and Abuse of Lesbian, Gay, Bisexual and Transgender People in the U.S.*, a report recently released by Amnesty International, documents numerous cases of physical abuse based on gender identity and sexual orientation by law enforcement officers.⁵² The number, nature, and frequency of cases of use of excessive force by law enforcement officers reported to domestic NGOs, as well as the patterns of disproportionate abuse reflecting systemic inequalities, undermine the U.S. government's apparent position in its report to the Committee that abuses by law enforcement officers are limited to exceptional cases involving a few officers who are subsequently duly punished.

“An officer who fatally shot a 17-year-old girl riding in a car driven by a wanted parolee testified that he had more than 20 citizen complaints about excessive use of force but had never been counseled. He was promoted 2 ½ years after the shooting and more than six months before the city paid \$505,000 to settle a lawsuit brought by the girl's family.

Another officer built a record as one of the department's most frequent users of force in his first year on the job but was picked to train new recruits even before his one-year probation period was complete. He was acting in that role when he broke a war protester's arm with his baton and then lied, claiming she had threatened him. That cost taxpayers a legal settlement of \$835,000.”⁵³

B. *The Reality: Unregulated Use of Electroshock Weapons (TASERs)*

Since June 2001 over 150 have people died in police custody in the U.S. after being shot with TASERs.⁵⁴ Hundreds more non-fatal cases of inappropriate and excessive TASER use, including incidents involving use of electro-shock weapons against non-violent and unarmed children, elderly persons, and pregnant women, have been reported across the country.

The Committee Against Torture has previously acknowledged that “electro-shock instruments, including [T]asers” can “sometimes be used as instruments of torture.”⁵⁵ During review of the U.S.’ government’s Initial Report to the Committee, the Country Rapporteur inquired how “the administration, however brief, of an electric shock of 50,000 volts did not constitute cruel, inhuman, and degrading treatment,”⁵⁶ and the Committee’s Conclusions and Recommendations reflect concerns regarding the use of electroshock devices.⁵⁷ In a study regarding the trade in and production of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment, the Special Rapporteur on Torture noted that, while the use of TASERs can be legitimate in appropriate circumstances, their misuse constitutes torture or cruel, inhuman, or degrading treatment.⁵⁸

In 2000, the United States government acknowledged continuing allegations of “police abuse, brutality and unnecessary or excessive use of force, including inappropriate use of devices and techniques such as tear gas and chemical (pepper) spray, [T]asers or “stun guns,” stun belts, police dogs, handcuffs and leg shackles.”⁵⁹

In its most recent report to the Committee, the U.S. concedes that the Civil Rights Division of the Department of Justice has recommended limitations on the use of electro-shock weapons by law enforcement agencies, as well as increased training for officers using such weapons, yet cites no federal regulation or mandate imposing such limitations or training. It further maintains that “used appropriately...stun guns... can be effective tools for law enforcement under certain conditions where use of force is warranted.”⁶⁰

There are currently no federal or state standards limiting how and when TASERs can be used by law enforcement agents. There are also no federal or state regulations prohibiting or limiting the use of TASERs against children, the elderly, pregnant women, or other individuals for whom a 50,000 Volt shock may be medically contraindicated.

We therefore urge the Committee to find that United States government’s failure to regulate the use of TASERs violates the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

“It is the most profound pain I have ever felt. You get total compliance because they don’t want that pain again.” -- Firearms consultant describing the experience of being shot with a “TASER,” quoted in The Associated Press, 12 August 2003.

“I felt this excruciating pain, and I was immobilized... you can’t think or move...I fell to the floor and I crumbled up in the fetal position.” – 68 year-old great grandmother shot with a TASER while sitting on a bench in a police precinct waiting room.

The use of “TASERs” or “stun guns” – hand-held dart-firing electro-shock weapons designed to temporarily paralyze a person by delivering a 50,000 volt shock – by law enforcement agents has become increasingly widespread in the United States since the invention of the device in the 1970s.⁶¹ According to TASER International, the main manufacturer of the devices, currently over 7,000 U.S. law enforcement agencies in 49 U.S. states use TASERs.⁶² As of July 2005, 1,735 law enforcement agencies in the country were at “full deployment,” meaning that every patrol officer on the force carried a TASER.⁶³

TASERs can strike a person from a distance of up to 25 feet, or can be applied directly to the skin.⁶⁴ They fire two fish-hook-like barbed darts that remain attached to the gun by wires, and are made to penetrate up to two inches of a person’s clothing or skin.⁶⁵ These darts deliver a high-voltage, low amperage, electro-shock along insulated copper wires for approximately five seconds.⁶⁶

Notwithstanding the manufacturer’s claims that there is no risk of death or serious physical injury as a result of TASER use, experience has proven otherwise. Over 150 deaths have been reported following TASER use. Cardiac arrest and drug intoxication appear to be the most commonly listed cause of death following TASER shock, and medical authorities have conceded that cardiac arrest can be induced by TASER shock. For instance, in a letter published in *The New England Journal of Medicine* in September of 2005, physicians reported that a TASER stun gun caused a teenager in Chicago to go into ventricular fibrillation, a usually fatal heart disturbance,⁶⁷ and medical examiners have cited TASERs as a cause or contributing factor in 27 deaths.⁶⁸ A member of a team at the University of Wisconsin currently conducting the first U.S. government study of TASER safety concedes that electric shock near the heart can contribute to ventricular fibrillation, particularly in individuals who have used cocaine.⁶⁹ A recent study published in the peer-reviewed *Journal of the National Academy of Forensic Engineers* concluded that TASER shocks were 39 times stronger than claimed by the manufacturer, and could cause fatal heart arrhythmias.⁷⁰ This study represents one of the few to date in which no representatives of the TASER manufacturer were involved.⁷¹

Severe and sometimes permanent non-fatal injuries have also resulted from TASER use - in fact, a number of police officers who “volunteered” to be shocked during training in TASER use have suffered spinal fractures, ruptured discs, burns, dislocations and soft tissue injuries.⁷²

Despite their pervasive use and growing concerns over TASER abuse, there are currently no federal or state standards governing the use of TASERs by law enforcement officers in the U.S.. Moreover, many law enforcement agencies rely on training materials produced by TASER International,⁷³ which have been characterized as exaggerating

TASER safety and misrepresenting research on the risk associated with TASER use, particularly where individuals under the influence of controlled substances are concerned, and encouraging multiple uses of the weapon. ⁷⁴

*“Subject was given several commands, but did not comply.” – statement used by a Palm Beach, FL Sheriff’s deputy to obtain supervisory approval to use a TASER on a 115 pound 15 year-old girl.*⁷⁵

The failure of the U.S. government to control the use of TASERs is indefensible, not only because of the severe pain inflicted by the weapon and the dangers associated with its use, but also because of numerous reports pointing to pervasive police abuse connected to the use of TASERs. These reports suggest that TASERs are commonly used to secure compliance in routine arrest and non-life-threatening situations.⁷⁶ TASER International itself found that 76.9% of circumstances in which TASERs were used involved suspects who were unarmed, and that the most common reason given for their use was “verbal non-compliance” – or, in other words, arguing with the police.⁷⁷ A Florida newspaper which reviewed 1000 police reports in a study of TASER use by South Florida police found that “[o]ne out of every four suspects shocked with Tasers was unarmed, nonviolent, and not posing any apparent immediate threat,” and almost half were being arrested for minor offenses.⁷⁸

Twenty-six year old Jeremy J. Miljour was “accidentally” shot in the genitals with a TASER by a Florida police officer after he failed to comply with an order to stop when approached by a group of officers responding to complaints that a man was breaking windows and exposing himself to women. ⁷⁹

Officers often shock individuals with TASERs not once, but multiple times, in many instances even after they have already been restrained with handcuffs.⁸⁰ For instance, Andrew Washington of Vallejo, California was shocked 17 times in three minutes with a TASER by police because he fled after hitting a parked car. Officers only stopped shocking him when they noticed that he was having trouble breathing. Washington, 21 and a father of one, died after being transported to the hospital.⁸¹

Furthermore, there have been a number of reports from around the country indicating that TASERs are being used against pregnant women, as well as on unarmed elderly persons, children – some as young as one year old - and mentally disturbed or intoxicated individuals.⁸² In one case, a woman who was 12 weeks pregnant who refused to undergo a strip search in a Florida jail was shocked with a TASER and later suffered a miscarriage.⁸³ While some departments have policies limiting the use of TASERS against pregnant women, children, and the elderly, many others do not.⁸⁴

*“They [the police officers] could have hurt my unborn fetus... All because of a traffic ticket. Is this what it’s come down to?” -- Malaika Brooks, an African American woman who was “Tased” three times by a traffic enforcement officer when 8-months pregnant because she refused to sign a traffic ticket.*⁸⁵

On June 9, 2003, Portland, Oregon police shot a 71-year-old blind woman four times in the back and once on her right breast with a TASER. At the time she was shocked, Eunice Crowder was trying to retrieve her possessions, which had been taken from her property and placed on a truck by a city official who had come to clean up her “messy” yard. The Portland police admitted no wrongdoing, but in 2004 Ms. Crowder received a \$145,000 settlement from the city.⁸⁶ In 2005, 75-year-old grandmother Margaret Kimbrell was shot in the back with a TASER by a North Carolina police officer, knocking her to the ground, when she refused to leave a nursing home where she was visiting a friend.⁸⁷ In June 2004, a Kansas City police officer shot Louise Jones, an unarmed 66 year-old African American woman, twice with a TASER in her own home because she protested when the officer tried to issue her a traffic ticket for honking her car horn at a police vehicle earlier in the day.⁸⁸

Thirty-two percent of police departments interviewed by TASER International used TASERs in schools.⁸⁹ Between late 2003 and early 2005, at least 24 Central Florida elementary school students were shocked with TASERs by police officers placed in public schools. Some of the students were as young as 12 years old. A typical scenario involved officers wading in through a crowd to break up a fight and using TASERs to “get them to move.”⁹⁰ In other cases, police repeatedly shocked students already in handcuffs.⁹¹ On March 1, 2005, a 15 year-old girl who had been suspended from her Minnesota high school was Tased by a police officer when she refused to leave the school premises.⁹² In October 2004, Miami-Dade police used a TASER to subdue a 55 pound first grade Latino boy, and, just weeks later, TASED a 12 year-old girl who was skipping school.⁹³ In May of 2004, a nine-year old runaway was Tased when she was already handcuffed, subdued, and sitting in a police vehicle because she began to kick at the car and bang her head. No charges were brought against the officer involved, as the state prosecutor believed that the use of a TASER was justified under the circumstances.⁹⁴

“I was hearing reports of Tasing for jaywalking, a 75-year old woman, a 5 foot, 100 pound high school girl by a 200 pound officer...I know she may have a big mouth, but was it necessary to Tase her?” – Florida State Senator Gary Siplin, whose bill proposing to limit TASER use to violent or threatening criminals died in committee⁹⁵

There is also evidence suggesting that TASERs are disproportionately used against people of color and people with physical or mental disabilities. For instance, recent reports from Houston, Texas, where 3700 officers have been issued TASERs, indicate that nearly 90% of cases in which they are used involve Latino/as and African Americans.⁹⁶ In Seattle, Washington, almost half the people shocked with TASERs were African American, in a city where the Blacks represent less than 10% of the population.⁹⁷ Tony Hill, a Florida State Senator, noted that many of the incidents of TASER use on children in his district involved African American kids.⁹⁸

The International Association of Police Chiefs recently called for the development of policies providing for medical protocols following TASER use and for comprehensive officer training and reporting systems, and recommended that TASERs not be issued to every officer.⁹⁹ In October 2005, the Police Executive Research Forum, composed of police chiefs and criminal justice academics, recommended restrictions on TASER use

limiting them to situations where a subject is “aggressively resisting arrest,” and proposed policy and training guidelines which the U.S. government has yet to adopt.¹⁰⁰ The Federal Law Enforcement Training Center (FLETC) has recommended a standardized training program on the use of TASERs to ensure that they are appropriately located on the use-of-force continuum developed by the Center,¹⁰¹ just below use of lethal force, rather than at the same level as use of pepper spray or even worse, when an individual is passively resisting an officer’s verbal commands. The FLETC also recommends additional independent research into TASER safety and deployment.¹⁰² Some police departments have stopped expansion of TASER use, including the City of Chicago, which cancelled an order for 200 additional TASERs after a 14 year-old boy went into cardiac arrest and a 54 year old man died in the same week after being shocked with TASERs by police.¹⁰³ Several departments have filed lawsuits against the manufacturer, claiming they were misled about the weapon’s safety.¹⁰⁴ Blacks in Government, representing 10,000 African American federal, state and local government employees, recently passed a resolution calling for a moratorium on TASER use pending further independent study.

But perhaps the most damning statement on TASER safety comes from the U.S. Army, which has banned TASERs from certain facilities,¹⁰⁵ and concluded last year that TASERs could cause seizures and ventricular fibrillation, and therefore that shocking soldiers with “stun guns” during training exercises was not recommended.¹⁰⁶ An Air Force laboratory also recently concluded that TASERs are more dangerous than initially thought, and that more research is needed regarding their effects.¹⁰⁷ It is unclear, in light of this information, what possible justification the U.S. government could advance for permitting the unbridled and unregulated use of TASERs on civilians, including, in some jurisdictions, children, the elderly, people with heart conditions, pregnant women, people with disabilities, and people under the influence of controlled substances.

In light of the Committee’s conclusion that inappropriate use of TASERs meets the definition of torture or cruel, inhuman and degrading treatment under Articles 1 and 16 of the Convention, the U.S. government’s failure to regulate TASER use and mandate training and supervision of officers to whom TASERs are distributed represents a failure to “...take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” as required by Article 2 of the Convention. Indeed, the U.S. government is not merely failing to take *effective* measures; it is not taking *any* measures at all to prevent these acts of torture or cruel, inhuman or degrading treatment.

Moreover, failure to regulate TASER use at the federal level, combined with a generalized lack of civilian oversight of federal, state, and local police departments suggests that, with respect to TASER use, the U.S. government has failed to provide for “a prompt and impartial investigation” when there is “reasonable ground to believe” that a TASER has been inappropriately used, as required by Article 12 of the Convention. Indeed, no federal or state mandate exists requiring officers to even report, much less justify, TASER use.¹⁰⁸

Additionally, failure to mandate training of law enforcement officers in TASER use violates Article 10, which requires signatory States to “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel...”

TASER use against unarmed individuals also violates Article 3 of the United Nations Code of Conduct for Law Enforcement Officials, which provides that law enforcement officials “may use force only when strictly necessary and to the extent required for the performance of their duty.” Given the severe pain inflicted by electro-shock weapons and their potentially fatal impacts, the standard set forth in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders, providing that “law enforcement officials shall not use firearms against persons except in self-defence or defence of others against *the imminent threat of death or serious injury...*,” should be applied to TASER use.

We therefore urge the Committee to conclude that the United States government’s failure to regulate or control the use of TASERs clearly violates Articles 2, 7, 10, 12 and 16 of the Convention, and to recommend an immediate moratorium on TASER use by law enforcement officers pending a rigorous, independent, and impartial inquiry into their use and effects.

C. *The Reality: Torture and Cruel, Inhuman, and Degrading Treatment During Interrogations and in Police Custody*

Over the past two decades, there have been a number of high profile cases of torture of individuals in police custody for the purposes of securing confessions in the U.S.. Since the U.S. government's last report to the Committee, the Governor of the State of Illinois commuted the death sentences of 4 prisoners based on findings of systemic torture and abuse by members of the Chicago Police Department which led to false confessions in their cases.¹⁰⁹ Nevertheless, despite the considerable attention focused on these cases by NGOs and the U.S. media, authorities have yet to bring the perpetrators to justice or implement measures that would prevent such conduct in the future.¹¹⁰

During the Committee's review of the U.S. government's Initial Report, the Country Rapporteur emphasized the importance, under the Convention's definition of torture, of recognizing the particularly egregious nature of acts involving "an agent of the State deliberately inflicting severe pain for certain purposes, such as the extraction of a confession."¹¹¹

While the U.S. government's current report to the Committee focuses to some degree on allegations of torture of detainees held by U.S. authorities overseas, with respect to torture committed by local, state, and federal law enforcement officers for the purposes of securing a confession, little attention is given to similar conduct which takes place on U.S. soil. And, while the U.S. report to the Committee references legislation enacted by the State of Illinois in 2003 in response to allegations of torture and coerced confessions in police custody requiring police to "videotape or audiotape questioning of suspects in homicide cases for the entirety of the interview," as well as similar legislation adopted by the states of Alaska and Minnesota, the federal government has taken no similar or additional steps to prevent the use of torture in police interrogations.¹¹²

Torture and cruel, inhuman or degrading treatment by military personnel of detainees in U.S. custody in Afghanistan, Iraq, and Guantánamo Bay has been well documented,¹¹³ and we urge the Committee to take strong action against the United States with respect to torture committed or condoned in the context of its occupation of Iraq and Afghanistan as well as its global "war on terror." We also direct the Committee to the submission of Penal Reform International and Global Rights, which documents the pervasive torture and cruel, inhuman or degrading treatment which takes place in prisons and jails across the U.S.

While it has perhaps receded from public view in light of the egregious abuses committed in these other contexts, torture and cruel, inhuman or degrading treatment by law enforcement agents during interrogations and in police custody continues to take place with alarming frequency within the United States. This should come as no surprise, as some of the military personnel responsible for U.S. treaty violations overseas are former law enforcement and/or corrections officers who were alleged to have engaged in cruel, inhuman, and degrading treatment at the police station or prison

where they were employed in the U.S. prior to being deployed overseas. For instance, one of the military personnel cited for perpetrating human rights violations at Abu Ghraib, Charles Graner, was a former corrections officer in the United States.¹¹⁴ During his 7 year tenure as a correctional officer (1994-2000), ending in his termination in 2000, numerous allegations that he engaged in cruel, inhuman, and degrading treatment were made by both fellow staff and prisoners.¹¹⁵ However, such links between torture by U.S. soldiers overseas and ongoing torture by U.S. law enforcement agents on American soil are rarely made in public discourse.

Moreover, as outlined in detail in the September 30, 2005 submission of the Midwest Coalition on Human Rights to the Committee, law enforcement officers who have engaged torture for the purpose of extracting confessions in the U.S. continue to escape prosecution. Local and federal authorities' failure to bring criminal charges against Commander Jon Burge and the officers of Chicago's infamous Area 2 precinct, who are documented to have tortured, over a 20 year period, at least 135 African American men for the purpose of obtaining confessions,¹¹⁶ seriously undermines the U.S. government's assertion in its report to the Committee that "acts of torture are prohibited by law and contrary to U.S. policy, subject to prompt and impartial investigations, and punished by appropriate sanction."¹¹⁷ Clearly, even assuming that, as maintained by the U.S. government, "any act of torture falling within the Torture Convention definition would in fact be criminally prosecutable in every jurisdiction in the United States,"¹¹⁸ this does not necessarily mean that every documented case of torture will result in a criminal prosecution. The absence of criminal prosecution in these infamous and well documented cases of torture has precisely the opposite impact to the "deterrent effect" the U.S. government cites to in its current report to the Committee with reference to criminal prosecutions of law enforcement officers responsible for abuse.¹¹⁹ Not surprisingly, organizations continue to receive reports of torture and cruel, inhuman and degrading treatment by police officers in Chicago.

Torture of individuals in police custody by law enforcement officers in the U.S. is not limited to the Chicago area. For instance, a young man recently died while in the custody of police in Harrison County, Mississippi. Prior to his death, the young man was handcuffed, a covering was placed over his head, and he was pepper sprayed.¹²⁰

We therefore urge the Committee to conclude that the U.S. government is in violation of Articles 2, 12, 13, 14, and 15 of the Convention, and to recommend that immediate action be taken to bring all officers implicated in torture to secure confessions in the city of Chicago to justice, and that national measures to prevent and provide effective redress for acts of torture and cruel, inhuman and degrading treatment by law enforcement agents be put in place.

III. Rape & Sexual Assault

The U.N. Special Rapporteur on Torture has specifically stated that “rape or other forms of sexual assault ...in detention [are] a particularly ignominious violation of the inherent dignity and right to physical integrity of the human being, they accordingly constitute [] an act of torture”¹²¹ Similarly, sexual abuse committed by members of security forces, whether as a result of a deliberate practice promoted by the State or as a result of failure by the State to prevent the occurrence of this crime, has been found to violate the human right to physical and mental integrity.¹²²

In its review of the U.S. government’s Initial Report to the CAT, the Committee expressed concern regarding “alleged cases of sexual assault upon female detainees and prisoners by law enforcement officers and prison personnel. Female detainees and prisoners are also very often held in humiliating and degrading circumstances.”¹²³

Nevertheless, it appears that to date the U.S. government has not explicitly recognized rape and sexual assault by law enforcement officers as forms of torture.¹²⁴ Moreover, the federal government currently has no measures in place to systemically document, monitor and prevent rape and sexual abuse by law enforcement officers as required by Article 11 of the Convention.

Credible evidence exists that rape, sexual assault, and sexual harassment of women, including transgender women, as well as of transgender and gender non-conforming individuals who do not identify as women, by on-duty law enforcement officers is a serious problem in the U.S. Sex workers and homeless people in particular report endemic extortion of sexual favors by police officers in exchange for leniency or to avoid routine police violence against them, as well as frequent rapes and sexual assaults. Sexual harassment and assault of women subjected to traffic stops has also been reported in a number of jurisdictions. Latina immigrants, both documented and undocumented, are routinely raped by local law enforcement and border patrol agents in the borderlands between Mexico and the U.S. While several high profile criminal prosecutions of officers charged with sexual assaults or rapes of women have taken place, including those cited in Paragraphs 18 and 19 of the United States government’s report to the Committee, individuals and advocates across the country report that such conduct is far more pervasive than the limited number of such prosecutions would suggest, and takes place with impunity in many instances. Yet the U.S. government has failed to even acknowledge or take steps to monitor or address this issue at the federal level.

“The police are not here to serve; they are here to get served...Every night I’m taken into an alley and given the choice between having sex or going to jail.”¹²⁵

No official data is currently available regarding the number of rapes and sexual assaults committed by law enforcement officers in the U.S. Data currently gathered by federal and state governments regarding the use of excessive force by law enforcement does not

include information the number of allegations, complaints, or incidents of rape, sexual assault or coerced sexual conduct by police officers. Similarly, data gathered by the federal government on rape and sexual assault does not include information about rapes committed by police officers and other law enforcement agents. However, reports received by NGOs across the United States suggest that such misconduct and abuse is far more prevalent than indicated by the U.S. government's report to the Committee, suggesting that sexual abuse by local, state, and federal law enforcement officers remains one of the U.S.'s "dirty little secrets."

In the absence of State information-gathering mechanisms regarding this particular form of torture, much of the publicly available information about rape and sexual assault of women by law enforcement agents concerns cases in which criminal charges were brought against the abusers. Yet these cases appear to represent merely the tip of the iceberg. Such incidents are in fact rarely reported, much less prosecuted. For instance, Amnesty International states in its recently released report *Stonewalled: Police Misconduct and Abuse Against Lesbian, Gay, Bisexual, and Transgender People in the U.S.* that it documented cases of rape and sexual assault and abuse by law enforcement officers in numerous cities across the U.S..¹²⁶ Yet many of the survivors who courageously came forward to report these human rights violations to Amnesty International had never reported the incidents to the authorities for fear that they would not be believed, would be subject to exposure of their sexual orientation or gender identity, or would suffer retaliation by police officers, or because they were undocumented, or involved in sex work or drug use and feared that they would be charged with a crime if they lodged a complaint against the police.¹²⁷ Similarly, rape and sexual violence by law enforcement officers on the border between the U.S. and Mexico is reported to be rampant, yet many new immigrants and undocumented women are unaware that complaint mechanisms exist, or don't report the abuse for fear of deportation.¹²⁸

This is by no means surprising in light of the fact that it is estimated that only a little over a third of *all* rapes and sexual assaults are reported to the authorities.¹²⁹ One can only imagine that this rate is far lower among women who are raped or sexually assaulted by the very law enforcement agents who are charged with protecting them from violence. Threats of retribution and retaliation against women who report sexual assault by police officers are commonplace, while prosecutions of law enforcement officers for criminal acts are rare. Moreover, law enforcement officers tend to target women who are criminalized, marginalized or otherwise vulnerable – sex workers, women who use certain controlled substances, undocumented immigrants - for sexual abuse, thereby further reducing the likelihood that their conduct will be reported. Given the fear of retaliation many women who have experienced sexual assault at the hands of law enforcement officers report, and the general reluctance of prosecutors, who work closely with police, to bring charges against them, complaint-based accountability mechanisms such as criminal prosecutions of police officers provide an inadequate remedy for such abuses.

Women working in the sex trade in particular report rampant sexual abuse by law enforcement officers.¹³⁰ For instance, a 2002 Chicago-based study of women in the sex

trade found that 30% of exotic dancers and 24% of street-based sex workers who had been raped identified a police officer as the rapist. Approximately 20 percent of other acts of sexual violence reported by study participants were committed by the police.¹³¹ According to two studies released by the Sex Workers Project of the Urban Justice Center in New York City, up to 17% of sex workers interviewed reported sexual harassment and abuse, including rape, by law enforcement officers.¹³²

Officer Roger Magaña of the Eugene, Oregon police department was convicted in 2004 of sexually abusing more than a dozen women over a period of eight years. His case, while unique in that it resulted in a criminal conviction and substantial penalty, is common many in other respects. Officer Magaña preyed on domestic violence survivors as well as women who were involved in the sex trade, who use controlled substances, or who are labeled as mentally ill, threatening arrest and then trading leniency for sexual acts. In some cases, he used the pretext of conducting “welfare checks” – which allow officers to enter residences by simply stating that they believe a person’s well being is at risk – to gain entry into residences before raping or sexually assaulting women in their own homes. In others, he conducted inappropriate and abusive searches of women on the side of the road. Magaña’s threats of retaliation in the event any of the women he assaulted reported him allowed him to engage in such conduct with impunity for almost a decade before he was investigated by his department. One woman told of Magaña putting his service weapon up against her genitals and saying he would “blow her insides out” if she told anyone. Many of the women who eventually came forward said they initially did not report the abuse because they feared they would not be believed. Indeed, police files indicate that at least half a dozen officers and supervisors heard complaints over the years from women who said that they had been raped or sexually assaulted by Officer Magaña and one of his fellow officers, and that the complaints were dismissed as the “grumbings of junkies and prostitutes.”¹³³

Transgender women and gender non-conforming individuals are also disproportionately subject to rape and sexual abuse by law enforcement officers. For instance, a Native American transgender woman reported to Amnesty International that, in October 2003, at around 4 a.m, two LAPD officers pulled over and told her they were going to take her to jail for “prostitution.” She told the officers she was just walking and not engaged in sex work. The officers handcuffed her, put her in the patrol car and drove her to an alley. One of the officers pulled her out of the car, still handcuffed, and began hitting her across the face, saying “you fucking whore, you fucking faggot.” He then grabbed her by the mouth, covering it while he continued hitting her. The officer threw her down on the back of the patrol car, ripped of her miniskirt and underwear and raped her. Although she contacted 911 immediately after the rape, the responding paramedics did not believe her.¹³⁴ Two young, Latina transgender women in New York City report being approached and questioned by police officers in a patrol car in 2001. The officers threatened them with arrest unless they had sex with them. The women performed oral sex on the officers before being allowed to go free. They did not report the incident because of their undocumented immigration status and threats of retaliation.¹³⁵

Sexual assault and rape of women stopped by police for traffic offenses is also reported with alarming regularity. For instance, in 2001, a rash of cases came to light in which law enforcement officers in Suffolk and Nassau Counties in New York State were found to have forced women to perform sexual acts and/or strip in public.¹³⁶ In two cases, officers were alleged to have forced women to have sex with them after pulling them over for traffic infractions. In another, instead of issuing a traffic citation, an officer forced a woman to walk home in her underwear.¹³⁷ More recently, two New York City police officers followed a 35 year-old woman home after stopping her for a traffic offense, and subsequently forced her to perform oral sex on them in her apartment while her three children slept nearby.¹³⁸

Sexual assault in the context of police responses to domestic violence has also been reported across the country. For instance, in another rare case in which criminal charges were brought and a conviction obtained, in February of 2004, an LAPD officer was convicted of criminal sexual battery in connection with an incident in which an undocumented immigrant Latina woman called the police for help because a man was beating her in her home. When the officer responded to the 911 call, rather than protecting the woman from harm, he took her into a bedroom, sexually battered her, and then arrested her, falsely accusing her of a crime.¹³⁹

Moreover, individuals and advocates report that searches of women and transgender individuals by law enforcement officials are often conducted in a violent or abusive fashion amounting to cruel, inhuman, and degrading treatment. For instance, strip searches conducted on the street in full public view or in police precincts in view of other detainees and officers, often by officers of a different gender than the person being searched, have been reported in several jurisdictions. For instance, officers at Brooklyn, New York's Central Booking facility are reported to often humiliate detainees by having them remove their clothing in front of groups of other prisoners, including those of a different gender. One woman reports that an officer grabbed her bra and pulled it up in a location where she could see cells holding both men and women, many of whom were laughing at her.¹⁴⁰ Transgender women and gender nonconforming individuals in particular report frequent invasive and abusive searches, including strip searches, performed under circumstances that do not warrant a search under U.S. or international law, conducted for the sole purpose of ascertaining their genital status.

Rape, sexual abuse, coerced sexualized conduct, or violations of bodily integrity through inappropriate or abusive strip searches, violate not only prohibitions against torture and cruel, inhuman and degrading treatment, but also prohibitions against torture committed based on "discrimination of any kind." **We therefore urge the Committee to find the U.S. government in violation of Articles 2, 11, and 16, and to recommend that the U.S. government take immediate steps to document, systemically review, and prevent rape, sexual assault and abusive strip searches by law enforcement officers.**

IV. Police Brutality in the Wake of Hurricanes Katrina & Rita

Images of thousands of New Orleans residents, the majority of whom were low-income women of color and their children, elders, and others unable, due to poverty, to leave the city before Hurricane Katrina struck, abandoned to their fate by the U.S. government, were quickly followed by images of law enforcement violence and abuse of individuals struggling to survive under the horrifying conditions that prevailed in the city in the days and weeks following the hurricane.

Not only did the conduct of law enforcement and military personnel stationed in New Orleans since Hurricanes Katrina and Rita devastated the Gulf Coast of the United States violate the Convention in many instances, it also violated *The Guiding Principles on Internal Displacement* issued by the Secretary General of the United Nations, which outline internationally recognized rights and guarantees of persons who have been forcibly displaced from their homes due to natural disaster.¹⁴¹ These principles mandate, *inter alia*, that “[i]nternally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.”¹⁴²

While the U.S. government’s response to Hurricanes Katrina and Rita and the devastation they wrought in the Gulf States and the city of New Orleans was not addressed in the United States’ Second Periodic Report to the Committee as the events in question took place more than six months after the report was submitted, we urge the Committee to take this opportunity to address the conduct of military and law enforcement officers and agencies in the days and weeks following Hurricane Katrina during its review of the U.S. Report.

"They have M-16s and are locked and loaded. These troops know how to shoot and kill and I expect they will." – Louisiana Governor Kathleen Blanco.¹⁴³

In the days following Hurricane Katrina, thousands of members of the U.S. National Guard and federal troops were mobilized in Louisiana, along with members of local law enforcement agencies from across the country who were temporarily deputized by the state. These officers quickly established militarized zones in the area, in which individuals desperate for food and water were routinely verbally abused and threatened with use of lethal force, and often violently arrested or detained, for seeking out basic necessities from local area businesses. In some cases, conduct by law enforcement agents met the definitions of torture and cruel, inhuman and degrading treatment under the Convention. In one incident three days after Katrina struck, “officers from the Gretna Police Department, the Jefferson Parish Sheriff’s Office and the Crescent City Connection Police, fired shots into the air and blocked desperate people...from escaping New Orleans” while one officer shouted “we don’t want New Orleans garbage on this side of the river.”¹⁴⁴ A few weeks later, a New Orleans Police officer pointed a gun at a man assisting soldiers in distributing rations by dropping them over a bridge to hungry and thirsty New Orleans residents below, saying “Drop another one and I’ll shoot you in

the head.”¹⁴⁵ Police told a relief worker as he was being taken into custody for carrying a penknife that they “could just shoot him and throw him in the river, no one would know.”¹⁴⁶ A National Guardsman shoved an M-16 in the chest of a man running to find his family, told him to get down, and then directed or allowed his police dog to attack the man, tearing at his legs and body before the officer called the dog off.¹⁴⁷ Police officers and soldiers charged with evacuating areas of the Gulf Coast often discharged their duties in an abusive fashion, using excessive force. Law enforcement officers assigned to shelters for displaced persons also acted in an abusive fashion. In one case, an armed officer was reported to have pointed a rifle at boisterous children in an evacuation shelter and ordered them to settle down. In another an African American transgender woman was arrested for taking a shower.

Robert Davis, an African American 65 year-old retired school teacher, had just returned to New Orleans and witnessed the devastation that destroyed his home and community. He was on world renown Bourbon Street looking to buy a pack of cigarettes as numerous white revelers were stumbling around carrying cocktail glasses around him, when he was approached by New Orleans and federal police officers who can later be seen on news camera videotape slamming his head up against the wall four times, dragging him to the ground, kneeling him and finally punching him twice, leaving him face down on the sidewalk with blood streaming down his arm. Mr. Davis was subsequently charged with public intoxication, resisting arrest, battery on a police officer, and public intimidation. The charges against him were later dropped. Mr. Davis maintains he hasn't had a drink for over 25 years.¹⁴⁸

In the days following Katrina, makeshift outdoor detention areas were established in New Orleans behind a bus terminal and on a highway overpass. Arrestees were held by law enforcement and military personnel for days in open-air cages surrounded by chain-link fencing topped by razor wire, in an area extending from a concrete train platform to an overhang about 15 feet above ground.¹⁴⁹ Nearly all the individuals detained in the baking sun with no shelter, no place to sit other than the concrete ground, and minimal toilet facilities, were arrested for offenses related to seeking water, food and other necessities.

In the months since the devastation that followed Hurricane Katrina, police brutality has continued unabated in New Orleans. Up to today, NGOs describe the city as “a police state encampment, occupied by an estimated 14,000 heavily armed government officers and their machine guns, patrolled by military trucks, up-armored Humvees, Black Hawks, and Chinooks.”¹⁵⁰ At a recent City Council hearing, a newly formed group, Safe Streets/Strong Communities, testified for over an hour about ongoing police misconduct and abuse, including cases of public strip searches and incidents in which individuals' heads were slammed against hard surfaces by law enforcement officers. Many of those who experience such violations were poor, Black, or Hispanic. One speaker testified that he had been attacked in early March 2006 by officers who punched and kicked his face and side, detained him for four hours in a police car, and destroyed his truck, during which time one officer said “[t]his is what I joined the Police Department for: to put black people away.”¹⁵¹

On Tuesday, April 4, 2006, police stopped Jonie Pratt, a Black school teacher and wife and sister of fellow New Orleans police officers, for allegedly running a stop sign two blocks from her house. A witness saw the officers pull Pratt out of her car by her hair, throw her repeatedly against the car, twist her arms behind her, and spray mace in her face. Two more officers arrived on the scene and the three shoved Pratt to the ground and knelt on her back while one of the officers kicked her in the head. Pratt suffered a broken wrist, a black eye, and a haematoma on her forehead as a result of the incident. The witness said the officers refused to believe that Pratt lived in the house that is her home because it is located in a middle class area of the city. The local NAACP chapter is calling for a federal investigation, noting that incidents of this type were common in New Orleans even before Hurricane Katrina struck.¹⁵²

We therefore ask the Committee to request that the U.S. government address issues of law enforcement violence and abuse in the wake of Katrina and the disastrous response of government authorities during the Committee's formal review of the current report.

V. State acquiescence to private acts of torture

The Convention imposes an obligation on States Parties to prevent acts of torture by private individuals. In *Hajrizi Dzemajl et al. v. Yugoslavia*,¹⁵³ the Committee found a violation of, *inter alia*, Articles 1 and 16 of the Convention based on the state's failure to protect individuals for mob-led violence motivated by ethnicity. Moreover, in a number of Concluding Observations, the Committee has expressed concern regarding prevalence of domestic violence and sexual violence against women and girls.¹⁵⁴

The U.S. government's report to the Committee makes no mention of its obligation to act to prevent acts of torture by private actors in the domestic context. However, it does maintain that all acts that would constitute torture are criminalized at the state and federal level. Given the power relations underlying acts of violence based on gender, race, religion, national origin, homophobia and transphobia, criminalization alone has not proven to be effective in ensuring safety from such violence or providing redress where such acts of violence are committed.

Accordingly, we urge the Committee to inquire as to additional measures the U.S. government is taking to prevent and protect individuals from torture by private actors on domestic soil.

VI. Definition of Torture and Cruel, Inhuman or Degrading Treatment, Prevention, Education, Investigation and Redress (Articles 1, 2, 10, & 16)

Notwithstanding the Committee's recommendation, upon review of the United States' Initial Periodic Report in 2000, that the U.S. adopt the definition of torture reflected in the Convention,¹⁵⁵ the U.S. government persists in its adherence to substantially more limited definitions of torture and of cruel, inhuman and degrading treatment than those governing the Convention.

The Convention defines torture as "...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind..."¹⁵⁶ Under this definition, only a general intent to commit the act which results in torture appears to be required.¹⁵⁷

However, when ratifying the Convention in 1984, the U.S. government did so with reservations and understandings adopting a far more restrictive definition of torture, which requires that an individual committing an act of torture have a specific intention to do so, stating: "[t]hat with reference to Article 1, the United States understands that, in order to constitute torture, an act must be *specifically* intended to inflict severe physical or mental pain or suffering."¹⁵⁸ [emphasis added]

Moreover, the U.S. limited its definition of mental pain or suffering to "prolonged mental harm caused by or resulting from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality."¹⁵⁹

No comparable limitation exists in the Convention, nor, to our knowledge, has any been imposed by the Committee's subsequent jurisprudence interpreting and applying its terms.

Similarly, the U.S. continues to limit its recognition of “cruel, inhuman and degrading treatment” to conduct prohibited by the U.S. Constitution as interpreted by the U.S. Supreme Court.¹⁶⁰ Specifically, the U.S. ratified the Convention with the understanding

“[t]hat the United States considers itself bound by the obligation under Article 16 to prevent "cruel, inhuman or degrading treatment or punishment," only insofar as the term "cruel, inhuman or degrading treatment or punishment" means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”¹⁶¹

However, as the Committee has previously noted,¹⁶² and as will be discussed in greater detail below, this places certain types of conduct – particularly instances of cruel, inhuman or degrading treatment – which violate the Convention, but which are not deemed to violate the U.S. Constitution, potentially beyond the reach of U.S. law.

The Fourth Amendment to the U.S. Constitution, which prohibits “unreasonable” searches and seizures by government agents, serves as the primary source of protection for individuals detained or arrested by law enforcement officers. Like the Eighth, Fifth, and Fourteenth Amendments to the U.S. Constitution, on which the U.S. government relies as the basis for its assertion that domestic law is sufficient to meet its obligations under the Convention, the Fourth Amendment does not provide absolute protection against torture or cruel, inhuman and degrading treatment.

Instead, the Fourth Amendment standard asks whether a law enforcement officer’s conduct – including conduct through which “severe pain or suffering, whether physical or mental, is intentionally inflicted”¹⁶³ -- was “reasonable” in light of all the circumstances.¹⁶⁴ When making this determination, courts adopt “the perspective of a reasonable officer at the scene, rather than ... the 20/20 vision of hindsight.”¹⁶⁵ Further, courts balance individuals’ rights against “the countervailing governmental interests at stake,” taking account of “the facts and circumstances of each particular case.”¹⁶⁶ As a result, conduct which meets the Convention’s definition of torture or cruel, inhuman or degrading treatment may be deemed “reasonable” under certain circumstances and therefore not run afoul of the U.S. Constitution. For instance, use of a TASER, which indisputably inflicts severe pain and suffering, or use of considerable physical force causing substantial injury, may be found by U.S. Courts to be completely lawful under the U.S. Constitution.

Also, U.S. courts consider some force and abuse to be “*de minimus*” such that it does not rise to the level of a Fourth Amendment violation. Thus, in Houston v. Tucker,¹⁶⁷ the court refused to hear the excessive force claim of a homeowner arising from an incident in which a police officer allegedly struck her, grabbed her shoulders, and threw her against the wall of her house. Similarly, in Sullivan v. City of Pembroke Pines,¹⁶⁸ the court denied relief to a woman when a police officer grabbed her arm, pulled her arms behind her back, forced her to the ground, placed his knee on her back, and handcuffed her during the course of her arrest. Unfortunately, U.S. NGOs receive reports indicating that such treatment, in many cases inflicting severe physical or mental pain and

suffering, is virtually a daily occurrence in jurisdictions across the U.S.. Nevertheless, the U.S. government does not deem such conduct to violate the Convention under its restrictive interpretation of its terms.

With respect to coerced statements, the protections of the Fifth Amendment do not appear to extend to all cases of torture or cruel or inhuman or degrading treatment for the purposes of obtaining a statement or confession. In recent case involving an individual who was undergoing medical treatment for injuries sustained during a police shooting that left him permanently blind and paralyzed from the waist down, who was aggressively questioned by police despite his repeated statements “I am dying,” “I am choking,” and “I am not telling you anything until they treat me,”¹⁶⁹ the U.S. Supreme Court cast doubt on whether torture leading to a coerced confession violates the Fifth Amendment of the Constitution unless the coerced statement is introduced against the individual at trial.¹⁷⁰

In the days following September 11, 2001, Abdallah Higazy was arrested and taken into FBI custody for his alleged ownership of a walkie-talkie found at a hotel near the World Trade Center. During interrogation, a FBI agent repeatedly banged on the table and accused Higazy of lying. At trial, Higazy testified that “during the polygraph examination [the agent] screamed at him and was so enraged at one point that his face turned red; (2) Higazy feared [the agent] would hit him; (3) [the agent] informed [him] that he was facing thirty years of imprisonment; and ... [that the agent] threatened Higazy that the ‘FBI [would] make [Higazy's] brother upstate live in scrutiny’ and otherwise threatened his family.”¹⁷¹ As a result of the mental anguish caused by the agent’s actions, Higazy confessed to ownership of the device. Fortunately, the actual owner appeared several days later and Higazy was released from custody.

When Higazy subsequently sought redress for the FBI’s agent’s conduct using the very provisions relied on by the United States in its report to the Committee as sufficient substitutes for the Convention’s protections against torture, his claim was denied on the grounds that the Fifth Amendment’s protections extend only to individuals against whom coerced statements are introduced in a criminal case, the Fourth Amendment, which provides protection against unreasonable searches and seizures and is frequently invoked in police brutality cases, was inapplicable where a coerced statement was obtained after a valid arrest, and the substantive due process provision of the Fourteenth Amendment did not apply because the officers’ conduct did not “shock the conscience.”¹⁷²

The Eighth Amendment to the U.S. Constitution, also cited by the U.S. government as providing sufficient protection against cruel, inhuman, or degrading treatment,¹⁷³ does not apply in instances of police brutality. The U.S. Supreme Court has expressly held that the Eighth Amendment’s prohibition of “cruel and unusual punishment” only protects those already convicted of crimes, and not those who are subjected to violence at the hands of law enforcement prior to being charged or convicted.¹⁷⁴

Dethorne Graham, a diabetic, was on his way to purchase orange juice to counteract the effects of an insulin reaction when he was stopped by a law enforcement officer. While the officer questioned him, Graham briefly lost consciousness. In the ensuing confusion, a number of police officers arrived on the scene in response to a request for backup. One of the officers rolled Graham over on the sidewalk and cuffed his hands tightly behind his back, ignoring his friend's pleas to get Graham some sugar. In response to the friend's pleas to assist Graham, an officer was quoted as saying: "I've seen a lot of people with sugar diabetes that never acted like this. Ain't nothing wrong with the M. F. but drunk. Lock the S. B. up."¹⁷⁵ Several officers then lifted Graham up from behind, carried him over to his friend's car, and placed him face down on its hood. Regaining consciousness, Graham asked the officers to check in his wallet for a diabetic decal. In response, one of the officers told him to "shut up" and shoved Graham's face down against the hood of the car. Four officers then grabbed Graham and threw him headfirst into the police car. A friend of Graham's brought some orange juice to the car, but the officers refused to give it to him. When the officers ascertained that Graham had done nothing wrong at the convenience store where he was first stopped, they drove him home and released him. As a result of the officers' actions, Graham sustained a broken foot, cuts on his wrists, a bruised forehead, an injured shoulder and a persistent loud ringing in his right ear. Graham subsequent claim against the officers was rejected on the grounds that the Eighth Amendment only affords protection from cruel and unusual treatment as punishment for a crime, after conviction thereof.¹⁷⁶

Moreover, while the U.S. government maintains in its current report to the Committee that all conduct which meets the definition of torture or cruel, inhuman, or degrading treatment under the Convention, presumably regardless of whether or not it is found to rise to the level of a constitutional violation, is unlawful in the U.S. pursuant to state and federal criminal provisions,¹⁷⁷ it is virtually unheard of that a prosecution for even simple assault will be brought against a law enforcement officer if no constitutional violation is found. Similarly, the civil remedies cited to by the U.S. government in its report to the Committee remain inaccessible or fail to provide redress to many survivors of police brutality for reasons discussed in greater detail below.

We therefore urge the Committee to once again press the U.S. government to remove its reservations to the Convention, enact a federal crime of torture, and allocate sufficient and impartial resources to documenting, investigating, and prosecuting allegations of torture by local, state, and federal law enforcement officers.

B. Prevention of Torture (Article 2) & Systemic Review (Article 11)

The Convention requires each Signatory State to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction,"¹⁷⁸ and to engage in "systematic review [of] 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 cases of torture."¹⁷⁹

As noted by the Committee during its review of the U.S. government's Initial Periodic Report,¹⁸⁰ as well as in its list of issues to guide review of the current U.S. report to the Committee,¹⁸¹ the U.S. government has not enacted a federal law creating a crime of torture which governs acts committed within U.S. jurisdiction. Instead, the U.S. claims that its existing federal and state laws satisfy the Convention's requirements, and that the prospect of criminal prosecution acts as a sufficient deterrent to the commission of acts of torture.

Nor does the U.S. government engage in a proactive, systemic review of law enforcement policies, procedures, and practices at the federal, state or local level regarding the treatment of individuals in police custody by law enforcement agencies. As noted by the Committee during its review of the U.S. government's Initial Report, in the absence of any federal nationwide data collection system permitting documentation of complaints and allegations of police misconduct and abuse, including that which rises to the level of torture or cruel, inhuman and degrading treatment, efforts to monitor police misconduct, detect trends and patterns, and take action to prevent further violations of the Convention are limited.¹⁸² Indeed, the U.S. concedes in its Initial Report to the Committee that "the absence of reliable national statistics precludes an accurate statistical description of the frequency with which incidents of abuse and brutality by law enforcement officers take place,"¹⁸³ and the current Report makes no reference to any efforts made by the U.S. government to address this critical failure to undertake even this preliminary prerequisite to systemic review of allegations of torture and cruel, inhuman and degrading treatment.

Moreover, as noted in Sections II, III, and IV of this report, despite existing evidence of their necessity, the U.S. government has failed to take effective action to prevent torture by regulating the use of TASERs, nationally mandating practices which would reduce the likelihood of torture in police custody such as videotaping during traffic stops, street encounters, and police interrogations, and taking affirmative steps to address rape and sexual assault by law enforcement officers. The persistence of widespread violence and abuse by federal, state and local law enforcement across the U.S. effectively undermines the U.S. government's claims that measures currently in place, including those implemented by the severely under-resourced pattern and practice investigation branch of the Department of Justice Civil Rights Division, are sufficient to meet its obligations under the Convention.¹⁸⁴

C. Education and Information (Article 10)

The U.S. refers to a variety of law enforcement training programs at the federal, state and local level in its report to the Committee, claiming that it attaches "considerable importance to the task of providing education and information" regarding its obligations under the Convention.¹⁸⁵

Putting aside for the moment the fact that the U.S. is referring to its obligations under the Convention as it understands them under the restrictive definition of torture and cruel, inhuman and degrading treatment reflected in its reservations, in the absence of

national standards for training of law enforcement officers, it is difficult to evaluate this claim. There is considerable variation in the type and depth of training received by local, state, and federal law enforcement agencies in the U.S. This is particularly true where the use of force and weapons such as TASERs and pepper spray, as well as the conduct of strip searches, are concerned.¹⁸⁶ Moreover, the prevalence of police misconduct and abuse in the U.S., as well as the cases referenced in this report, appear to suggest that what training measures are in place are not effective.

We therefore urge the Committee to recommend that the U.S. government adopt, in consultation with non-governmental organizations, national standards for training of law enforcement officers that will meet its obligations under the Convention.

D. Prompt Investigation (Article 12)

In 2000, the Committee Against Torture recommended that the United States, “[t]ake such steps as are necessary to ensure that those who violate the Convention are investigated, prosecuted and punished, especially those who are motivated by discriminatory purposes or sexual gratification.”¹⁸⁷

In its Initial Report to the Committee Against Torture, the U.S. government acknowledged allegations of “lack of police accountability, including failure to discipline, prosecute and punish police misconduct,”¹⁸⁸ as well as allegations regarding “racial bias and discrimination against members of minorities, as reflected, *inter alia*, in statistical disparities in instances (as well as allegations) of harassment and abuse.”¹⁸⁹

The European Commission on Human Rights held in Mentesse and others v. Turkey¹⁹⁰ that “the obligation to protect the right to life under art 2 of the Convention also required, by implication, that there should be some form of effective official investigation when individuals had been killed as a result of the use of force.” Similarly, in Tepe v. Turkey,¹⁹¹ the Commission stated that

Where an individual had an arguable claim that he had been tortured or subjected to serious ill-treatment by agents of the State, the notion of an effective remedy entailed, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and included effective access for the complainant to the investigatory procedure. For an investigation into alleged torture or ill treatment by State officials to be effective, it would generally be regarded as necessary for the persons responsible for, and carrying out, the investigation to be independent from those implicated in the events. That meant not only a lack of hierarchical or institutional connection but also a practical independence.

In the experience of NGOs across the country documenting police misconduct and abuse and advocating for effective accountability for torture and cruel, inhuman and degrading treatment, investigations into violations of the Convention are infrequent and discipline is rare and mild. This is particularly true in many rural and suburban communities and

particularly for those where the population is made up predominantly of people of color. Often police departments in these areas lack any established procedures for addressing complaints about police misconduct. In such a climate, victims of abuse come to understand the ineffectiveness of complaints, so abuse is underreported. As a result, existing complaint-based mechanisms fail to create a climate in which police officers understand that abuse will not be tolerated and in which individuals believe that the police will treat them fairly. Indeed, many of the cases cited in this report illustrate that such perceptions are, for the most part, unwarranted in light of existing realities. For further critique of investigations of allegations of police misconduct in the U.S., we refer the Committee to the comprehensive reports of several non-governmental organizations, including *Shielded From Justice* by Human Rights Watch, *Rights for All* by Amnesty International, and *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, by the U.S. Civil Rights Commission, all of which are cited extensively in this report.

“They don’t do anything with the complaints. I have seen them laughing about the people and the complaints they receive.” – Hispanic woman from Nogales, Arizona¹⁹²

E. *Right to Complain & Right to Redress and Compensation* (Articles 13 and 14)

The U.S. has not enacted a federal law against torture which governs acts committed within U.S. jurisdiction. Instead, the U.S. claims that its existing federal and state criminal laws are sufficient to satisfy its obligations under the Convention.

As noted throughout this report and those of other NGOs, successful state criminal prosecutions of police officers for use of excessive force are rare, due in part to the fact that such cases turn on credibility determinations pitting the victim, who may also be charged with a crime, against a police officer trained in providing expert testimony.¹⁹³ As one commentator notes,

“the characteristics that make the victims vulnerable to police beating are the same characteristics that make them less credible to juries. For example, victims may have been engaging in criminal activity when the police brutality occurred, and from the jury’s perspective, are from the wrong race, class, sex or sexual orientation. In addition, the victim may have been drunk, on drugs, have a history of alcoholism or drug addiction, or may be mentally ill.¹⁹⁴

As one study of complaints against police filed with the Philadelphia District Attorney’s Office concluded, “the District Attorney’s Office has not been, and in the nature of things, could not be, an effective instrument for controlling police violence.”¹⁹⁵

In Fall 2005, police in Larimer County, Colorado shocked Timothy Mathis between three and seven times with a TASER after responding to a call relating to his erratic behavior. Mathis went into a coma, and died three weeks later. Although the coroner ruled the death a homicide, finding the TASER shock to be a cause of death, the local prosecutor declined to press charges, finding that the four officers involved used reasonable force to defend themselves against Mathis, who, at one point, reportedly advanced on them with a rock.¹⁹⁶

In addition to federal and state criminal statutes, the U.S. relies primarily on the provisions of 18 U.S.C. §242¹⁹⁷ and 42 U.S.C. §1983,¹⁹⁸ maintaining that these statutory provisions afford redress and compensation for violations of the Convention. With respect to 18 U.S.C. § 242, it is important to note that prosecutions cannot be initiated by individual citizens, but must be undertaken by the U.S. Department of Justice Civil Rights Division, thereby requiring individuals to come forward and federal authorities to be willing to prosecute their cases. As noted above, the Civil Rights Division is insufficiently resourced and therefore unable, as a practical matter, to prosecute the number of cases of torture and cruel, inhuman, or degrading treatment committed by law enforcement officers in the U.S. each year. Moreover, consistent with the U.S. government's definition of torture, § 242 requires that a law enforcement agent specifically intend to violate an individual's constitutional rights¹⁹⁹ rather than merely intend to commit the act which results in violation of their rights as in the definition of torture which governs the CAT. "Even the specific intent to injure, or the reckless use of excessive force, without more, does not satisfy the requirements of § 242 ... There must exist an intention to 'punish or to prevent the exercise of constitutionally guaranteed rights, such as the right to vote, or to obtain equal protection of the law.'"²⁰⁰ An officer's belief that his conduct is reasonable under the circumstances is therefore a sufficient defense to a charge under § 242.²⁰¹ As a result, few prosecutions are successfully brought under this statutory provision.²⁰²

"Federal investigators dropped a civil rights case against Border Patrol agent Cesar Cervantes who shot Ricardo Olivares Martinez, age 22, at least five times in the chest on June 4, 2003. Agent Cervantes told investigators that Martinez was throwing rocks at him. The Department of Justice decided that there was not enough evidence of a civil rights violation."²⁰³ A security camera videotape recorded the entire incident.²⁰⁴

Cases of rape and sexual assault by law enforcement officers and other government officials represent one exception to the general rule that the intent standard of 18 U.S.C. § 242 severely limits the number of successful prosecutions for police misconduct which can be brought under this provision. The U.S. Supreme Court has held that rape or sexual assault under color of law violates individual rights under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, and that the right to be free of such conduct is sufficiently well established that prosecution under § 242 is warranted.²⁰⁵ This provision could therefore serve as an effective tool in meeting the U.S. government's obligations under the Convention. However, the Criminal Section of the U.S. Department of Justice Civil Rights Division appears to have only brought a

handful of prosecutions against law enforcement officers for rape or sexual assault, thereby failing to address what appears to be a more pervasive practice.

Federal statute 42 U.S.C. §1983 provides a federal civil remedy against state actors for violation of Constitutional and federal rights. It is important to note at the outset that, even though individuals can initiate such actions without involvement of the state, victims of police abuse are often hesitant to come forward and often do not have access to the resources required to initiate and pursue such an action. Plaintiffs bringing police misconduct and brutality claims under § 1983 carry the burden of proving two central elements: 1) the person whose conduct is at issue must have acted under color of state law, and 2) the conduct must have deprived the plaintiff of a right, privilege, or immunity under the Constitution or federal law.²⁰⁶ Although §1983 does not itself create substantive rights, it provides plaintiffs with an opportunity to vindicate existing constitutional and statutory rights in federal courts.²⁰⁷ Accordingly, remedies under §1983 are limited by the infirmities of the Supreme Court's constitutional jurisprudence discussed in previous sections of this report.

“Four to five years ago my 16-year old cousin was badly beaten by the Border Patrol. Another cousin was shot in the knee while camping. They took the cases to trial and the Border Patrol got off. There was no compensation. – Mexican man from Douglas, Arizona²⁰⁸

Even where individuals are willing and able to come forward and assert claims under § 1983 for torture or cruel, inhuman and degrading treatment, a number of judicial doctrines hamper their ability to assert a successful claim. For instance, the requirement that an officer act “under color of law” when violating an individual's rights has barred redress in a number of cases of rape or sexual assault by police in which courts have held that the officers engaged in unlawful conduct in pursuit of personal pleasure, rather than as an exercise of state power.²⁰⁹ Additionally, under § 1983 police officers can successfully raise the affirmative defense of qualified immunity so long as a reasonable official would not have known that the challenged conduct would violate a constitutional right that was “clearly established” at the time of the incident.²¹⁰ Moreover, while a plaintiff may be successful in asserting a claim against a police officer in their individual capacity, additional barriers may preclude a finding of liability on the part of the municipality that employs them or a grant of injunctive relief, both of which are essential tools for obtaining systemic changes necessary to prevent future violations of individual rights by police officers.²¹¹ Finally, even when claims are successful, § 1983 do not always provide adequate remedy or redress for violations of the Convention.

In 1997, Humbolt County sheriffs used Q-tips to smear liquid pepper spray across the eyelids of non-violent environmental protesters engaged in civil disobedience after they passively refused to obey an order to disperse. The protestors subsequently brought a claim pursuant to 42 U.S.C. § 1983 in federal court, claiming that the police conduct caused severe and searing eye pain, gagging, dizziness, hyperventilation, and headaches which, in some cases lasted for days, and impaired vision, which persisted for years, and was therefore tantamount to torture.²¹² Seven years after the incidents took place, a jury verdict was finally rendered in September of 2004, in which each of the plaintiffs was awarded \$8 in damages. The plaintiffs are still seeking a ban on use of pepper spray in this manner by police.²¹³ Clearly, the provisions relied upon by the U.S. government in its submission to the Committee neither rendered the plaintiffs whole in this case nor served as a deterrent to future similar conduct on the part of the law enforcement officers.

VII. Recommendations

We urge the Committee to conclude that the United States government is in violation of Articles 2, 7, 10, 11, 12, 13, 14, 15 and 16 of the Convention, and to recommend that the U.S. government:

- Enact a federal crime of torture and allocate sufficient and impartial resources to document, investigate, and prosecute allegations of torture by local, state, and federal law enforcement officers;
- Impose an immediate moratorium on TASER use by law enforcement officers pending a rigorous, independent and impartial inquiry into their use and effects;
- Take immediate action to bring all officers implicated in torture to secure confessions in the city of Chicago to justice;
- Take immediate steps to document, systemically review, and prevent rape, sexual assault, and abusive and unlawful strip searches by law enforcement officers;
- Adopt national measures to prevent and provide effective redress for acts of torture and cruel, inhuman and degrading treatment by law enforcement agents;
- Take affirmative steps beyond creating remedies at law at both the federal and state levels to address police brutality and other custodial torture and CID that is shown to be occurring in a racially discriminatory manner or in a manner evidencing discrimination based on gender, gender identity, sexual orientation, or some combination of all of these factors;
- Provide adequate funding to allow the U.S. Department of Justice to fulfill its mandate under the Police Accountability Act provisions of the Violent Crime Control and Law Enforcement Act of 1994 to compile, publish and regularly analyze national data on police use of excessive force (including all fatal shootings and deaths in custody, use of force during street encounters as well as traffic stops, and incidents of rape, sexual harassment, and unlawful searches of persons). Adequate resources should also be afforded to the U.S. Department of Justice to more comprehensively pursue and enforce “pattern and practice” actions against police departments engaging in widespread or systematic abuses.
- Increase its use of Title VI of the Civil Rights Act of 1964 to seek to eliminate racially discriminatory practices by law enforcement agencies;
- Develop and mandate national training standards for federal, state and local law enforcement agents.

SIGNATORIES TO
In the Shadows of the War on Terror:
Persistent Police Brutality and Abuse in the US

**A report submitted to the UN Committee Against Torture on the occasion of
its review of the Second Periodic Report of the United States of America to
the Committee Against Torture**

Organizations

American Civil Liberties Union (ACLU) of Mississippi
American Friends Service Committee, Philadelphia, PA
Center for Constitutional Rights, New York City, NY
Center on Juvenile and Criminal Justice, San Francisco, CA
Children and Family Justice Center, Bluhm Legal Clinic, Northwestern
University School of Law, Chicago, IL
Citizens' Alert, Chicago, IL
Communities Against Rape and Abuse, Seattle, WA
Communities United Against Police Brutality, Minneapolis, MN
December 12th Movement International Secretariat
Desiree Alliance, Los Angeles, CA
DRUM (Desis Rising up and Moving), New York City, New York
The General Synod of the United Church of Christ
Global Network of Sex Work Projects, New York City, NY
Human Rights Clinic, Columbia Law School, New York City, NY
INCITE! Women of Color Against Violence
International Association Against Torture
Justice First, LLP, Oakland, CA
Legal Services for Prisoners with Children, San Francisco, CA
Malcolm X Grassroots Movement, New York City, NY
Massachusetts Statewide Harm Reduction Coalition, MA
Midwest Coalition for Human Rights
Minnesota Advocates for Human Rights, Minneapolis, MN
National Alliance Against Racist and Political Repression, Chicago Branch
National Association for the Advancement of Colored People (NAACP), Washington, DC
National Association of Criminal Defense Lawyers
National Black Police Association, Washington, DC
National Economic and Social Rights Initiative, New York City, NY
National Jericho Movement, New York City, NY
National Network for Immigrant and Refugee Rights, Oakland, CA
National Organization of Women (NOW), Washington, DC
Pacific Juvenile Defender Center, San Francisco, CA
Penal Reform International – The Americas, Washington, DC
Prison Moratorium Project, New York City, NY
Prostitutes of New York, New York City, NY
RAWAN (Radical Arab Women's Activist Network)

RFR Researchers, New York City, NY
Scottish Prostitutes Education Project, Edinburgh, Scotland
Sex Workers Project at the Urban Justice Center, New York City, NY
Sex Workers' Organizing Project, San Francisco, CA
Sylvia Rivera Law Project, New York City, NY
US Human Rights Network (representing 170 organizations and individuals from across the country working on such fundamental human rights issues as criminal justice, discrimination, health care, immigration, housing, labor, and education)

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Calvert Stewart, North Carolina October 22nd Coalition, father of a Gilbert A. Barber, victim of excessive violence by law enforcement
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Christina M. Vogt, International Gender Organization (GenderWatch)
Juanita Young, mother of Malcolm Ferguson (killed by NYPD March 2000), Parents Against Police Brutality, survivor of police torture, member, October 22 Coalition to Stop Police Brutality, Repression and the Criminalization of a Generation, Justice Committee

It should be noted that all of the signatories to this submission strongly believe in the importance of adherence to the CAT and share strong concerns about the U.S. failure to comply fully with its international human rights obligations. The issues raised in this report constitute a compilation of the concerns of the various signatories, each of whom has a unique mandate and expertise. However, its contents do not necessarily

reflect the precise position of each of these organizations. Finally, it is important to note that the issues identified therein are not exhaustive.

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ENDNOTES

- ¹ See, Human Rights Watch, *Witness to Abuse: Human Rights Abuses Under the Material Witness Law Since September 11*, HRW Index No.: G1702, 2005, available at: <http://hrw.org/reports/2005/us0605/us0605.pdf>; U.S. Department of Justice, Office of the Inspector General, *Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York*, December 2003.
- ² Amnesty International USA Domestic Human Rights Program, *Threat & Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States*, October 2004.
- ³ American Civil Liberties Union, *Civil Liberties After 9/11: The ACLU Defends Freedom*, October 2002; available at: http://www.aclu.org/FilesPDFs/911_report.pdf.
- ⁴ Second Periodic Report of the United States of America to the Committee Against Torture, Submitted by the United States of America to the Committee Against Torture, May 6, 2005, ¶ 75.
- ⁵ Coramae Richey Mann, *Unequal Justice: A Question of Color* 165, 195 (1993); *Born in Slavery: Slave Narratives From the Federal Writers' Project, 1936-1938, Georgia Narratives*, Vol. IV, Part 4, "Slavery," at 321-329.
- ⁶ *We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of the United States Government Against the Negro People*, Civil Rights Congress, New York, 1951.
- ⁷ See, e.g., *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, South Dakota Advisory Committee to the United States Commission on Civil Rights, March 2000; *United States of America: Rights for All*, Amnesty International, AMR 51/035/1998, 1998.
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- ¹¹⁵ For example, the first allegation against Graner involved an incident on July 29, 1998. "Horatio Nimley, convicted of perjury, was eating mashed potatoes when his mouth started bleeding and he spat out a razor blade. According to a May 1999 federal lawsuit brought by Nimley, Graner first planted the blade in his potatoes, then ignored him when he began to bleed, and finally brought him to the nurse, where they punched, kicked, and slammed Nimley on the floor. Nimley also alleges that when he screamed, "Stop, stop," Graner told him, "Shut up, nigger, before we kill you." Graner denies these allegations. A federal magistrate in Pittsburgh, however, ruled that the charges against Graner have "arguable merit in fact and law." When Nimley was released from prison in 2000, he disappeared, and the case was dismissed, leaving much of what happened still in question." See Christian Davenport and Michael Amon, *3 to be Arraigned in Prison Abuse: Defense to Argue that Military Intelligence Officers were in Charge*, Washington Post, May 19, 2004, Page A01.
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- ¹²⁰ Personal Communication, Raine Thompson, Esq., ACLU of Mississippi, December 14, 2005.
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- ¹²⁴ While the US government references several cases of rape and sexual assault by law enforcement officers in its report to the Committee, it refers to these cases merely as "abuse" and "deprivation of liberty without due process of law," and does not appear to recognize them as acts of torture. See Second Periodic

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¹³⁵ *Id.*

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¹³⁷ *Suffolk County Officer Is Charged in Abuse of Female Drivers*, New York Times, November 29, 2002.

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¹⁴¹ Statement on Katrina Disaster, National Economic and Social Rights Initiative (NESRI), February 23, 2006, available at http://www.nesri.org/media_updates/index.html#nesri.

¹⁴² Principle 12(3) of United Nations Guiding Principles on Internal Displacement.

¹⁴³ *Military due to Move Into New Orleans: Governor Warns Thugs, Troops 'Know how to Shoot and Kill'*, CNN.com, September 2, 2005

¹⁴⁴ Ronnie Thomas, *Escape Into Uncertainty: This is a Family in Crisis*, Decatur Daily, December 18, 2005; Shaun Waterman, *Cops Trapped Survivors in New Orleans*, United Press International, September 9, 2005.

¹⁴⁵ Ronnie Thomas, *Escape Into Uncertainty: This is a Family in Crisis*, Decatur Daily, December 18, 2005.

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- ¹⁴⁷ Tanya Mendis, *Katrina Survivor Alleges Police Brutality*, WCTV, September 9, 2005.
- ¹⁴⁸ *Police Brutality in New Orleans*, News Hour with Jim Lehrer, Public Broadcasting Service, October 12, 2005; Mary Foster, *New Orleans Beating Caught on Tape*, Associated Press, October 9, 2005.
- ¹⁴⁹ KOMO 4 News, *At the Train Station, New Orleans' Newest Jail is Open for Business*, September 6, 2005.
- ¹⁵⁰ Gerald Smith, *New Orleans: A Police State Encampment*, Copwatch Report, Berkeley Cop Watch, Winter 2006.
- ¹⁵¹ Bruce Egger, *Increase in Police Brutality in N.O. Alleged: Residents Say Poor, Minorities Targeted*, New Orleans Times-Picayune, March 17, 2006.
- ¹⁵² Mary Foster, *New Orleans to Probe Brutality Allegations*, Associated Press, April 6, 2006.
- ¹⁵³ Comp. 160/2000, CAT/C/29/D/161/2000.
- ¹⁵⁴ See, e.g., Albania, CAT/C/CR/34/ALB, 21 June 2005; Bahrain, CAT/C/CR/34/BHR, 21 June 2005; Greece, CAT/C/CR/33/2, 10 December 2004.
- ¹⁵⁵ *Conclusions and Recommendations of the Committee Against Torture: United States of America*. 15/05/2000. A/55/44, paras. 175-180; see also *Summary Record of the First Part (Public) of the 427th Meeting*, CAT/C/SR.424, ¶ 18.
- ¹⁵⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987, Part I, Article 1(1).
- ¹⁵⁷ See, e.g., Jonathan Canfield, *The Torture Memos: The Conflict Between A Shift In U.S. Policy Towards A Condemnation Of Human Rights And International Prohibitions Against The Use Of Torture*, 33 Hofstra L. Rev. 1049 (2005) (discussing Memorandum from U.S. Department of Justice Office of Legal Counsel, to Alberto R. Gonzales Counsel to the President (Aug. 1, 2002) and US reservations to the Convention and comparing them to language of the Convention).
- ¹⁵⁸ 136 Cong. Rec. s17486-01 (daily ed. Oct. 27, 1990); Vol. 136 No. 150 -- Part 2; also available at <http://www.ohchr.org/english/law/cat-reserve.htm>; see also *Memorandum for James B. Comey, Deputy Attorney General Re: Legal Standards Applicable Under 18 U.S.C. § 2340-2340A*, December 30, 2004, appended to *Second Periodic Report of the United States of America to the Committee Against Torture, Submitted by the United States of America to the Committee Against Torture*, May 6, 2005. (discussing US government's interpretation of "severe physical pain and suffering" and "specifically intended")
- ¹⁵⁹ 136 Cong. Rec. s17486-01 (daily ed. Oct. 27, 1990); Vol. 136 No. 150 -- Part 2; also available at <http://www.ohchr.org/english/law/cat-reserve.htm>
- ¹⁶⁰ 136 Cong. Rec. s17486-01 (daily ed. Oct. 27, 1990); Vol. 136 No. 150 -- Part 2; also available at <http://www.ohchr.org/english/law/cat-reserve.htm>.
- ¹⁶¹ 136 Cong. Rec. s17486-01 (daily ed. Oct. 27, 1990); Vol. 136 No. 150 -- Part 2; also available at <http://www.ohchr.org/english/law/cat-reserve.htm>.
- ¹⁶² *Conclusions and Recommendations of the Committee Against Torture: United States of America*. 15/05/2000. A/55/44, paras. 179(b); see also *United States of America: List of Issues to be Considered During the Examination of the Second Periodic Report of the United States of America*, CAT/C/USA/Q/2/CRP.1, 14 December 2005.
- ¹⁶³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987, Part I, Article 1.
- ¹⁶⁴ See *Graham v. Connor*, 490 U.S. 386 (1989).
- ¹⁶⁵ *Graham v. Connor*, 490 U.S. 386, 395 (1989).
- ¹⁶⁶ *Abdullahi v. City of Madison*, 423 F.3d 763, 768 (7th Cir. 2005), quoting *Graham* at 396.
- ¹⁶⁷ 137 F.Supp.2d 1326 (N.D. Ga. 2000).
- ¹⁶⁸ 2006 WL 63959 (11th Cir. Jan. 12 2006).
- ¹⁶⁹ *Id.*
- ¹⁷⁰ *Chavez v. Martinez*, 538 US 760 (2003).
- ¹⁷¹ 346 F. Supp. 2d 430 (2004).
- ¹⁷² *Higazy v. Millennium Hotel & Resorts, CDL L.L.C.*, 346 F. Supp. 2d 430 (2004).
- ¹⁷³ 136 Cong. Rec. s17486-01 (daily ed. Oct. 27, 1990); Vol. 136 No. 150 -- Part 2; also available at <http://www.ohchr.org/english/law/cat-reserve.htm>.

¹⁷⁴ *Ingraham v. Wright*, 430 U.S. 651 (1977).

¹⁷⁵ *Id.*

¹⁷⁶ *Graham v. Connor*, 490 U.S. 386 (1989). The Court returned the case to the appeals court for evaluation of Graham's claim under the Fourth Amendment. We were unable to locate a published opinion adjudicating a Fourth Amendment claim. However, such claims are frequently decided in favor of the government under a lenient standard which requires examination of whether, under the "totality of circumstances" a law enforcement officer's conduct was "objectively reasonable" from the point of view of the officer at the time of the conduct in question.

¹⁷⁷ *Second Periodic Report of the United States of America to the Committee Against Torture*, Submitted by the United States of America to the Committee Against Torture, May 6, 2005, ¶ 13.

¹⁷⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987, Part I, Article 2.

¹⁷⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987, Part I, Article 11.

¹⁸⁰ *Conclusions and Recommendations of the Committee Against Torture: United States of America*. 15/05/2000. A/55/44, para. 179(a).

¹⁸¹ *United States of America: List of Issues to be Considered During the Examination of the Second Periodic Report of the United States of America*, CAT/C/USA/Q/2/CRP.1, 14 December 2005.

¹⁸² See *Summary Record of the First Part of the 424th Meeting: United States of America*. 09/02/2001. CAT/C/SR.424. (Summary Record), at ¶ 18, noting that "there was as yet no body in the United States capable of gathering...data [regarding its compliance with its obligations under the treaty]".

¹⁸³ *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Initial Reports of States Parties due in 1995*, Addendum, United States of America, 9 February 2000, CAT/C/28/Add.5., para. 89.

¹⁸⁴ For discussions of the consistent lack of funding for pattern and practice investigations by the Department of Justice, see U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000; Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, HRW Index No.: 1-56432-183-5, July 1, 1998.

¹⁸⁵ *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Second Periodic Reports of States Parties due in 1999*, Addendum, United States of America, 29 June 2005, CAT/C/48/Add.4. para. 206.

¹⁸⁶ See, e.g., ACLU of Northern California, *Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives*, September 2005 ; United States Government Accountability Office, *TASER WEAPONS: Use of Tasers by Selected Law Enforcement Agencies*, GAO-05-464, May 2005; Amnesty International, *Excessive and lethal force? Amnesty International's concerns about deaths and ill-treatment involving police use of TASERS*, AMR 51/139/2004, November 2004; Civilian Complaint Review Board, *Recommendation that the NYPD enhance its training of officers to ensure adherence to Patrol Guide strip search procedures*, May 12, 2004 Memorandum to the NYPD.

¹⁸⁷ *Conclusions and Recommendations of the Committee Against Torture: United States of America*. 15/05/2000. A/55/44, para. 180(b).

¹⁸⁸ *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Initial Reports of States Parties due in 1995*, Addendum, United States of America, 9 February 2000, CAT/C/28/Add.5., para. 70.

¹⁸⁹ *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Initial Reports of States Parties due in 1995*, Addendum, United States of America, 9 February 2000, CAT/C/28/Add.5., para. 70.

¹⁹⁰ ECHR 36217/97 (2005).

¹⁹¹ ECHR 31247/96 (2004).

¹⁹² *Justice on the Line: The Unequal Impacts of Border Enforcement on Arizona Border Communities 7*, Border Action Network.

¹⁹³ See, e.g., U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000; Human Rights Watch, *Shielded from*

Justice: Police Brutality and Accountability in the United States, HRW Index No.: 1-56432-183-5, 1998; *United States of America: Rights for All* 43, Amnesty International, AMR 51/035/1998, 1998.

¹⁹⁴ Tara L. Senkel, *Civilians Often Need Protection From the Police: Let's Handcuff Police Brutality*, 15 N.Y.L. Sch. J. Hum. Rts. 385, 403 (1999).

¹⁹⁵ Tara L. Senkel, *Civilians Often Need Protection From the Police: Let's Handcuff Police Brutality*, 15 N.Y.L. Sch. J. Hum. Rts. 385, 401 (1999). The study cited the prosecutor's conflict of interest in prosecuting police officers whose assistance he may also need to prosecute the person bringing the complaint against the officers, as well as the practice of only prosecuting cases in which persons sustained severe and well-documented injuries as factors supporting its conclusion. *Id.* at 412.

¹⁹⁶ Mark Sherman, *Amnesty International: US Taser Deaths Up*, Associated Press, March 27, 2006; Pamela Dickman, *Man Dies 2 Weeks After Fight*, Loveland Daily Reporter Herald, October 26, 2005.

¹⁹⁷ 18 USCS §242 states in relevant part:

Whoever, under color of any law, statute, ordinance, regulation, or custom, *willfully* subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death. (Emphasis added.)

¹⁹⁸ 42 U.S.C. §1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

¹⁹⁹ *Screws v. US*, 325 U.S. 91 (1945); see also Pastor, Michael J., *A Tragedy and a Crime?: Amadou Diallo, Specific Intent, and the Federal Prosecution of Civil Rights Violations*, N.Y.U. J. Legis. & Pub. Pol'y 171.

²⁰⁰ *United States v. Shafer*, 384 F. Supp. 496, 503 (N.D. Ill 1974).

²⁰¹ *United States v. Shafer*, 384 F. Supp. 496 (N.D. Ill 1974).

²⁰² For instance, during a meeting with students at Howard University in Washington DC in November 2000, Bill Lann Lee, former Assistant Attorney General for Civil Rights, cited to 18 U.S.C. § 242's requirement that a law enforcement officer "willfully" deprive an individual of their constitutional rights in order for liability to attach as a barrier to prosecution of an officer responsible for the death of Howard University student Prince Jones. See also U.S. Commission on Civil Rights, *Revisiting Who is Guarding the Guardians?: A Report on Police Practices and Civil Rights in America*, November 2000.

²⁰³ *Justice on the Line: The Unequal Impacts of Border Enforcement on Arizona Border Communities 7*, Border Action Network.

²⁰⁴ *Justice on the Line: The Unequal Impacts of Border Enforcement on Arizona Border Communities 7*, Border Action Network.

²⁰⁵ *United States v. Lanier*, 520 US 259 (1997).

²⁰⁶ *Parratt v. Taylor*, 451 US 527, 535 (1981).

²⁰⁷ *Id.*

²⁰⁸ *Justice on the Line: The Unequal Impacts of Border Enforcement on Arizona Border Communities 7*, Border Action Network.

²⁰⁹ See e.g., *Roe v. Hunke*, 128 F.3d 1213, 1215 (8th Cir. 1997) (sexual assault of 11-year-old girl by police officer who worked at local school was not “under color of law”); *Almand v. DeKalb County*, 103 F.3d 1510, 1514-15 (11th Cir. 1997) (although court acknowledged that officer entered woman’s apartment based on his status as a police officer, subsequent forcible entry and rape was a “private act” not taken under authority of state law).

²¹⁰ *Andersen v. Creighton*, 483 U.S. 635 (1987).

²¹¹ *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978); *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).

²¹² Carolyn Marshall, *Pepper-Spray Case Goes to Jury in California*, New York Times, September 22, 2004; *Verdicts & Settlements*, The Recorder, vol. 130(21):5, January 31, 2006.

²¹³ Bob Egelko, *Bid to put limit on pepper spray; 8 Humboldt County activists ask judge to ban use at protests*, The San Francisco Chronicle, May 9, 2005.