

**COMMON CORE DOCUMENT  
OF THE  
UNITED STATES OF AMERICA**

**Submitted with the Fourth Periodic Report of the United States of America  
to the United Nations Committee on Human Rights concerning the  
International Covenant on Civil and Political Rights**

**December 30, 2011**

# COMMON CORE DOCUMENT

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## United States of America

### I. General Information about the Reporting State

#### A. Demographic, economic, social and cultural characteristics

##### 1. Demographic indicators

1. The United States is a multi-racial, multi-ethnic, and multi-cultural society in which racial and ethnic diversity is ever increasing. Virtually every national, racial, ethnic, cultural, and religious group in the world is represented in the U.S. population. The United States decennial census in 2010 showed that from 2000 to 2010, the U.S. population grew by 27.3 million (9.7 %) to 308.9 million. This represented a lower growth rate than was seen from 1990 to 2000 (13.2 %), but was similar to the growth rate from 1980 to 1990 (9.8 %). Regional growth was faster for the South and West than for the Midwest and Northeast. The West for the first time surpassed the population of the Midwest. Overall, the South and West accounted for 84.4 % of the U.S. population increase from 2000 to 2010. Over four fifths (83.7 %) of the U.S. population in 2010 lived in the nation's 366 metropolitan areas – areas with core urban populations of 50,000 or more.

<http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf>.

2. More than half the 27.3 million population growth from 2000 to 2010 was due to a 15.2 million population increase in the Hispanic or Latino population.<sup>1</sup> During this period, the Hispanic or Latino population grew by 43 % from 35.3 million in 2000 to 50.5 million in 2010 – from 13 % to 16 % of the total population. The non-Hispanic/Latino population grew at a relatively slower rate – about 5 %. Within the non-Hispanic/Latino population, those

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<sup>1</sup> The racial and ethnic categories used since 1997 in the U.S. census are: White; Black or African American; American Indian and Alaska Native (AIAN); Asian; and Native Hawaiian and Other Pacific Islander (NHPI). Members of these racial categories are also classified separately as belonging to one of two ethnic categories: Hispanic or Latino origin, or non-Hispanic or Latino origin. For reasons of simplicity, this report sometimes uses the single terms “Black” or “Hispanic” to refer to the respective categories of persons, rather than the terms “Black or African American” and “Hispanic or Latino” employed by the Census Bureau. Also, on occasion the report uses the single term “Native American” rather than the full Census term “American Indian and Alaska Native”.

who reported their race as White alone grew the most slowly (1 %). While the non-Hispanic/Latino White alone population increased numerically from 194.6 million to 196.8 million over the 10-year period, its proportion of the total population declined from 69 percent to 64 percent.

3. In 2010, approximately 97 % of all respondents reported only one race. From 2000 to 2010, all major race groups experienced increases in numbers, but the groups grew at different rates.

4. The Asian alone population was the fastest growing race group – growing by 43.3 % from 10.2 million to 14.7 million -- from 3.6 % to 4.8 % of the population. The Native Hawaiian and Pacific Islander (NHPI) alone population grew by more than a third, from 398,835 to 540,013, increasing its proportion of the population from 0.1 % to 0.2 %. The American Indian and Alaska Native (AIAN) alone population grew by 18 % from 2.5 to 2.9 million, remaining at 0.9 % of the overall population. The Black or African American alone population grew by 12.3 % from 34.7 million to 38.9 million -- increasing its proportion from 12.3 % to 12.6 %. The White only population (including White Hispanics/Latinos) grew by the smallest percentage – only 5.7 % – and was the only group to experience an actual decrease in its proportion of the population – from 75 % to 72 %. Of the 27.3 million people added to the total population, the White alone population made up just under half of the growth -- increasing by 12.1 million. Within this White alone population, however, the vast majority of the growth was propelled by persons of Hispanic/Latino ethnicity.

**Population by Hispanic or Latino Origin and by Race for the United States: 2000 and 2010**

HISPANIC OR LATINO ORIGIN / RACE	2000	2000	2010	2010	Change	Change
	Number	Percent of total population	Number	Percent of total population	2000-2010 Number	2000-2010 Percent
<b>RACE</b>						
Total population	281,421,906	100.0	308,745,538	100.0	27,323,632	9.7
One race	274,595,678	97.6	299,736,465	97.1	25,140,787	9.2
White	211,460,626	75.1	223,553,265	72.4	12,092,639	5.7
Black or African	34,658,190	12.3	38,929,319	12.6	4,271,129	12.3

American	2,475,956	0.9	2,932,248	0.9	456,292	18.4
AIAN	10,242,998	3.6	14,674,252	4.8	4,431,254	43.3
Asian	398,835	0.1	540,013	0.2	141,178	35.4
NHPI	15,359,073	5.5	19,107,368	6.2	3,748,295	24.4
Some Other Race	6,826,228	2.4	9,009,073	2.9	2,182,845	32.0
Two or More Races						

Source: U.S. Census, “Overview of Race and Hispanic Origin: 2010,” 2010 Census Briefs, [www.census.gov/prod/cen2010/briefs/c2010br-02.pdf](http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf). (Note: AIAN stands for American Indian and Alaska Native; NHPI stands for Native Hawaiian and Pacific Islander.)

5. The Hispanic or Latino population predominantly identified as either White or some other race (only 6 % of the Hispanic/Latino population reported multiple races). The non-Hispanic/Latino population identified primarily as White alone (76 %), Black or African American alone (15 %), and Asian alone (6 %). Fewer than 1 % identified as some other race alone, and only 2 % reported more than one race. Of the people who reported multiple races, White and Black/African American was the most predominant multiple race combination. The four largest groups were White and Black/African American (1.8 million), White and some other race (1.7 million), White and Asian (1.6 million) and White and AIAN (1.4 million). Nearly half of all people who identified as AIAN reported multiple races – 63 % AIAN and White, 12 % AIAN and Black/African American, and 10 % AIAN, White, and Black/African American.

6. From 2000 to 2010, the minority population grew in all regions, but the rates of growth were highest in the South (47 %) and the West (40 %). California had the largest minority population, followed by Texas, New York, Florida and Illinois. Texas joined California, Washington, D.C., Hawaii and New Mexico in having minorities constitute more than 50 % of its population. <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

7. In 2010, the Census Bureau reported that as of 2009, 36.7 million of the nation’s population (12 %) were foreign born, and another 33 million (11 %) were native born with at least one foreign born parent, making one in five people either first or second generation U.S. residents. A recent report by the Congressional Research Service indicates that from 2000 to 2008, foreign born persons contributed 30 % of the total U.S. population increase and almost all of the prime 25 to 54 working age group increase. Close to 30 % of the foreign born had arrived in the United States since 2000 and roughly 29 % were residing illegally in the United

States in 2009. The geographical origins have shifted from Europe (74 % in 1960) to Latin America and Asia (80 % in 2008). In 2008, the 10 leading countries of birth of foreign born were Mexico, China, Philippines, India, Vietnam, El Salvador, Korea, Cuba, Canada and the Dominican Republic. In recent years, many foreign born have settled in new urban and rural destinations, often in response to employment opportunities in construction, manufacturing and low-skilled services. Yet, as in previous decades, at least two thirds of the foreign born population remains concentrated in six states: California, New York, Florida, Texas, Illinois and New Jersey. In the past four decades, the total foreign born population has increased, but the proportion of foreign born who are naturalized U.S. citizens has declined from 63.6 % in 1970 to 43.0 % in 2008. <http://www.fas.org/sgp/crs/misc/R41592.pdf>.

8. Estimates of the unauthorized immigrant population in the United States by the Department of Homeland Security indicate that in 2009 there were approximately 10.7 million unauthorized persons in the United States, as compared to 8.5 million in 2000. More than half of these unauthorized persons were from Mexico. The other most prevalent countries of origin were El Salvador, Guatemala, Honduras, Philippines, Korea, and India. <http://www.census.gov/compendia/statab/2011/tables/11s0045.pdf>.

9. According to the Census Bureau American Community Survey, in 2008, approximately 227.4 million (80 %) of persons 5 years old and older in the United States spoke English at home. Approximately 34.6 million spoke Spanish, and approximately 21.2 million spoke other languages, with Chinese, Tagalog, French, Vietnamese, German and Korean being the most frequently spoken. The highest percentages of non-English speakers were found in the states of California (42.3 %), New Mexico (35.4 %), and Texas (33.8 %). <http://www.census.gov/compendia/statab/2011/tables/11s0054.pdf>.

10. Population projections indicate that, by mid-century, the United States is projected to be even more racially and ethnically diverse, as well as much older. The 65 and older population will represent nearly one in five U.S. residents in 2030, and will increase from 38.7 million in 2008 to 88.5 million by 2050. Minorities, now roughly one-third of the U.S. population, are expected to become the majority in 2042, with the nation projected to be 54 % minority in 2050. By 2050, the minority population (everyone except non-Hispanic/Latino, single race Whites) is projected to be 235.7 million out of a total of 439 million. By 2023, minorities will comprise more than half of all children. The Hispanic or Latino population is

projected to nearly triple from 46.7 million to 132 million from 2008 to 2050, and its share is projected to double from 15 to 30 %. The Black or African American population is expected to increase from 41.1 million (14 %) in 2008 to 65.7 million (15 %) in 2050, and the Asian population is projected to climb from 15.5 million (5.1 %) in 2008 to 40.6 million (9.2 %) in 2050. The AIAN population is expected to rise from 4.9 million to 8.6 million (2 %), and the NHPI population from 1.1 million to 2.6 million.

<http://www.census.gov/newsroom/releases/archives/population/cb08-123.html>.

## **2. Social, economic, and cultural indicators**

11. Educational attainment. In 2009, 29.5 % of Americans 25 years old and over were college graduates or higher. With regard to racial and ethnic groups, the highest rate of college graduates was for the Asian and Pacific Islander population (52.3 %), the next highest for White Americans (29.9 %), and the lowest rate was for Blacks or African Americans (19.3 %). Among the Hispanic or Latino population, a total of 13.2 % had college degrees. These percentages were higher than they were in 2000, when the total population with college degrees or higher was only 25.6 %, and much higher than in 1970, when the population with college degrees was only 10.7 %.

12. In 2009, 86.7 % of Americans had high school diplomas or higher, with 87.1 % for White Americans, 84.1 % for Blacks or African Americans and 88.2 % for Asian and Pacific Islander Americans. For the Hispanic/Latino population, the total was 61.9 %. Likewise, these percentage figures were higher than in 2000, when the total was 84.1 %, and much higher than in 1970, when the total was only 52.3 %.

<http://www.census.gov/compendia/statab/2011/tables/11s0225.pdf>.

13. Except for the Asian and Pacific Islander population, women generally were slightly more likely than men to be high school graduates. With regard to college, Black or African American and Hispanic/Latino women were somewhat more likely than Black or African American and Hispanic men to have college degrees or higher, while White and Asian and Pacific Islander women were slightly less likely than White and Asian and Pacific Islander men to have such degrees. For the Hispanic population, this represents a change from the 1970's and 1980's, when Hispanic women were less likely than Hispanic men to have both high school and college degrees, and from 1990 when Hispanic women were more likely than Hispanic men to have high school degrees, but less likely to have college diplomas. See, Id.

14. Employment. Bureau of Labor Statistics data on the civilian labor force indicate that the employment to population ratio was lower in 2009 than it had been in 2000 for all categories, likely a result of the economic downturn.

**Civilian Labor Force – Employment to Population Ratio**

Sex, race and ethnicity	Year 2000	Year 2010
Male	71.9	63.7
Female	57.5	53.6
White	64.9	59.4
Black/African American	60.9	52.3
Asian	64.8	59.9
Hispanic/Latino	65.7	59.0

Source: <http://www.bls.gov/cps/cpsaat4.pdf>; <http://www.bls.gov/cps/cpsaat3.pdf>; and <http://www.bls.gov/cps/cpsaat2.pdf>.

15. These data generally indicate that men have higher rates of employment in the civilian labor force than women, and also that Blacks or African Americans may have been more significantly affected by the recent economic downturn than some other groups.

16. When civilian labor force participation rates are assessed in relation to educational attainment, they show that Blacks or African Americans and Hispanics or Latinos with college degrees (i.e., bachelor’s or higher) actually have higher labor force participation rates than Whites – 79.5 % for Blacks/African Americans and 81.7 % for Hispanics/Latinos with college degrees in 2010, as compared to 76.5 % for Whites and 75.9 % for Asian Americans. For persons with high school degrees, the rates of participation are 63.8 % for Blacks/African Americans and 73.9 % for Hispanics/Latinos, compared to 61.2 % for Whites and 62.8 % for Asians. This underscores the importance of working to improve the levels of educational attainment of minority populations. <http://www.bls.gov/cps/cpsaat7.pdf>.

17. With regard to occupational distribution, 2010 Bureau of Labor Statistics data for employed persons by occupation, race, ethnicity and sex show the following

**Employed persons by occupation, race, Hispanic or Latino ethnicity, and sex: 2010  
(percentage figures)**

Occupations	Total	White	Black or African American	Asian	Hispanic or Latino	Men	Women
Management, Professional & Related	37.2	37.9	29.1	47.0	18.9	34.2	40.6
Service	17.7	16.6	25.1	18.0	26.4	14.5	21.3
Sales and Office	24.0	24.1	25.1	21.1	21.2	16.9	32.0
Natural Resources, Construction & Maintenance	9.4	10.2	5.8	3.9	16.4	17.0	.9
Production, transportation & material moving	11.6	11.3	15.0	10.0	17.1	17.4	5.2

Source: Bureau of Labor Statistics, Employed Persons by occupation, race, Hispanic or Latino ethnicity, and sex, <http://www.bls.gov/cps/cpsaat10.pdf> (partial table, see website for full table).

18. These data indicate that Asian and White Americans are the most likely to be in management, professional and related occupations, with Asian Americans being particularly concentrated in such occupations. Asian and White Americans are also, to a somewhat lesser degree, found in service and sales and office positions. Blacks or African Americans are, likewise, most heavily concentrated in management, professional, and related occupations as well as in service, sales, and office occupations. Hispanic or Latino Americans tend to be somewhat less in management and professional occupations, and more concentrated in service and sales and office occupations, as well as in natural resources, construction and maintenance; and production, transportation and material moving.

19. The data also show that, overall, women are more heavily represented than men in management, professional, and related occupations (40.6 % for women compared to 34.2 % for men), service occupations (21.3 % for women compared to 14.5 % for men), and sales and office occupations (32 % for women compared to 16.9 % for men). On the other hand, men are more heavily represented in natural resources, construction and maintenance

occupations (17 % for men compared to .9 % for women) and production, transportation and material moving occupations (17.4 % for men compared to 5.2 % for women).

20. Data from 2010 show that in total, 67.9 % of the foreign born population participated in the labor force, while the total for the native born population was 64.1 %. The overall unemployment rate for the foreign born population was 9.8 %, while it was 9.6 % for the native born population. A racial and ethnic breakdown indicates that with the exception of Whites (where native born persons have a higher labor force participation rate), the foreign born population tended to participate in the labor force at a somewhat higher rate than the native born population. The foreign born population also appeared to have a somewhat lower unemployment rate than the native born population. The racial and ethnic breakdown is as follows:

**Foreign Born and Native Born Populations – Employment Status by Selected Characteristics: 2010**

Characteristic	Foreign Born		Native Born	
	Labor force participation rate	Unemployment rate	Labor force participation rate	Unemployment rate
White non-Hispanic	60.7	7.4	64.8	8.0
Black non-Hispanic	74.6	12.4	60.7	16.5
Asian non-Hispanic	65.8	7.3	61.5	7.9
Hispanic	70.8	11.3	64.0	13.8

Source: U.S. Bureau of Labor Statistics, Foreign-Born Workers: Labor Force Characteristics in 2010, Table 1, News Release, USDL-11-0763, May 27, 2011. See also <http://www.bls.gov/news.release/forbrn.toc.htm>. (partial table, see website for full table)

**3. Standard of living of different segments of the population**

21. In 2008, median income for American households was \$50,303, down from \$52,500 in 2000. Racial and ethnic disparities existed in median income, with White households having a median income of \$52,312, Black or African American households of \$34,218, Asian and

Pacific Islander households of \$65,637, and Hispanic or Latino households of \$37,913. Median income levels for all groups, however, were down from 2000. In 2008, 13.2 % of all persons were below the poverty level, and 17.9 % were below 125 % of the poverty level.<sup>2</sup> The racial breakdown of persons below poverty level showed significant disparities -- 11.2 % for White Americans, 24.7 % for Blacks or African Americans, 11.8 % for Asians and Pacific Islanders, and 23.2 % for Hispanic or Latino Americans. All poverty figures were higher than in 2000, when 11.3 % of all persons fell below the poverty line -- 9.5 % of Whites, 22.5 % of Blacks or African Americans, 9.9 % of Asians and Pacific Islanders, and 21.5 % of Hispanics or Latinos. For families, in 2008, 10.3 % of families were below the poverty line and 14.2 % were below 125 % of the poverty line. The racial and ethnic breakdown of families below the poverty line was 8.4 % of White families, 22.0 % of Black or African American families, 9.8 % of Asian and Pacific Islander families and 21.3 % of Hispanic/Latino families. As was the case for individuals, the poverty figures for families were also above those for 2000.

<http://www.census.gov/compendia/statab/2011/tables/11s0690.pdf>;

[http://www.census.gov/compendia/statab/cats/income\\_expenditures\\_poverty\\_wealth.html](http://www.census.gov/compendia/statab/cats/income_expenditures_poverty_wealth.html).

## **B. Constitutional, political and legal structure of the State**

### **1. Description of the constitutional structure and the political and legal framework**

#### **Type of government**

22. The United States of America is a federal republic of 50 states, together with a number of commonwealths, territories and possessions. The United States Constitution is the central instrument of government and the supreme law of the land. Adopted in 1789, the Constitution is the world's oldest written constitution still in force, and owes its staying power to its simplicity and flexibility. Originally designed to provide a framework for governing 4 million people in 13 very different former British colonies along the Atlantic coast, its basic provisions were so soundly conceived that, with only 27 amendments, it now serves the needs of more than 300 million people in 50 even more diverse states and other constituent units, which stretch from the Atlantic to the Pacific Ocean.

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<sup>2</sup> The poverty level for one person under 64 years old in 2008 was \$11,201, and for one person over 65 years old was \$10,326.

23. Although the Constitution has changed in a number of respects since it was first adopted, most of its basic principles remain the same as they were in 1789:

- The will of the people forms the basis of governmental legitimacy, and the people have the right to change their form of national government by legal means defined in the Constitution itself.
- The three main branches of the federal government (the executive, legislative, and judicial) are separate and distinct from one another. The powers given to each are delicately balanced by the powers of the other two. Each branch serves as a check on potential excesses of the others.
- The Constitution stands above all other laws, executive acts and regulations, including treaties.
- All persons are equal before the law and are equally entitled to its protection. All states are equal. Within the limits of the Constitution, each state must give “full faith and credit to the public acts, records, and judicial proceedings of every other state.” (The constitutional “full faith and credit” requirement allows states, for public policy reasons, to decline to “recognize and respect” the laws of other states in certain circumstances. See, e.g., Nevada v. Hall, 440 U.S. 410, 422 (1979).) State governments, like the federal government, must be republican in form, with final authority resting with the people.
- Powers not granted to the federal government are reserved to the states or the people.

24. The U.S. Constitution establishes a government based on federalism, or the sharing of power between the national and state governments. Both the national and state governments are granted certain exclusive powers and share other powers. For example, under the U.S. Constitution, powers reserved to the national government include the authority to: print money, declare war, establish an army and navy, enter into treaties with foreign governments, and regulate commerce between states. Powers reserved to state governments include the authority to: address vacancies in the Senate and ratify amendments to the U.S. Constitution. Shared, or “concurrent,” powers include the authority to: create and collect taxes, build highways, borrow money, and charter banks. Each state has its own constitution. However, all provisions of state constitutions must comply with the U.S. Constitution.

25. The U.S. Constitution and the federal government stand at the peak of a governmental pyramid that includes the 50 states and many hundreds of local jurisdictions. In the United States system, each level of government has a large degree of autonomy. Disputes between different jurisdictions are typically resolved by the courts. However, there are questions involving the national interest that require the cooperation of all levels of government simultaneously, and the Constitution makes provision for this as well. By way of example, public (government-funded) schools are largely administered by local jurisdictions, adhering to statewide standards even at the university level. Private schools are also generally required to meet the same standards. Nevertheless, the federal government also aids the schools, as literacy and educational attainment are matters of vital national interest. In other areas, such as housing and health and welfare, similar partnerships exist between the various levels of government.

26. Within the states, there are generally two or more layers of government. Most states are divided into counties, and areas of population concentration are generally incorporated into municipalities or other forms of local government (cities, towns, townships, boroughs, parishes, or villages). In addition, school districts and special service districts provide systems of public education and various other services (for example, water and sewer services, fire and emergency services, higher education, hospital services, public transportation). The leaders of the federal, state, county, municipal and other local governments are for the most part democratically elected, although some are appointed by other officials who are themselves democratically elected. The leaders of special service districts are likewise either elected or appointed, with election more common in the case of school districts.

27. A significant number of United States citizens and/or nationals live in areas outside the 50 states and yet within the political framework of the United States. These include persons living in the District of Columbia, American Samoa, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. The governmental frameworks in these areas are largely determined by the area's historical relationship to the United States and the will of their residents.

28. **Electoral system.** At the federal level, the President and Vice President are elected indirectly (through an Electoral College) for four-year terms, the members of the United

States Senate (100 Senators) are elected directly by the voters for six-year terms, and the members of the House of Representatives (435 Representatives) are elected directly for two-year terms. Considerable variation exists in the governmental structures of the states and other government units. From state to state, differences exist in the number of officials elected per capita. Elected at the state level typically are the governor, a lieutenant governor, an attorney-general, other leaders of state governmental departments, and members of a bicameral legislature (Nebraska, however, has a unicameral legislature). In many states, justices of the state supreme court and judges in various courts are also elected. Elected at the county level typically are members of a county governing body, a chief executive, a sheriff, a clerk, an auditor, a coroner, and minor judicial officials, such as justices of the peace and constables. Officials elected at the municipal level usually include a mayor and members of a governing council, board, or commission. All elections, even those for federal office, are conducted by the states or their political subdivisions.

29. Officials at all levels are elected at regularly scheduled elections to terms of fixed duration, usually varying in length between one and six years. Vacancies are filled either through special elections or by appointment or by a combination of the two methods. Elections are conducted by secret ballot.

30. While the U.S. Constitution does not establish or regulate political parties, most federal and state elections are in fact dominated by two long-established parties: the Democratic party, the origins of which may be traced to Thomas Jefferson, who was President from 1801 to 1809, and the Republican party, founded in 1854. Each party is a loose alliance of private organizations formed at the state and local levels, which unite every four years for the presidential election. There are no tests for party registration, and beliefs vary widely across the country and within the parties. Where one party dominates local politics, the only truly competitive electoral race may in fact be an initial, intra-party election of the party's candidate for office (often called the "primary" election). Many believe that individuals with moderate ideologies comprise the majority of voters nationwide. Some of these "moderates" may also be "independents" who are not registered in either party.

31. While the United States may generally be said to have a "two party" system, many Americans consider themselves "independents" or unaffiliated with either the Democratic or Republican party, or are affiliated with other political parties. Currently two independents

hold seats in the United States Congress, both in the Senate. An independent candidate for President won 18.9 percent of the popular vote in the 1992 election, and in the 2004 election, an independent candidate won 1 percent of the popular vote. In addition, there are numerous other, smaller political parties, such as the Green Party of the United States, the Labor Party, and the Raza Unida Party.

32. Most elections involve a two-step process. The first (or “primary”) step involves the selection or designation of a candidate to represent a political party; in the second, the respective parties’ candidates run against each other and any independent candidates in a general election. Local and state party organizations vary widely in the degree to which a voter must demonstrate party allegiance before participating in the party’s nominating method (commonly a “primary” election, but other methods include party caucuses or conventions). Although a state may not require by law that political parties conduct “closed primaries,” limited to registered members of their party, see, e.g., Tashjian v. Republican Party of Conn., 479 U.S. 208 (1986), states may nevertheless choose to permit such “closed primaries.” On the other hand, party caucuses and conventions typically require a greater degree of party affiliation by the voter and may be open only to certain party officials. Once the parties have designated their candidates for office, state-run general elections are held. In almost all elections, voters are permitted to “split” their ballots by, for example, voting for a Democrat for President and a Republican for Senator. The result is that at both the federal and state levels, the individual holding the highest executive office (e.g., President or Governor) may be of a different political party from the majority of elected representatives in the legislative branch.

33. The method of electing the President is particular to the United States system. Although the names of the candidates appear on the ballots, technically the people of each state do not vote directly for the President and Vice President. Instead, they select a slate of “presidential electors,” equal to the number of Senators and Representatives each state has in Congress. The law of each state determines how its “presidential electors” are chosen. All but two of the states have adopted a “winner-take-all” system, in which the entire slate of “presidential electors” is awarded to the candidate with the highest number of state-wide votes. The other two states have adopted a system in which the citizens of each congressional district choose one presidential elector, and the remaining two electors are chosen in accordance with the highest number of state-wide votes.

34. **Voting.** At the federal level, any U.S. citizen 18 years of age or over can register to vote, although in some local elections, non-citizens do have opportunities to vote. Under the Fifteenth and Nineteenth amendments to the U.S. Constitution, the right to vote is open to all, regardless of race, color, sex, or age (for those 18 years or older).

35. Based on the Fourteenth Amendment, which explicitly recognizes the right of states to bar an individual from voting “for participation in rebellion, or other crime,” a number of states deny voting rights to persons who have been convicted of certain serious crimes, although the inability to vote in most cases terminates at the end of the term of incarceration or by the granting of pardon or restoration of rights. The standards and procedures for criminal disenfranchisement vary from state to state. Currently 48 states restrict voting by persons convicted of felony offenses in some manner. Four states (Florida, Iowa, Kentucky and Virginia) have permanent disenfranchisement for all persons with felony convictions unless the government approves individual rights restoration, and 7 states (Alabama, Arizona, Delaware, Mississippi, Nevada, Tennessee, and Wyoming) have permanent disenfranchisement for at least some persons with criminal convictions unless the government approves restoration of individual rights.

36. Felony disenfranchisement is a matter of continuing debate in the states of the United States, and has been criticized as weakening our democracy by depriving citizens of the vote, and also for its disproportionate affects on racial minorities. In August 2001 and September 2005, National Commissions on Federal Election Reform recommended that all states restore voting rights to citizens who have fully served their sentences. In 2001, New Mexico terminated its lifetime voting ban for persons with felony convictions, and in 2003, Alabama changed its law to permit most felons to apply for a certificate of eligibility to register to vote after completing their sentences. In addition, since 2005, a number of states, including Nebraska, Rhode Island, Tennessee, Maryland, and Washington have legislatively or by executive order limited the reach of felony disenfranchisement in their states. Legal challenges alleging that some of these state felony disenfranchisement laws violate either the U.S. Constitution’s non-discrimination principle or other federal voting rights statutes have generally not succeeded in the absence of proof of a racially discriminatory purpose. In 2011, a bill to establish a uniform federal standard restoring voting rights in federal elections to people with felony convictions who had been released from prison was introduced in Congress. This bill, the Democracy Restoration Act of 2011, has not yet been enacted.

37. The residents of the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of Guam and the Virgin Islands have the right to vote for a delegate who sits in the U.S. House of Representatives. These delegates may participate in debate, and vote in congressional committees. In some sessions of Congress in the past, the delegates have also been permitted under House Rules to vote in the Committee of the Whole. At the beginning of the 112<sup>th</sup> Congress, however, the House rules were changed to eliminate voting by delegates in the Committee of the Whole, H. Res 5, January 5, 2011. Likewise, residents of the District of Columbia are represented in the House of Representatives by a Delegate who sits on committees and participates in debate, but cannot vote in the Committee of the Whole. Whether District residents should be afforded voting rights in Congress remains an issue of active public debate and is before the U.S. Congress. The District of Columbia House Voting Rights Act of 2009, H.R. 157 and S. 160, was passed by the Senate in February of 2009, but did not come to a vote in the House of Representatives during the 111th Congress, and has been reintroduced in the House in the 112th Congress. In April 2010, President Obama urged Congress to pass legislation that would provide District of Columbia residents with voting representation and to take steps to improve the District's Home Rule Charter.

38. The proportions of eligible voters who actually vote tend to be highest in years in which Presidential elections are held. In 2004, slightly more than 60 percent of the eligible voters actually voted; in 2008, the percentage rose to nearly 62 percent. In non-Presidential years, the figures vary; in 2010, voter turnout was slightly over 40 percent.<sup>3</sup>

39. Federal law requires political candidates to disclose certain information concerning the financing of their campaigns, and also places prohibitions and limitations on the types and amounts of contributions that may be given to candidates, political parties, and related entities. The Federal Election Commission administers and enforces these requirements. In 2010, the U.S. Supreme Court held that because communications related to candidate elections that are funded by corporations, unions, and other organizations constitute "speech"

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<sup>3</sup> These percentages, from the Elections Project website, represent the number of votes for the highest office divided by the voting-eligible population. In presidential election years, the vote for highest office is the presidential vote. In midterm elections, the vote for the highest office is the highest vote tally for Governor, U.S. Senator, or combined House of Representatives. McDonald, Michael P. 2011, "Voter Turnout," United States Elections Project, see <http://elections.gmu.edu/FAQ.html>

under the First Amendment to the U.S. Constitution, the government may not ban or place a ceiling on such spending. See Citizens United v. Federal Election Commission, 130 S. Ct. 876 (2010). The Court held that such expenditures may be regulated through disclosure and disclaimer requirements, which do not have the effect of suppressing speech. Since that time, legislation (the DISCLOSE Act) has been introduced in Congress to provide for disclosure of such election contributions in order to provide transparency for the American public.

### **Organization of executive, legislative and judicial branches**

40. **Executive branch.** The executive branch of the government is headed by the President who, under the Constitution, must be a natural-born United States citizen, at least 35 years old, and a resident of the country for at least 14 years. Candidates for the presidency are chosen by political parties several months before the presidential election, which is held every four years (in years divisible evenly by four) on the first Tuesday after the first Monday in November.

41. According to the Constitution, the President must “take care that the laws be faithfully executed.” To carry out this responsibility, the President presides over the executive branch of government, with broad powers to manage national affairs and the workings of the federal government. The President can issue instructions called executive orders, which are binding on federal agencies. As commander-in-chief of the armed forces of the United States, the President may also call into federal service the state units of the National Guard. The Congress may by law grant the President or federal agencies broad powers to make rules and regulations under standards set in those laws. In time of war or national emergency, these grants may be broader than in peacetime.

42. The President chooses the heads of all executive departments and agencies, subject to confirmation by the Senate, and also selects hundreds of other high-ranking federal officials, many of whom are also subject to confirmation by the Senate. The large majority of federal workers, however, are selected through the Civil Service system, in which appointment and promotion are based on ability and experience rather than political affiliation.

43. Under the Constitution, the President is the federal official primarily responsible for the relations of the United States with foreign nations. In this sense the President is both “head of government” and “head of State.” Presidents appoint ambassadors, ministers and consuls,

subject to confirmation by the Senate, and receive foreign ambassadors and other public officials. With the Secretary of State, the President manages all official communication with foreign governments. On occasion, the President may personally participate in summit conferences where heads of government meet for direct consultation.

44. Through the Department of State, the President is responsible for the protection of United States citizens abroad. Presidents decide whether to recognize new nations and new governments, and negotiate treaties with other nations, which are binding on the United States when the Senate gives its advice and consent by two thirds of the Senators present and voting. Based on statutory authority as well as inherent constitutional powers, the President may also negotiate executive agreements with foreign powers that are not subject to Senate advice and consent.

45. Although the Constitution provides that “all legislative powers” shall be vested in the Congress, the President also has a major role in the legislative process. The President can veto any bill passed by Congress, and, unless two-thirds in each house votes to override the veto, the bill does not become law. Much of the legislation dealt with by Congress is drafted at the initiative of the executive branch. In his annual “State of the Union” address and in other special messages to Congress, the President may propose legislation he believes necessary. The President has the power to call Congress into special session. Furthermore, the President, as head of a political party and as chief executive officer of the United States government, is in a position to influence public opinion and thereby to influence the course of legislation in Congress.

46. The President also appoints federal judges, including Justices of the Supreme Court, subject to confirmation by the Senate. The President has the power to grant a full or conditional pardon to anyone convicted of breaking a federal law, except in a case of impeachment. The pardoning power includes the authority to shorten prison terms and reduce fines.

47. The day-to-day enforcement and administration of federal laws is in the hands of the various executive departments created by Congress to deal with specific areas of national and international affairs. The heads of the major departments, chosen by the President and approved by the Senate, form a council of advisers generally known as the President’s Cabinet. The Cabinet is an informal consultative and advisory body, not provided for by the

Constitution. In the current Administration, the members of the Cabinet include the President, Vice President, and the secretaries of 14 cabinet Departments: Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Labor, State, Transportation, Treasury, and Veterans Affairs, as well as the Attorney General, who heads the Justice Department. Some executive departments include major subordinate agencies, such as the Federal Aviation Administration (Department of Transportation), the Federal Bureau of Investigation (Department of Justice), and the Bureau of Indian Affairs and the National Park Service (Department of the Interior). The Department of Homeland Security, which was created by the Homeland Security Act of 2002, contains a number of major agencies, such as the Transportation Security Administration (TSA) and Immigration and Customs Enforcement (ICE).

48. In addition to the heads of the 15 executive departments, the President's cabinet also includes the chiefs of a number of other governmental organizations. In the current Administration, those are: the Chair of the Council of Economic Advisers, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the United States Trade Representative, the U.S. Ambassador to the United Nations, and the White House Chief of Staff. The Executive Office of the President includes certain other organizations such as the Office of Science and Technology Policy, and the Council on Environmental Quality.

49. In addition to the executive departments, more than 50 other agencies within the executive branch have important responsibilities for keeping the government and the economy working. These are often called independent agencies, as they are technically not part of the executive departments. Some are regulatory bodies, with powers to supervise certain sectors of the economy, such as the Securities and Exchange Commission, the Nuclear Regulatory Commission, and the Federal Communications Commission. Others provide special services, either to the government or to people, such as the United States Postal Service, the Central Intelligence Agency, and the Federal Election Commission. In most cases, such agencies have been created by Congress to deal with matters that have become too complex for the scope of ordinary legislation. In total, the executive branch employs approximately 2.8 million civilian personnel.

50. The Department of Defense is responsible for providing the military forces required to deter potential adversaries from engaging in war and to protect the security of the United States. The major components of these forces are the Army, Navy, Marine Corps, and Air Force. Under the authority of the President, the Secretary of Defense exercises civilian authority, direction, and control over the Department of Defense, which includes the separately organized Departments of the Army, Navy, and Air Force; the Joint Chiefs of Staff; the unified and specified combatant commands; and various subordinate agencies established for specific purposes. As of 2011, there are approximately 1.42 million active duty members of the military, of which 206,023 are women.

51. **Legislative branch.** The legislative branch of the federal government is the Congress, which has two houses: the Senate and the House of Representatives. Powers granted Congress under the Constitution include the powers to levy taxes, borrow money, regulate interstate commerce, and declare war. In addition, each house may discipline its own membership and determine its rules of procedure. Including related entities such as the Library of Congress, the General Accounting Office, the Government Printing Office and the Congressional Budget Office, the legislative branch employs approximately 30,800 people.

52. **The Senate.** Each state elects two senators. Senators must be at least 30 years old, residents of the state from which they are elected, and citizens of the United States for at least nine years. Each term of service is for six years, and terms are arranged so that one third of the Senate is elected every two years. The Senate considers legislation (termed “bills” prior to enactment as “acts”), working through committees prior to being voted on by the full Senate. In addition, certain powers especially reserved to the Senate include the authority to confirm or reject presidential appointments of high officials and ambassadors, as well as authority to give advice and consent to the ratification of treaties by a two thirds vote.

53. The Constitution provides that the Vice President of the United States shall be president of the Senate. The Vice President has no vote, except in the case of a tie. The Senate chooses a president *pro tempore* from the majority party to preside when the Vice President is absent.

54. **House of Representatives.** The 435 members of the House of Representatives are chosen by direct vote of the electorate in each state, with the number of representatives allotted to each state on the basis of population. Each representative represents a single

congressional district. Members must be at least 25 years old, residents of the states from which they are elected, and previously citizens of the United States for at least seven years. Each term of service is two years.

55. The House of Representatives chooses its own presiding officer, the Speaker of the House. The Speaker is always a member of the political party with the majority in the House. The leaders of the two political parties in each house of Congress are respectively the majority leader and the minority leaders; they are helped by party whips who maintain communication between the leadership and the members of the House. Legislative proposals introduced by members of the House are received by the standing committees, the chairs of which are selected by the majority party.

56. Members of each house of Congress have the power to introduce legislation on any subject, except that revenue bills must originate in the House of Representatives. Legislation must be enacted by both houses, and each house can vote against legislation passed by the other house. Often, a conference committee made up of members from both houses must work out a compromise acceptable to both houses before a bill becomes law.

57. Role of committees. One of the major characteristics of the Congress is the dominant role committees play in its proceedings. Committees have assumed their present-day importance by evolution, not design, as the Constitution makes no provision for their establishment. At present, the Senate has 16 standing committees; the House has 20. The houses share a number of joint committees, such as the Joint Committee on Taxation, and each also has a number of special and select committees. Each specializes in specific areas of legislation and governmental activity, such as foreign affairs, defense, banking, agriculture, commerce, appropriations and other fields.

58. The majority party in each house controls the committee process. Committee chairs are selected by a caucus of members of the majority party in that house or by specially designated groups of members. Minority parties are proportionately represented in the committees according to their strength in each house.

59. Bills are developed by a variety of methods. Some are drawn up by standing committees, some by special committees created to deal with specific legislative issues, and some are suggested by the President or other executive branch officers. Citizens and

organizations outside the Congress may suggest legislation to members, and individual members themselves may initiate bills. Each bill must be sponsored by at least one member of the house in which it is introduced. After introduction, bills are typically sent to designated committees, which may schedule a series of public hearings to permit presentation of views by persons who support or oppose the legislation. The hearing process, which can last several weeks or months, opens the legislative process to public participation. Most bills introduced in either house are referred to a committee for study and recommendation. The committee may approve, revise, reject or ignore any measure referred to it. It is rare for a bill to reach the House or Senate floor without first winning committee approval. In the House, a petition to discharge a bill from committee requires the signature of 218 members; in the Senate, a majority of all members is required. In practice, such discharge motions rarely receive the required support.

60. When a committee has acted favorably on a bill, the proposed legislation may then be brought to the floor for open debate. In the Senate, the rules permit virtually unlimited debate. In the House, because of the large number of members, the Rules Committee usually sets limits. When debate is ended, members vote to approve the bill, defeat it, table it (set it aside), or return it to committee. A bill passed by one house is sent to the other for action. If the bill is amended by the second house, the bill may return to the first house for another vote, or a conference committee composed of members of both houses may attempt to reconcile the differences.

61. Once passed by both houses, a bill is sent to the President for action. The President generally has the option of signing the bill, in which case it becomes law, or vetoing it. A bill vetoed by the President may become law only if it is re-approved by a two thirds vote of each house. If the President refuses either to sign or veto a bill, it becomes law without his signature 10 days after it reaches him (not including Sundays). The single exception to this rule is when Congress adjourns after sending a bill to the President and before the 10-day period has expired; in that case, the President's refusal to take any action then negates the bill – a process known as the “pocket veto.”

62. Congressional powers of oversight and investigation. Congress has an interest in conducting oversight in aid of its legislative function. Oversight functions include reviewing the effectiveness of laws already passed and assessing their implementation by the executive

branch. In addition, investigations are conducted to gather information on the need for future legislation. Frequently, committees call on outside (non-governmental) experts to assist in conducting investigative hearings and to provide testimony in connection with oversight and investigative hearings.

63. There are important corollaries to the powers of oversight and investigation. One is the power to publicize the proceedings and their results. Most committee hearings are open to the public and are widely reported in the media. Congressional hearings thus represent one important tool available to lawmakers to inform the citizenry and arouse public interest in national issues. A second power is to compel testimony from unwilling witnesses, and to cite for contempt of Congress witnesses who refuse to testify and for perjury those who give false testimony.

64. Composition of Congress. Distribution of Congress in terms of party, as well as sex and racial makeup, changes as a result of each election. In the 112<sup>th</sup> Congress, 1<sup>st</sup> Session the Senate is made up of 51 Democrats, 2 Independents, and 47 Republicans, while the House is comprised of 241 Republicans, 198 Democrats (including 5 Delegates and the Resident Commissioner). The 112<sup>th</sup> Congress includes 91 women – 74 in the House (including 3 Delegates) and 17 in the Senate. There are 44 Blacks or African Americans in the House (including 2 Delegates), and 28 Hispanic or Latino members (26 in the House, including the Resident commissioner and 2 in the Senate), and 13 members are Asian or Native Hawaiian/Pacific Islander (11 are in the House, including 2 Delegates, and 2 in the Senate). See CRS Report, “Membership of the 112<sup>th</sup> Congress: A Profile,” <http://www.senate.gov/reference/resources/pdf/R41647.pdf>

65. **Judicial branch.** The third branch of the federal government, the judiciary, consists of a system of courts headed by the Supreme Court of the United States and including subordinate courts throughout the country. The federal judicial power extends to cases arising under the Constitution, laws, and treaties of the United States; to cases affecting ambassadors, other public ministers, and consuls; to cases of admiralty and maritime jurisdiction; to controversies to which the United States is a party; and to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. In

practice, the vast majority of litigation in federal courts is based on federal law or involves disputes between citizens of different states under the courts' "diversity" jurisdiction.

66. The power of the federal courts extends both to civil actions for money damages and other forms of redress, and to criminal cases arising under federal law. Article III of the Constitution establishes the Supreme Court of the United States and gives Congress the power to establish other federal courts as needed. Under Article I, Congress also has the power to establish certain courts; Article I courts include territorial courts, certain District of Columbia courts, courts martial, legislative courts, and administrative agency adjudicative procedures.

67. The Constitution safeguards the judicial independence of Article III judges by providing that federal judges shall hold office "during good Behaviour" – in practice, until they die, retire, or resign, although a judge who commits an offense while in office may be impeached in the same way as other officials of the federal government. Federal judges are appointed by the President and confirmed by the Senate. Altogether, there are approximately 1,000 federal judges, and the federal judiciary employs some 34,000 people.

68. The Supreme Court. The Supreme Court is the highest court of the United States and the only one specifically created by the Constitution. A decision of the Supreme Court cannot be appealed to any other court. Congress has the power to fix the number of judges sitting on the Court (currently a Chief Justice and eight Associate Justices) and, within limits, to decide what kinds of cases it may hear, but it cannot change the powers given to the Supreme Court by the Constitution itself.

69. The Supreme Court may exercise original jurisdiction (i.e., the authority to hear cases directly rather than on appeal) in only two kinds of cases: those affecting ambassadors, other public ministers and consuls; and those in which a state is a party. All other cases reach the Supreme Court on appeal from lower federal courts or from the various state courts. The right of appeal is not automatic in most cases, however, and the Supreme Court exercises considerable discretion in selecting the cases it will consider. A significant amount of work of the Supreme Court consists of determining whether legislation or executive acts conform to the Constitution. This power of judicial review is not expressly provided for by the Constitution. Rather, it is a doctrine inferred by the Court from its reading of the Constitution, and stated in the landmark case of Marbury v. Madison, 5 U.S. 137 (1803). In

Marbury, the Court held that “a legislative act contrary to the Constitution is not law,” and observed that “it is emphatically the province and duty of the judicial department to say what the law is.” The doctrine of judicial review also covers the activities of state and local governments for conformity with federal law.

70. Decisions of the Court need not be unanimous; a simple majority prevails, provided at least six Justices participate in the decision. In split decisions, the Court usually issues both a majority and a minority or dissenting opinion. Often Justices will write separate concurring opinions when they agree with a decision, but for reasons other than those given by the majority.

71. Three of the nine Supreme Court Justices are women. The Court includes one Black/African American and one Hispanic/Latino (who is also female).

72. Courts of appeals and district courts. The second highest level of the federal judiciary is made up of the courts of appeals. The United States is divided into 12 geographic appellate circuits, each served by a court of appeals; in addition there are four specialized courts of appeals for patent, trade, veterans’ benefits, and civil service cases. The regional courts of appeals have appellate jurisdiction over decisions of the district courts (trial courts with federal jurisdiction) within their respective geographic areas. They are also empowered to review orders of the independent regulatory agencies, such as the Federal Trade Commission, in cases where the internal review mechanisms of the agencies have been exhausted and there still exists substantial disagreement over legal issues. Approximately 180 judges sit on the various courts of appeals.

73. Below the courts of appeals are the federal district courts. The 50 states are divided into 89 districts so that litigants may have a trial within easy reach. Additionally, there are district courts in the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories of Guam and the Virgin Islands. Congress fixes the boundaries of the districts according to population, size, and volume of work. Some states (such as Alaska, Hawaii, Idaho, and Vermont) constitute a district by themselves, while states with larger populations (such as New York, California, and Texas) have four districts each. In total, there are approximately 675 federal district judges.

74. Courts with specialized jurisdiction. In addition to the federal courts of broad jurisdiction, it has been necessary from time to time to set up courts for special purposes. Perhaps the most important of these special courts is the United States Court of Federal Claims, established in 1955 to render judgment on monetary claims against the United States. Other special courts include the United States Tax Court, the United States Court of Appeals for Veterans Claims, and the U.S. Court of International Trade, which has exclusive jurisdiction over civil actions involving duties or quotas on imported goods.

75. Military courts. A separate system exists for military justice. Members of the military are subject to the Uniform Code of Military Justice for disciplinary matters. Cases of alleged criminal conduct are investigated and, when substantiated, are resolved in appropriate forums ranging from non-judicial punishment to one of three types of courts-martial. In a trial by court-martial, an accused is accorded the full range of constitutional rights, including representation by a qualified defense counsel at no charge to the individual. Any court-martial that results in a sentence of confinement for a year or more, discharge from the service, or capital punishment is automatically reviewed by the relevant court of criminal appeals for the Military Department concerned. Those courts, which are composed of senior military (and sometimes civilian) attorneys serving as appellate judges, examine the records of trial for both factual and legal error. Decisions can be appealed to the United States Court of Appeals for the Armed Forces, composed of five civilian judges. Adverse decisions can be further reviewed by the United States Supreme Court on a discretionary basis.

76. Relationship between federal and state courts. Over the course of the nation's history, a complex set of relationships has arisen between state and federal courts. Federal courts may hear cases arising under the laws of individual states only when the parties are residents of different states and the amount in controversy is greater than \$75,000. However, many cases over which federal courts have jurisdiction may also be heard and decided by state courts. Both court systems thus have exclusive jurisdiction in some areas and concurrent jurisdiction in others. Taking into account that there are 50 separate state court systems, which often include subordinate judicial bodies (e.g., county and city courts), as well as the judicial systems of the insular areas, the District of Columbia, and other non-state entities, there are over 2,000 courts with general jurisdiction and approximately 18,000 judicial districts of either general or limited jurisdiction in the United States. Many states have large numbers of courts with very limited jurisdiction, such as New York (which has 1,300 town and village

justice courts) and Texas (which has approximately 900 municipal courts and 820 justice of the peace courts).

### **State governments.**

77. The governments of the 50 states have structures closely paralleling those of the federal government, each with a constitution and executive, legislative, and judicial branches. The state Governor acts as the head of the executive, but not all states bestow the same amount of power on their governors; some are quite powerful, others less so. All state legislatures have two houses, except Nebraska's legislature, which is unicameral. The size of state legislatures varies widely; the largest include those in New Hampshire (424 representatives), Pennsylvania (253), and Georgia (236), while the smallest are found in Nebraska (49) and Alaska (60). Most state judicial systems mirror the federal system, with lower trial courts, appellate courts, and a court of last resort. States and insular areas divide relatively evenly among those that elect their highest court judges by popular or legislative vote (24), those that appoint their highest court judges (14, including the District of Columbia and four of the insular areas), and those where the highest court judges are initially appointed and subsequently run on a retention ballot (18 including Guam).

78. The power of state governments is vast. Essentially, each state is in many respects a sovereign entity, free to promulgate and enforce policies and laws that pertain exclusively to that state, limited under the federal Constitution only to the extent the relevant authorities have been delegated to and/or exercised by the federal government or by other federal Constitutional requirements. The power of a state and its cities and localities to regulate its own general welfare has traditionally been termed the "police power." Besides enforcement of criminal laws, state powers encompass regulation of agriculture and conservation, highway and motor vehicle supervision, public safety and correction, professional licensing, regulation of intrastate business and industry, and broad aspects of education, public health, and welfare. The interpretation of a state's constitution falls exclusively within the domain of that state's own court system. Only where there is direct conflict with federal law or the federal Constitution, or where the federal government has "pre-empted" the field, can state law be overridden or invalidated. The retention of most aspects of governmental authority at the state and local levels generally serves to keep that authority in the hands of the people. State constitutions and laws generally provide for equal protection and due process of law, and

most states implement and enforce such laws through their Attorney Generals' offices and also through human rights or civil rights offices or commissions.

79. Distribution of authority between the states and the federal government has historically been among the most basic dynamics of the federal system. Although the powers of Congress are limited to those expressly enumerated in the Constitution, and those powers not expressly delegated to the federal government are reserved to the states or to the people, the twentieth century saw increasingly broad judicial interpretation of national legislative power. Today there is an abundance of federal legislation that did not exist 100 years ago. One result of this expansion of federal authority, especially in the latter half of the twentieth century, has been a substantial increase in legislation and government regulations protecting civil and political rights.

### **Other governmental levels.**

80. The governmental frameworks in areas not within the 50 states, such as the District of Columbia, American Samoa, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands, are largely determined by the area's historical relationship to the United States and the will of the residents.

81. The District of Columbia was established as a federal city at the founding of the Republic to ensure that the home of the nation's capital would be outside of any state. In 1783 the Continental Congress voted to establish a federal city, and the specific site was chosen by President George Washington in 1790. Congress moved to the District from Philadelphia in 1800, and the District remains the seat of the federal government today. The land donated by Virginia was returned in 1845 and the District now covers 179.2 km<sup>2</sup> located on the west central edge of Maryland, along the eastern bank of the Potomac River. Residents of the District, numbering approximately 601,700, are United States citizens and have been entitled to vote in presidential elections since enactment of the 23<sup>rd</sup> Amendment to the U.S. Constitution in 1964. Residents elect a non-voting delegate to the United States Congress as well as a mayor and a city council with authority to levy its own taxes. The United States Congress retains final authority in a number of important areas, including the District's laws and budget. As noted above, voting rights for District of Columbia residents is an issue of active public debate.

82. American Samoa is an unincorporated territory of the United States, acquired by means of the Treaty of Berlin of 1899. In 1900 and 1904 the traditional leaders of American Samoa signed Deeds of Cession, which Congress ratified and confirmed in 1929. Unless born of a U.S. citizen national parent with the requisite number of years of residence, an individual born on American Samoa does not have Electoral College votes. However, since 1980, voters in American Samoa have elected a delegate to the House of Representatives who enjoys nearly all the privileges of a member of Congress from one of the several states, except the ability to vote on the House floor. Fundamental rights are guaranteed by both the United States Constitution and the territorial constitution. American Samoa is under the general administrative supervision of the Department of the Interior; nonetheless, American Samoa has been self-governing since 1978, with an elected Governor and Lieutenant Governor and bicameral legislature (Senate and House of Representatives). American Samoa also has its own high court and five district courts.

83. Puerto Rico has been a United States territory since 1898. It currently has a constitution of its own and so is a self-governing commonwealth of the United States. However, it remains subject to congressional authority. Puerto Ricans have been citizens of the United States since 1917, but like residents of other United States territories they do not vote in federal Presidential or Congressional elections. Residents elect a Resident Commissioner to the House of Representatives who enjoys nearly all the privileges of a member of the Congress from one of the several states, including committee membership and voting rights, but does not vote on the House floor. Puerto Rico has a popularly elected chief executive (Governor), a bicameral legislature, and a judicial branch consisting of a Supreme Court and lesser courts. There is also a federal district court, whose judges are appointed by the President of the United States.

84. The people of Puerto Rico have expressed their views on their relationship with the United States in a number of public referenda, most recently in December 1998. Consideration of the status of Puerto Rico has continued within Puerto Rico, and within the United States Government. In 1992 President George H.W. Bush declared the policy that the will of the people of Puerto Rico regarding their political status should be ascertained periodically through referenda sponsored either by the United States Government or by the legislature of Puerto Rico, 57 F.R. 57093 (Dec. 2, 1992). This policy was continued by Presidents Clinton, George W. Bush, and Obama. President Clinton established the

President's Task Force on Puerto Rico's Status in December 2000, and Task Force Reports have been issued in 2005, 2007, and 2011. In 2009, President Obama expanded the mandate of the Task Force to include recommendations on policies that promote job creation, education, health care, clean energy, and economic development in Puerto Rico. The 2011 Task Force Report included extensive recommendations on these issues, as well as a recommendation, *inter alia*, that "the President, Congress and the leadership and people of Puerto Rico work to ensure that Puerto Ricans are able to express their will about status options and have that will acted upon...." A link to the 2011 Task Force Report can be found at:

[http://www.whitehouse.gov/sites/default/files/uploads/Puerto\\_Rico\\_Task\\_Force\\_Report.pdf](http://www.whitehouse.gov/sites/default/files/uploads/Puerto_Rico_Task_Force_Report.pdf)

85. The United States Virgin Islands is an unincorporated territory of the United States. These islands were acquired from Denmark in 1917. An individual born in the U.S. Virgin Islands is a United States citizen. Like the other U.S. territories, the U.S. Virgin Islands does not have Electoral College votes. However, since 1972, voters in the U.S. Virgin Islands have elected a delegate to the House of Representatives who enjoys nearly all the privileges of a member of Congress from one of the several states, except the ability to vote on the House floor. Voters elect the Governor and Lieutenant Governor, as well as the 15 members of their unicameral legislature. There is a federal territorial court for the United States Virgin Islands, whose judges are appointed by the United States President.

86. Guam is an unincorporated territory of the United States, acquired by the United States in 1899 after the Spanish-American War and administered by the Navy until 1950. An individual born in Guam is born a U.S. citizen national. Like the other U.S. territories, Guam does not have Electoral College votes. However, since 1972, voters in Guam have elected a member of Congress who enjoys nearly all the privileges of a member of Congress from one of the several states, except the ability to vote on the House floor. The territory is under the general administrative supervision of the Department of the Interior. Voters elect their own Governor, Lieutenant Governor, and unicameral legislature. There is a federal territorial court for Guam, whose judge is appointed by the United States President.

87. The Commonwealth of the Northern Mariana Islands (CNMI) is a territory of the United States and a self-governing commonwealth. Formerly a district of the Trust Territory of the Pacific Islands assigned to the United States by the United Nations in 1947, the CNMI

became self-governing in 1976. An individual born in the CNMI is born a U.S. citizen national. Like the other U.S. territories, the Northern Mariana Islands does not have Electoral College votes. However, since 2008, voters in the CNMI have elected a delegate to the House of Representatives who enjoys nearly all the privileges of a member of Congress from one of the several states, except the ability to vote on the House floor. Voters do elect their own Governor, Lieutenant Governor, and bicameral legislature. There is a federal territorial court for the CNMI, whose judge is appointed by the United States President.

88. The Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau – areas which were formerly encompassed within the Trust Territory of the Pacific Islands – are now independent, sovereign nations in free association with the United States.

89. American Indians and Alaska Natives. There are more than 560 federally-recognized tribes<sup>4</sup> in the United States, located throughout the United States in many of the 50 states. By virtue of their status as sovereigns pre-dating the federal Union, as well as subsequent treaties, statutes, executive orders and judicial decisions, tribes are recognized as political entities with powers of self-government in the United States, and they have a special government-to-government relationship with the U. S. federal government. The nature of this special relationship is described further below in the section on Information on Non-Discrimination and Equality and Effective Remedies, and is also discussed in the specific treaty reports.

## **2. Principal system through which non-government organizations are recognized.**

90. Non-governmental organizations (NGOs) in the United States take many forms, including unincorporated or voluntary associations; trusts, charities and foundations; not-for-profit companies; and charitable or other entities formed or registered under laws relating to nonprofits and charitable organizations. Because there is no uniform system of registration for NGOs, it is difficult to know exactly how many such organizations exist in the United

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<sup>4</sup> Note that the term “tribe” or “tribal” as used in this report means an American Indian/Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

States; [NonProfitExpert.com](http://NonProfitExpert.com) estimates 1.2 million. Such organizations range from extraordinarily large national or international organizations with budgets in the hundreds of millions of dollars, to very small organizations run by individuals out of their homes. Organizations have various missions, including charitable, social, environmental, civil rights, human rights, peace, and many others. They also have various modes of operation, including advocacy and operational programmatic work. Organizations that meet the requirements for a public charity under the federal tax code may be exempt from federal taxation and may operate as a tax-favored charity.

### 3. Information on administration of justice.

91. Crime rates in the United States are generally decreasing:

#### Crimes and crime rates, by type of offense, for 1990, 2000, 2007 and 2008

Year	Violent Crimes		Property crimes	
	# of Crimes	Rate per 100,000 population	# of Crimes	Rate per 100,000 population
1990	1,820,000	730	12,655,000	5,073
2000	1,425,000	507	10,183,000	3,618
2008	1,393,000	458	9,775,000	3,211
2009	1,318,000	429	9,321,000	3,036

Source: U.S. Department of Justice, FBI, "Crime in the United States," [http://www.fbi.gov/ucr/cius2009/data/table\\_01.html](http://www.fbi.gov/ucr/cius2009/data/table_01.html). (Violent crimes include murder, forcible rape, robbery, and aggravated assault; property crimes include burglary, larceny, theft, and motor vehicle theft.)

92. Data for 2010 indicate a drop of 5.5 % in violent crimes and of 1.8 % in property crimes compared with 2009. (Source: Preliminary Annual Uniform Crime Report, [www.fbi.gov/ucr/](http://www.fbi.gov/ucr/)). Violent crime fell in cities of all sizes, with the largest decrease (6.9 %) in cities with populations ranging from 250,000 to 499,999. Violent crime declined 6 % in counties in metropolitan areas, and 6.4 % in non-metropolitan counties. All property crime offenses decreased in 2010 when compared with 2009. Cities with populations of 500,000 to 999,999 reported the greatest decrease of 4 %.

93. Homicide rates have decreased from a high of 10.7 per 100,000 population in 1980 to 9.4 in 1990, 5.5 in 2000, and 5 in 2009.

94. Hate crimes have also dropped. In 2000, 8,213 incidents were reported involving 9,619 offenses as a result of bias toward race, religion, sexual orientation, ethnicity and national origin, or physical or mental disability. In 2009, 6,604 criminal incidents were reported involving 7,789 offenses. Of these, 6,598 were single bias incidents – 48.5 % motivated by racial bias, 19.7 % motivated by religious bias, 18.5 % by sexual orientation bias, 11.8 % by ethnicity/national origin bias, and 1.5 % motivated by disability bias. Of the 4,793 hate crimes against persons, 45 % involved intimidation, 35.3 % involved simple assault, 19.1 % involved aggravated assault, and other offenses constituted the remainder. Of the 2,970 hate crimes against property, most (83 %) involved acts of destruction, damage, and vandalism. The remaining 17 % involved robbery, burglary, vehicle theft, arson, or other offenses. The number of offenders in 2009 was 6,225; of those 62.4 % were White, 18.5 % were Black/African American, 7.3 % were of multiple races, 1.0 % were American Indian/Alaska Native, and .7 % were of Asian Pacific ancestry. Race was unknown for the remainder.

(Source: FBI, Uniform Crime Report,

<http://www2.fbi.gov/ucr/hc2009/documents/incidentsandoffenses.pdf>)

95. In late 2009, the National Institute of Justice was tasked by Congress to evaluate trends in hate crimes against new immigrants, individuals perceived to be immigrants, and Hispanic or Latino Americans, and to assess the underlying causes behind any increase in hate crimes against these groups. Preliminary findings from Phase I of this study were made available in May of 2011. That phase involved selection of four states for review, based on a number of factors, including numbers of hate crimes, solid state hate crime laws, good statistical reporting processes, geographic and demographic variations, and active engagement of key sectors in addressing hate crimes. The states selected were California, Michigan, New Jersey and Texas (Arizona will be included later in Phase II). Researchers found that Uniform Crime Rate data are the most promising for analyzing trends, and that it was possible to detect significant trends in the two states with the greatest number of events. The data suggested a slight rise in hate crimes against Hispanics/Latinos in the 2004 – 2008 timeframe, although the effect is modest when some sampling techniques are used and disappears in other models. Phase II, which began in August 2011, involves fieldwork and surveys, in

order to provide contextual and supplemental information to augment and interpret the analyses.

96. For criminal offenders sentenced during fiscal year 2008 (October 1, 2007 to September 30, 2008), the sentences received were as follows:

**Sentence types for offenders sentenced in criminal cases terminated, by offense  
October 1, 2007 to September 30, 2008**

Most serious offense of conviction	Total offenders sentenced	Percent Incarcerated	Percent Probation	Percent Fine Only
All Offenses	82,823	77.9	11.7	3.4
Felonies	75,832	83.9	8.9	0.4
Violent crime	2,442	93.4	4.5	0.1
Property crime	11,908	61.8	27.0	0.7
Drug offenses	26,323	91.7	3.9	0.3
Public Order	6,434	75.2	19.5	1.1
Weapons	8,054	92.0	5.5	0.3
Immigration offences	20,671	85.0	3.4	0.2
Misdemeanors	6,865	11.8	42.8	36.7

Source: Federal Justice Statistics, 2008 – Statistical Tables, November 2010, Table 5.1, <http://bjs.ojp.usdog.gov/index.cfm?ty=pbdetail&iid=1745>

97. Looking at offender characteristics, according to the most up-to-date statistics currently available, 84.4 % of all convicted males were incarcerated, compared to 59.4 % of convicted females. With respect to race, 81.5 % of convicted White offenders were incarcerated, compared to 84.1 % of Blacks/African Americans, 79.5 % of American Indian/Alaska Native offenders, 67.4 % of Asian/Native Hawaiian/Other Pacific Islander, and 66.0 % of others.<sup>5</sup>

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<sup>5</sup> At the state level, according to the 2008 Annual Report of the Hawai'i Department of Public Safety, while 24% of the general population of the State of Hawai'i are Native Hawaiian, 39% of the incarcerated population of that state are Native Hawaiian.

With respect to ethnicity, 85.4 % of convicted Hispanics/Latinos were incarcerated, compared to 78.2 % of non-Hispanics/Latinos. With respect to citizenship, 79.5 % of convicted U.S. citizens were incarcerated, compared to 84.4 % of non-U.S. citizens. Looking at age, 73.5 % of persons under 19 years were incarcerated, compared to 77.0 % of 19 – 20 year olds, 82.7 % of persons 21 – 30, 83.6 % of persons 31-40, and 76.3 % of persons over 40.

98. The growth in the prison population during 2009 was the slowest annual increase during the decade and marked the third consecutive year of a declining rate of growth in the prison population. While the federal prison population increased by 3.4 percent (up 6,838 prisoners), the state prison population had the first measured decline (down 0.2 percent of 2,857 prisoners) since 1977. Twentyfour states reported declines in their prison populations, with the largest declines in absolute numbers of prisoners in Michigan and California. Twenty-six states reported increases in their populations, with Pennsylvania and Florida having the largest increases. At year-end 2009, the imprisonment rate – the number of sentenced prisoners per 100,000 U.S. residents – declined for the second straight year, falling to 502 from a peak of 506 per 100,000 in 2007. (Source: Bureau of Justice Statistics, Prisoners in 2009, December 21, 2010, <http://bjs.ojp.usdoj.gov>)

99. From December 31, 2008 through December 31, 2009, the size of the male prison population increased slightly (0.3 % - 5,168 prisoners). Fewer females were imprisoned (down 1.0 % -1,187 prisoners) at year end 2009 than at yearend 2008. Males had an imprisonment rate of 949 per 100,000, 14 times higher than females at 67 per 100,000.

100. Black/African American non-Hispanic/Latino males had an imprisonment rate (3,119 per 100,000 U.S. residents) more than six times higher than White non-Hispanic/Latino males (487 per 100,000), and almost three times higher than Hispanic/Latino males (1,193 per 100,000). One in 703 Black/African American females was imprisoned, compared to 1 in 1,987 White females and 1 in 1,356 Hispanic /Latino females. (Source: Bureau of Justice Statistics, “Prisoners in 2009,” December 21, 2010, <http://bjs.ojp.usdoj.gov>). The following table indicates that from 2000 to 2009, the rate of incarceration for White males and females increased, while at the same time the rate of incarceration for both Black/African American males and females decreased. The rate of incarceration for Hispanic/Latino males decreased, but the rate for Hispanic females increased. Despite these decreases in incarceration rates,

Blacks/African Americans and Hispanic/Latino Americans continue to be over-represented in prison populations.

**Estimated rate of sentenced prisoners under state or federal jurisdiction, per 100,000 U.S. residents, by sex, race, and Hispanic origin, December 31, 2000-2009**

Year	Male				Female			
	Total <sup>a</sup>	White <sup>b</sup>	Black <sup>b</sup>	Hispanic	Total <sup>a</sup>	White <sup>b</sup>	Black <sup>b</sup>	Hispanic
2000	904	449	3,457	1,220	59	34	205	60
2001	896	462	3,535	1,177	58	36	199	61
2002	912	450	3,437	1,176	61	35	191	80
2003	915	465	3,405	1,231	62	38	185	84
2004	926	463	3,218	1,229	64	42	170	75
2005	929	471	3,145	1,244	65	45	156	76
2006	943	487	3,042	1,261	68	48	148	81
2007	955	481	3,138	1,259	69	50	150	79
2008	952	487	3,161	1,200	68	50	149	75
2009	949	487	3,119	1,193	67	50	142	74

Note: Based on prisoners with a sentence of more than 1 year. Rates are per 100,000 U.S. residents as of January 1 in each reference population group. All estimates include persons under age 18. See *Methodology* for estimation method.

<sup>a</sup> Includes American Indians, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, and persons identifying two or more races. <sup>b</sup> Excludes persons of Hispanic or Latino origin. Source: Bureau of Justice Statistics, “Prisoners in 2009,” December 21, 2010, <http://bjs.gov>.

101. Capital punishment. As of 2011, capital punishment is available as a penalty by the federal government and 34 states for crimes of murder or felony murder, generally only when aggravating circumstances were present in the commission of the crime. In recent years the Supreme Court has narrowed the categories of crimes that may constitutionally be subject to the death penalty. Specifically, the death penalty may not be applied for the rape of a child where the crime did not result, and was not intended to result, in the child’s death, Kennedy v. Louisiana, 554 U.S. 407 (2008); to persons who were under the age of eighteen when their capital crimes were committed, Roper v. Simmons, 543 U.S. 551 (2005); or to individuals with intellectual disabilities (referred to by the Court as individuals with intellectual disabilities), Atkins v. Virginia, 536 U.S. 304 (2002).

102. Heightened procedural protections apply in death penalty cases. Under Supreme Court decisions, a defendant eligible for the death penalty is entitled to an individualized determination that the death sentence is appropriate in his case, and the jury must be able to consider and give effect to any mitigating evidence that a defendant proffers as a basis for a sentence less than death, see Johnson v. Texas, 509 U.S. 350 (1993). In addition, criminal

defendants, especially those in potential capital cases, enjoy ordinary procedural guarantees that are well respected and enforced by the courts, including the right to a fair hearing by an independent tribunal, the presumption of innocence, minimum guarantees for the defense, the right against self-incrimination, the right to access all evidence used against the defendant, the right to challenge and seek exclusion of evidence, the right to review by a higher tribunal, the right to counsel whether or not the defendant can afford to pay, the right to trial by jury, the right to challenge the makeup of the jury, and others.

103. Death sentences, executions, the number of states that have the death penalty, and the size of the population on death row have all declined in the last decade. As of September 2011, 34 states had statutes permitting imposition of the death penalty – down from 38 states in 2000. The number of inmates executed in 2010 (46) represented a 46 percent reduction from the 85 executions that occurred in 2000. The number of new inmates on death row also declined from 234 in 2000 to 112 in 2010, and the size of the death row population declined from 3,652 in 2000 to 3,261 in 2010. The death penalty continues to be an issue of extensive debate and controversy in the United States. Concerns include the overrepresentation of minority persons, particularly Blacks/African Americans, in the death row population (according to the Death Penalty Information Center, approximately 42 percent of the 2010 death row population was Black or African American), and the use of the method of lethal injection. The Supreme Court has repeatedly refused to consider the contention that a long delay between conviction and execution constitutes cruel and unusual punishment under the Eighth Amendment. See, e.g., Foster v. Florida, 537 U.S. 990 (2002).

## **II. General Framework for the Protection and Promotion of Human Rights**

### **A. Acceptance of international human rights norms.**

104. The United States is committed to the cause of human rights. As a nation built on the moral truths of the Universal Declaration of Human Rights, the United States supported the adoption of that instrument. In addition, the United States is party to the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child

Prostitution, and Child Pornography. The United States has also announced its support for the United Nations Declaration on the Rights of Indigenous Peoples.

105. Under our Constitution, treaty ratification requires not only executive approval, but also the consent of the U.S. Senate by a supermajority vote of two-thirds of those present and voting. For this reason, the United States has often pursued a practice of “compliance before ratification,” in contrast to the practice of “ratification before compliance” that some other nations may pursue. The Obama Administration supports ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities.

106. In addition to the international human rights instruments noted above, the United States is party to the Convention on the Prevention and Punishment of the Crime of Genocide; the Slavery Convention of 1926, as amended; the 1967 Protocol of the Convention relating to the Status of Refugees; the United Nations Convention against Transnational Organized Crime, including the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The United States is also party to the Convention on the Civil Aspects of International Child Abduction and the Convention on the Worst Forms of Child Labor; and is a signatory to the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. The United States is party to the four 1949 Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea; the Treatment of Prisoners of War; and the Protection of Civilian Persons in Time of War.

107. The United States is also a member of the Organization of American States and participates and cooperates actively in the proceedings of the Inter-American Commission on Human Rights. One of the seven Commissioners is from the United States.

#### **B. Legal framework for the protection of human rights at the national level**

108. The essential guarantees of human rights and fundamental freedoms within the United States are set forth in the Constitution and statutes of the United States, as well as the

constitutions and statutes of the states and other constituent units. In practice, the enforcement of these guarantees ultimately depends on the existence of an independent judiciary with the power to invalidate acts by the other branches of government that conflict with those guarantees. Maintenance of a republican form of government with vigorous democratic traditions, popularly elected executives and legislatures, and the deep-rooted legal protection of freedoms of opinion, expression and the press all contribute to the protection of fundamental rights against governmental limitation and encroachment.

## **1. U.S. Constitution**

109. The Constitution includes 27 amendments that have been added since 1791. Amending the Constitution requires approval by two-thirds of each house of the Congress, or by a national convention, followed by ratification by three-quarters of the states. The first 10 amendments provide for the basic protection of many of those individual rights that are fundamental to the democratic system of government. They remain at the heart of the United States legal system today, just as they were two centuries ago, although the specific rights they guarantee have been extensively elaborated by the judiciary over the course of time. Individuals may assert these rights against the government in judicial proceedings.

110. The First Amendment guarantees freedom of religious exercise, speech and press, the right of peaceful assembly, and the right to petition the government to correct wrongs; and it prohibits laws respecting the establishment of religion. The Second Amendment protects a right to own firearms in certain circumstances. The Third Amendment provides that troops may not be quartered in a private home without the owner's consent. The Fourth Amendment guards against unreasonable searches, arrests, and seizures of persons and property.

111. The next four amendments deal with the system of justice. The Fifth Amendment forbids trial for a major crime except after indictment by a grand jury; it prohibits repeated trials for the same offence, forbids punishment without due process of law, and provides that an accused person may not be compelled to testify against him or herself. The Sixth Amendment guarantees the right to legal counsel for the accused in most criminal proceedings, and provides that witnesses shall be compelled to attend the trial and testify in the presence of the accused. The Seventh Amendment preserves trial by jury in many civil

cases involving anything valued at more than 20 U.S. dollars. The Eighth Amendment forbids excessive bail or fines and cruel and unusual punishment.

112. The Ninth Amendment declares that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The Tenth Amendment sets forth the federal and democratic nature of the United States system of government, providing that powers not delegated by the Constitution to the federal government, nor prohibited by it to the states, are reserved to the states or the people. The Tenth Amendment recognizes that the federal government is a government of limited jurisdiction, empowered to do only what the Constitution authorizes it to do, and that all other powers remain vested in the people, and in their duly constituted state governments.

113. Amendments to the Constitution subsequent to the original Bill of Rights cover a wide range of subjects. One of the most far-reaching is the Fourteenth Amendment, by which a clear and simple definition of citizenship was established and broadened guarantees of due process, equal treatment, and equal protection of the law were confirmed. This amendment, adopted in 1868, has been interpreted to apply most of the protections of the Bill of Rights to the states. By other amendments, the judicial power of the national government was limited; the method of electing the president was changed; slavery was forbidden; the right to vote was protected against denial because of race, color, sex, or previous condition of servitude; the congressional power to levy taxes was extended to incomes; and the election of United States Senators by popular vote was instituted.

114. The Constitution provides explicitly that the Constitution, laws, and treaties of the United States are the “supreme Law of the Land.” This clause means that when state constitutions or laws passed by state legislatures conflict with the federal Constitution, laws, or treaties, they have no force or effect. Decisions handed down by the Supreme Court of the United States and subordinate federal courts over the course of two centuries have confirmed and strengthened this doctrine of federal law supremacy.

## **2. State constitutions**

115. As indicated above, the protections provided by the federal Constitution and statutes are applicable nationwide, generally providing a minimum standard of guaranteed rights for all persons in the United States. While the laws of individual states cannot detract from the

protections afforded to their citizens by federal law, states are, except where prohibited by federal law or where it infringes on a protected federal right, free to offer their citizens greater protections of civil and political rights.

116. Historically, states individually or collectively have often led the federal government in the advancement and protection of civil and political rights. For example, starting with Vermont in 1777 and through 1862, most Northern states curtailed or abolished slavery before the federal Constitution did in 1865. Likewise, women first gained the right to vote in Wyoming Territory in 1869, while federal law did not extend that right until 1920.

117. More recently, in the latter half of the twentieth century, federal law and the federal courts played a more active role in civil rights protections. State courts, however, continue to play an important role in this arena. In many cases, in keeping with the federal system of government, individual state laws afford their citizens greater protections than the federal Constitution requires. See, e.g., Prune Yard Shopping Center v. Robins, 447 U.S. 74 (1980) (holding that broader state protections for free speech, protecting expression in a public shopping center, did not violate the federal Constitution). Broader state protections have been afforded in a number of areas, including free speech, religious liberty, property rights, victims' rights, and the provision of government services. State constitutions vary widely in length, detail, and similarity to the U. S. Constitution. As a result, a state court decision, while it may expand on a right protected by the U.S. Constitution, may rest on grounds very different from those on which a similar federal case would be decided.

118. Some state constitutions also provide greater protections against the establishment of religion than are provided by the First Amendment to the federal Constitution. For instance, based on the state constitution's broad prohibition of governmental assistance to an institution not owned by the state, the Supreme Court of Nebraska found unconstitutional a statute under which public school books were lent to parochial schools, see Gaffney v. State Department of Education, 220 N.W.2d 550 (Neb. 1974). On similar grounds, the Supreme Court of Idaho struck down a statute authorizing publicly provided transportation of students to nonpublic schools, see Epeldi v. Engelking, 488 P.2d 860 (Id. 1971). In addition, while the U.S. Supreme Court has upheld the display of a nativity scene on public property as consistent with the First Amendment, the California Supreme Court has nonetheless held that the state constitution's ban on preference for religious sects prohibited the display of a lighted cross on

public grounds in celebration of Christmas and Easter, compare Lynch v. Donnelly, 465 U.S. 668 (1984) with Fox v. City of Los Angeles, 587 P.2d 663 (Cal. 1978).

119. Despite these examples, state courts are not uniform in their willingness to find greater protections within state constitutions than those guaranteed by the federal government. As is appropriate in a federal system, each state's protections are ultimately tailored by that state's democratic process. States are prohibited simply from subverting established federal protections.

### **3. Statutory law**

120. There is no single statute or mechanism by which human rights and fundamental freedoms are guaranteed or enforced in the United States legal system. Rather, domestic law provides extensive protections through enforcement of the constitutional provisions cited above and a variety of statutes, which typically provide for judicial and/or administrative remedies. The basic federal statutes, some of which apply to private entities, include the following. Other statutes are referenced in the United States reports on individual treaties.

- The 1866 and 1871 Civil Rights Acts (protecting property rights, freedom to contract, and providing federal remedies for private individuals subjected to unlawful discrimination by persons acting “under color of law”);
- The Civil Rights Act of 1964 (the most comprehensive federal statute, which prohibits discrimination in a number of areas, for example discrimination based on race, color, national origin, or religion in places of public accommodation; discrimination on the basis of race, color, or national origin in federally funded programs; and discrimination on the basis of race, color, national origin, sex, or religion in employment);
- The 1965 Voting Rights Act (invalidating discriminatory voter qualifications);
- The 1968 Fair Housing Act (providing the right to be free from discrimination in housing and the obligation for federal, state, and local governments to affirmatively further fair housing through the promotion of balanced living patterns and equal access to opportunity neighborhoods).

Protection against violent acts undertaken because of actual or perceived race, color, religion, or national origin, or because of actual or perceived gender, disability, sexual orientation or gender identity is afforded by:

- The 2009 Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act.

Similarly, in the area of sex discrimination, individuals benefit from the protections of the Equal Protection Clause, as well as statutes such as:

- The 1963 Equal Pay Act (equal pay for equal work);
- Title VII of the Civil Rights Act of 1964 (non-discrimination in employment based on sex);
- The Education Amendments of 1972 (non-discrimination in all federally-funded education programs and activities, including student recruitment, admissions, housing, counseling, financial and employment assistance, health and insurance benefits and services, and employment practices and benefits);
- The Equal Credit Opportunity Act (equal access and non-discrimination in housing, real estate and brokerage);
- The Pregnancy Discrimination Act of 1978 (non-discrimination in employment);
- The Public Health Service Act (prohibiting discrimination in federally assisted health training programs, projects for assistance in transition from homelessness, preventative health and health services block grants, community mental health services block grants, and substance abuse prevention and treatment block grants);
- The Social Security Act (prohibiting discrimination in maternal child and health services block grants);
- The Family Violence Prevention and Services Act;
- The Low-Income Energy Assistance Act of 1981;
- The Community Services Block Grant Act; and
- The 2010 Patient Protection and Affordable Care Act (nondiscrimination in obtaining health insurance – this act also covers discrimination on the basis of race, color, national origin, age, and disability).

Protection against age discrimination is provided by statutes such as the:

- Age Discrimination in Employment Act of 1967 (prohibiting discrimination in employment against workers or applicants 40 years of age or older); and
- Age Discrimination Act of 1975 (prohibiting discrimination based on age in federally funded programs).

Protection for persons with disabilities is provided by statutes such as the:

- Rehabilitation Act of 1973 (prohibiting disability discrimination in federal government employment and under any program or activity receiving federal financial assistance or conducted by a federal agency or the United States Postal Service);
- Civil Rights of Institutionalized Persons Act of 1980;
- The Americans with Disabilities Act of 1990 (although persons with disabilities have long been protected against disability-based discrimination by federal agencies or by programs and activities that receive federal financial assistance, this Act broadens these protections to include most public and private entities whether or not they receive federal financial assistance); this Act was recently amended by the Americans with Disabilities Amendments Act of 2008 to ensure a broad interpretation of “disability” and a broad interpretation of who is covered by the Act covers as an “individual with a disability”; and
- The Individual with Disabilities Education Act (requiring public schools to make available to all eligible children with disabilities a free appropriate public education in the least restrictive environment appropriate to their individual needs).

Protection from discrimination based on genetic information is provided by laws such as the:

- The Genetic Information Nondiscrimination Act of 2008 (preventing discrimination in employment or health insurance based on genetic information, including genetic testing and family medical history.)

Indian tribes are subject to the:

- Indian Civil Rights Act of 1968, which imposes on tribes such basic requirements as free speech protection, free exercise of religion, due process and equal protection.

Recent permanent residents, temporary residents, asylees and refugees are protected by:

- The anti-discrimination provisions of the Immigration and Nationality Act, at
  - 8 U.S.C. 1324b(a)(1)(B) from employment discrimination based on citizenship status;
  - 8 U.S.C. 1324b(a)(1)(A) from discrimination based on place of birth, country of origin, ancestry, native language, accent or because they are perceived as foreign;
- Title VII of the Civil Rights Act of 1964 (nondiscrimination in employment based on national origin).

Most states and large cities as well as other jurisdictions, such as tribes, have adopted their own statutory and administrative schemes for protecting and promoting basic rights and freedoms. For the most part, state statutory protections mirror those provided by the U.S. Constitution and federal law. Typically, state constitutions and statutes protect individuals from discrimination in housing, employment, accommodations, credit and education. For example, a Minnesota statute prohibits discrimination in sales, rentals, or leases of housing. Minn. Stat. sec. 363.03 (1992). Massachusetts makes it unlawful to refuse to hire or to discharge someone from employment on discriminatory grounds, or to discriminate in education. Mass. Ann. Laws ch. 151B, sec. 4; ch. 151C, sec 1 (1993). California requires that all persons be “free and equal” in accommodations, advantages, facilities, privileges and services of business establishments. Cal. Civ. Code sec. 51 (1993). Texas prohibits discrimination in credit or loans. Texas Revised Civil Statutes Annotated art. 5069-207 (1993). State, local, tribal and territorial human rights laws and enforcement entities are described in greater detail in Annex A to this Common Core Document.

Prevention of the sale of children, child prostitution and child pornography and protection of the rights of victims is carried out through U.S. federal and state laws, both criminal and civil.

Among the federal laws that provide for such prevention and protection are the following:

- The National Organ Transplant Act (prohibiting transfer of human organs for valuable consideration for use in human transplants if the transfer affects interstate commerce);
- The Trafficking Victims Protection Act of 2000, as amended (creating new crimes and enhanced penalties for existing crimes prohibiting trafficking in persons, including trafficking of children for sex and labor exploitation and providing protection of and assistance for victims);
- The Intercountry Adoption Act of 2000 (implementing the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, including measures to prevent illegal adoptions);
- The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (strengthening law enforcement measures to address sexual crimes against children, including child pornography, child sex tourism and child abduction, and establishing a nationwide program to alert officials of a child abduction);
- The Adam Walsh Child Protection and Safety Act of 2006 (strengthening law enforcement measures to address sex offenders and to combat sex trafficking of

children and sexual offenses against children and creating a national child abuse registry);

- The Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2008 (addressing in particular online child obscenity and pornography);
- The Fair Labor Standards Act of 1938, as amended (establishing a minimum age for jobs in general and separately for jobs that have been determined to be particularly hazardous, and limiting hours that children are permitted to work).

Prevention of the recruitment and use of children in armed conflict in violation of the Optional Protocol on Involvement of Children in Armed Conflict and protection and recovery of victims is carried out through U.S. federal and state laws, both criminal and civil. Among the federal laws that provide for such prevention and protection are the following:

- The U.S. Selective Service Act (precluding all mandatory recruitment into the U.S. military);
- 10 U.S.C. 505 (establishing seventeen as the minimum age for voluntary recruitment into U.S. armed forces);
- Child Soldiers Accountability Act of 2008 (creating criminal and immigration sanctions for persons recruiting or using child soldiers under the age of 15);
- Child Soldiers Prevention Act of 2008 (prohibiting specific types of military assistance and sales of military equipment to governments identified as recruiting and using child soldiers).

Protection against torture and cruel, inhuman or degrading punishment or treatment is provided by the Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution and through U.S. federal and state laws, both criminal and civil. Applicable federal criminal statutes include the following:

- 18 U.S.C. § 2340 et seq. (providing extraterritorial jurisdiction over persons who commit or attempt to commit torture outside the United States if the alleged offender is a U.S. national or is present in the United States);
- 18 U.S.C. § 2441 (defining "war crimes" to include "grave breaches" of Common Article 3 of the Geneva Conventions, including specifically "torture" and "cruel and inhuman treatment");

- 18 U.S.C. § 242 (criminalizing deprivations of Constitutional rights, such as the rights to be free from unreasonable seizure, to be free from summary punishment or cruel and unusual punishment, and the right not to be deprived of liberty without due process of law).

Additional protection is provided by statutes including the following:

- The Detainee Treatment Act of 2005 and the Military Commissions Acts of 2006 and 2009
  - 10 U.S.C. § 948r, prohibiting admission of any statement obtained by the use of torture or by cruel, inhuman, or degrading treatment, as defined by the Detainee Treatment Act of 2005, in a military commission proceeding, except against a person accused of torture or cruel, inhuman, or degrading treatment as evidence that the statement was made;
  - 42 U.S.C. § 2000dd, prohibiting cruel, inhuman and degrading treatment or punishment of those who are in the custody or under the physical control of the United States Government regardless of nationality or physical location;
- The Foreign Affairs Reform and Restructuring Act of 1998 (declaring the policy of the United States not to return any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States).

#### **4. Treaties and the national legal system**

121. Duly ratified treaties are binding on the United States as a matter of international law and constitute the “supreme Law of the Land” under Article VI, cl. 2 of the U.S. Constitution. As a matter of U.S. domestic law, the way in which treaty provisions are implemented varies. In some instances, the United States may enact implementing legislation. Thus, for example, to implement the Genocide Convention, the United States Congress adopted the Genocide Convention Implementation Act of 1987, codified at 18 U.S.C. sec. 1091-93. When such legislation is necessary in order to implement U.S. obligations under a treaty, the United States practice with respect to certain treaties has been to enact the necessary legislation before depositing its instrument of ratification. It is for this reason, for example, that the United States did not deposit its instrument of ratification for the Convention Against Torture until 1994, even though the Senate gave its advice and consent to ratification of that treaty in 1990, as Congress did not approve the necessary implementing legislation until May 1994.

In other instances, the United States does not take any new legislative action to accompany its ratification because the substantive obligations set forth in a particular treaty are already reflected in existing domestic law. For example, because the human rights and fundamental freedoms guaranteed by the International Covenant on Civil and Political Rights (other than those to which the United States has taken a reservation) have long been protected as a matter of federal constitutional and statutory law, it was not considered necessary to adopt special implementing legislation to give effect to the Covenant's provisions in domestic law. Thus, that important human rights treaty was ratified in 1992 shortly after the Senate gave its advice and consent.

122. Given the subject matter of most treaties, they generally do not contain a provision that creates individually enforceable rights in the courts of the United States. Whether treaty provisions give rise to individually enforceable rights in U.S. courts depends on a number of factors, including the terms, structure, history and subject of the treaty.

123. Remedies are discussed below under Non-discrimination and Equality.

## **5. Institutions**

### **National institutions**

124. Numerous national, state, local, tribal and territorial institutions exist with responsibility for overseeing implementation of human rights, including the advancement of the rights of women, children, the elderly, persons with disabilities, members of minority groups, indigenous peoples, refugees, and others. Such organizations are too numerous to name, but a few examples are set forth here. At the Presidential level, among other initiatives, President Obama has established the White House Council on Women and Girls to promote the fair and equal treatment of American women and girls in all matters of public policy; established the first White House Adviser on Violence Against Women; appointed a Senior Policy Advisor for Native American Affairs; and appointed a Special Assistant to the President for Disability Policy. Many federal government agencies include civil rights mandates as part of their missions, and the Equal Employment Opportunity Commission (EEOC), was specifically established to address issues of discrimination throughout the national workforce. In addition, most federal government departments and many state and local governmental departments and agencies have civil rights offices designed to ensure that

civil rights are respected in the carrying out of those departments' missions. Nearly all the states, and some local jurisdictions, tribes, and territories have human rights or civil rights offices and/or commissions, which work to ensure that human rights and civil rights are respected within their jurisdictions. State, local, tribal and territorial organizations are described in greater detail in Annex A to this Common Core Document. In addition, as noted above, thousands of non-governmental organizations also work to ensure implementation of human rights.

### **Regional human rights mechanisms**

125. The Inter-American Commission on Human Rights was established under the Charter of the Organization of American States (OAS) “to promote the observance and protection of human rights and to serve as a consultative organ of the Organization on these matters.” (Article 106) The Commission is an autonomous organ of the OAS and a leading human rights body in the Western hemisphere. The Commission has authority to receive and evaluate individual complaints, make general recommendations, request information, prepare reports, and engage in similar investigatory and disseminating activities regarding the human rights compliance of all OAS states, including the United States.

126. The United States is a member of the OAS and participates and cooperates actively in the proceedings of the Inter-American Commission. One of the seven Commissioners is from the United States. The United States is one of the Commission's most vocal supporters and defenders among all OAS Member States and is also one of its largest financial contributors, as a result of strong bipartisan Congressional support. The United States recognizes the Commission as an important mechanism for the promotion and protection of human rights in the Americas, in other States as well as our own.

### **C. Framework within which human rights are promoted at the national level.**

127. The United States promotes human rights in myriad ways through a variety of institutions and mechanisms at all levels of government and society. The U.S. Congress hears testimony on issues and enacts new legislation. The Executive Branch and the courts actively enforce the laws. The government also actively funds and pursues outreach and programmatic efforts to promote tolerance, mitigate and resolve problems, and assist those

whose human rights have been violated. Examples of such activities are set forth in specific treaty reports.

128. Thousands of non-governmental organizations also act to promote human rights with funding from both governmental and private sources. While much has been accomplished, the United States fully recognizes that there is still work to be done to realize the full promise of the U.S. Constitution to ensure equality, equal opportunity and fundamental fairness for all people. The United States therefore continues to be dedicated to moving forward on all fronts toward these goals.

129. The United States continues to look at ways of improving human rights treaty implementation at all levels of government – federal, state and local. Numerous state and local governments within the United States have state and/or local civil rights and/or human rights organizations or commissions, many of which participate in the International Association of Official Human Rights Agencies. Many of these organizations also coordinate their employment and housing discrimination work with the federal government. Some Indian tribes and territorial governments also have such human rights organizations or commissions. Examples of activities at state, local, tribal and territorial levels are set forth in specific treaty reports and in the Annex to this Common Core Document. While these multiple levels of complementary protections and mechanisms serve to reinforce the ability of the United States to guarantee respect for human rights, we are nevertheless aware of the argument in favor of establishing a more comprehensive national human rights institution, and creating such a mechanism is currently being debated in the United States.

130. Information about human rights is readily available in the United States at the federal level as well as other levels. As a general matter, persons are well informed about their civil and political rights, including the rights of equal protection, due process, and non-discrimination. The scope and meaning of – and issues concerning enforcement of – individual rights are openly and vigorously discussed in the media, freely debated within the various political parties and representative institutions, and litigated before the courts at all levels. Federal agencies, as well as human rights agencies and entities at the state, local, tribal, and territorial levels engage in robust outreach and public education in the areas of civil rights and human rights.

131. All treaties, including human rights treaties, to which the United States is a Party, are published by the federal government, first in the Treaties and International Agreements Series (TIAS) and thereafter in the multi-volume United States Treaties (UST) series. Annually, the Department of State publishes a comprehensive listing of all treaties to which the United States is a Party, known as Treaties in Force (TIF). The constitutional requirement that the Senate give advice and consent to ratification of treaties ensures that there is a public record of treaty consideration, typically including a formal transmission of the treaty from the President to the Senate, a record of the Senate Foreign Relations Committee's public hearing and the Committee's report to the full Senate, together with the action of the Senate itself. By statute, 1 U.S.C. 112b(a), the Secretary of State is also required to transmit to the Congress the text of any international agreement (including the text of any oral international agreement, which agreement shall be reduced to writing), other than a treaty, to which the United States is a party within 60 days of the agreement's entry into force.

132. The texts of all human rights treaties (whether or not the United States has ratified) are published in numerous non-governmental compilations and computerized databases, and can be readily obtained from the government or virtually any public or private library. The United Nations Compilation of International Instruments on Human Rights (ST/HR/1) is also widely available. In addition, federal and state agencies have websites on which information about the agency structure and programs – including those of its office of civil rights – can be found. Many of the websites include relevant information in languages other than English, increasing dissemination to persons with limited English proficiency within the United States, as well as to persons outside the United States who may be interested in the civil rights protections that the United States affords its citizens and residents.

133. The United States engages in active outreach to inform the public about the work of the United Nations and its various committees on human rights. Texts of human rights treaties to which the United States is party, committee documents and United States reports to U.N. human rights committees are made available on the State Department website, <http://www.state.gov/g/drl/hr/treaties/index.htm>. Copies of relevant documents are also widely distributed within the executive Branch of the U.S. Government, to federal judicial authorities, to relevant members of Congress and their staffs, and to state, territorial and tribal officials, and non-governmental human rights organizations. The State Department Legal Adviser has personally transmitted such information to the state governors, the governors of

American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and the Mayor of the District of Columbia, as well as federally recognized Indian tribes. In addition to conveying information about the treaties and U.S. obligations thereunder, the Legal Adviser has reached out to states, territories, and tribes for information on their human rights and civil rights laws and programs, for purposes of treaty reporting. This outreach forms the basis for the Annex on State, Local, Tribal and Territorial Human Rights Organizations and Programs, attached to this Common Core Document. Also, as another example of the results of this outreach, the Legislature of the State of California passed a resolution requesting the Attorney General to publicize the text of the treaties and protocols among all city, county and state agencies; to prepare templates for use by cities, counties and state agencies for reporting purposes; and to transmit the resolution to appropriate U.S. and United Nations officials.

134. Government officials meet with civil society regularly to receive comments and input on programmatic efforts, as well as for the treaty reports. In recent years, as part of the Universal Periodic Review (UPR) reporting process, as well as for individual treaty reports, the United States has engaged in unprecedented outreach to the public and human rights groups. The 2010 UPR consultations, hosted by a wide range of civil society organizations, involved nearly a thousand people, representing a diversity of communities throughout the United States, and voicing a wide range of viewpoints and concerns – input that informed not only the UPR Report but other treaty reports as well. Civil society organizations in the United States, which operate freely and openly, play a critical role in raising public awareness of human rights issues and pressing for continued progress on such issues.

135. Although there is no national educational curriculum in the United States, instruction in fundamental constitutional, civil, and political rights occurs throughout the educational system, from elementary and secondary school levels through postsecondary education. In a few areas, the U.S. Department of Education issues grants and may enter into contracts with third parties to develop training and instructional materials that may be used in schools or other educational institutions, or by parents to further education in the principles of human and civil rights. For example, the Department of Education supports grants to improve the quality of civics and government education, foster civic competence and responsibility, and improve the quality of civic and economic education. The program consists of two parts: We the People: The Citizen and the Constitution, and the Cooperative Civic Education and

Economic Education Exchange Program. These programs are offered to elementary and secondary classrooms both nationally and internationally. Most institutions of higher education, public and private, include courses on constitutional law in their departments of political science or government. Constitutional law is a required subject in law school, and most law schools now offer advanced or specialized instruction in the areas of civil and political rights, non-discrimination law, and related fields. Nearly every law school curriculum includes instruction in international law, including human rights law. Many textbooks have been published in the field, including documentary supplements containing the texts of the more significant human rights instruments. As noted above, the numerous non-governmental human rights advocacy groups in the United States also contribute to public understanding of domestic and international rights and norms at all levels of the educational spectrum. Financial information on federal spending on human rights and civil rights matters is contained in the individual treaty reports.

#### **D. Reporting process at the national level.**

136. Preparation and submission of reports is coordinated by the federal government through the National Security Council and the Department of State. Those entities coordinate with all federal agencies with responsibilities relevant to the report on the contents and drafting of the document. They also meet as appropriate with Congressional committees to keep the committees apprised of the reporting process. The National Security Council and Department of State also reach out to non-governmental entities, normally meeting with interested NGOs during the preparation for and drafting of the reports and seeking their input. Finally, the State Department reaches out to states, territories, tribes, and local jurisdictions to inform them of the treaty reporting process and to obtain their input. Outreach to the latter entities has normally been done through Governors, Attorneys General and other leaders of these jurisdictions, and also directly to human rights commissions and organizations through the International Association of Official Human Rights Agencies (IAOHRA). In 2009 and 2011, State Department officers attended the Board meeting of IAOHRA, and in 2010 a State Department officer spoke about the treaty reporting process at the IAOHRA Conference. A representative of the Los Angeles County Commission on Human Relations, who is also an IAOHRA Board member, was an adviser on the United States Delegation to the UPR Review in November 2010.

137. In connection with United States Government submission of reports to the appropriate United Nations Committees, many non-governmental organizations prepare and submit “shadow” reports on issues of particular concern to them. Those reports play an important role in the Committee’s deliberations. Those reports and other publications are also covered in the media and circulated publicly in the United States and abroad.

138. Follow up to concluding observations involves similar coordination among federal departments and agencies, meetings with Congressional committees, and outreach to non-governmental organizations and entities at state, local, tribal, and territorial levels.

#### **E. Other related human rights information.**

139. The United States is committed to multilateral engagement on human rights through the United Nations and participates actively in numerous fora, including the Human Rights Council and the United Nations General Assembly as well as numerous international conferences in human rights and related areas. The commitments the United States has undertaken in such fora are numerous. They are implemented under U.S. laws, policies, and programs, including the legal and policy framework described in this report.

### **III. Information on Non-Discrimination and Equality and Effective Remedies.**

140. The United States is a vibrant, multi-racial, multi-ethnic, and multi-cultural democracy, in which individuals have the right to be protected against discrimination based, *inter alia*, on race, color, and national origin in virtually every aspect of social and economic life. As noted above, the United States Constitution and federal laws prohibit discrimination based on race, color, or national origin in a broad array of areas, including education, employment, public accommodation, transportation, voting, housing and mortgage credit access, as well as in the military, and in programs receiving federal financial assistance; and protections also exist against discrimination based on sex, disability, and in some cases on sexual orientation and gender identity. Nondiscrimination obligations are imposed on federal contractors and subcontractors by Executive Order.

#### **A. International legal obligations**

141. As noted above, the United States is committed to international human rights law, is party to numerous human rights treaties, supports the Universal Declaration of Human

Rights, and actively engages multilaterally, including in the Human Rights Council and the United Nations General Assembly.

## **B. Basic legal framework**

### **1. U.S. Constitution and federal laws on discrimination and equality**

142. Section II.B.1 above sets forth the basic outlines of the U.S. Constitution and its Amendments. This section describes further the operation of that document and U.S. laws in guaranteeing that no public authority may engage in any act or practice of racial discrimination against persons, groups of persons, or institutions, and also in prohibiting governments from denying any person the “equal protection of the laws.” Specifically, under the Fourteenth Amendment, government action that distributes burdens or benefits on the basis of individual classifications of race, color, descent, and national or ethnic origin is subject to “strict scrutiny.” Johnson v. California, 543 U.S. 499, 505-506 (2005). In order to satisfy this searching standard of review, the government must demonstrate that the use of individual racial classifications is “narrowly tailored” to achieve a “compelling” governmental interest. Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995). Although the federal government is not subject to the Fourteenth Amendment, the due process clause of the Fifth Amendment has been interpreted to encompass an equal protection guarantee. Bolling v. Sharpe, 347 U.S. 497 (1954). Accordingly, the anti-discrimination principle applies with equal force to the federal government as well as to state and local governments.

143. As noted above, the Thirteenth Amendment prohibits “slavery” or “involuntary servitude” throughout the United States or any territory under its jurisdiction. This Amendment has been the basis for upholding federal laws banning public or private racial discrimination in the sale and rental of property. See Jones v. Alfred H. Mayer Co., 392 U.S. 409, 439-441 (1968) (upholding 42 U.S.C. 1982 under section 2 of the Thirteenth Amendment). The Fifteenth Amendment’s protection of voting rights from abridgement “on account of race, color, or previous condition of servitude” underpins the provisions of the Voting Rights Acts that bar literacy tests and similar voter-eligibility requirements. See Oregon v. Mitchell, 400 U.S. 112 (1970) (upholding the Voting Rights Act Amendments of 1970, 84 Stat. 314, under section 2 of the Fifteenth Amendment). The Nineteenth Amendment guarantees women the right to vote.

144. Numerous federal statutes prohibit discrimination by federal, state or local governments; private entities in the areas of employment, housing, transportation, and public accommodation; and private entities that receive federal financial assistance. The federal government is actively engaged in the enforcement of such statutes against discrimination in the areas of employment, housing and housing finance, access to public accommodations, and education.

145. The most comprehensive federal statute, the Civil Rights Act of 1964, prohibits discrimination in a number of specific areas. For example, Title VII of that Act, as amended, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Most allegations of employment discrimination are made against private employers. Those claims are investigated and potentially litigated by the Equal Employment Opportunity Commission (EEOC). However, the Employment Litigation Section of the Department of Justice (DOJ) is responsible for one vital aspect of Title VII enforcement – discrimination by non-federal public employers. Pursuant to Section 706 of Title VII, the Attorney General has authority to bring suit against a state or local government employer alleging discrimination against an individual victim. Under Section 707, the Attorney General has authority to bring suit against a state or local government employer where there is reason to believe that a “pattern or practice” of discrimination exists.

146. Title VIII of the Civil Rights Act of 1968, as amended, (the Fair Housing Act) prohibits discrimination in housing and housing-related transactions on the basis of race, color, national origin, religion, sex, disability, and familial status. The Department of Housing and Urban Development (HUD) has the primary role in enforcing the Fair Housing Act, in conjunction with DOJ, which handles cases that go to federal court, cases that involve criminal allegations, a suspected pattern or practice of discrimination, possible zoning or land use violations, and some other cases. DOJ also enforces the Equal Credit Opportunity Act, which prohibits discrimination in lending; Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations; the Religious Land Use and Institutionalized Persons Act (RLUIPA), which prohibits religious discrimination in zoning; Servicemembers Civil Protection Act (SCRA), which provides civil protections for active duty service members; and Title III of the Civil Rights Act of 1964, which prohibits discrimination in public facilities.

147. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. Under Executive Order 12250, DOJ's Civil Rights Division, Coordination and Review Section, ensures a coordinated and consistent approach to the enforcement of Title VI anti-discrimination provisions. In addition to Title VI, DOJ's Civil Rights Division, Special Litigation Section, enforces the Violent Crime Control and Law Enforcement Act of 1968, 42 U.S.C. 14141, and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d, which authorize the Attorney General to bring civil actions to eliminate pattern or practice law enforcement misconduct, including allegations of racial discrimination.

148. Fifty-seven years ago, in its landmark decision in Brown v. Board of Education, the U.S. Supreme Court held that the intentional segregation of students on the basis of race in public schools violates the Fourteenth Amendment to the U.S. Constitution. Subsequent federal legislation, such as Titles IV and VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Equal Education Opportunities Act of 1974, the Individuals with Disabilities Education Act, the Age Discrimination Act of 1975, and others, prohibit discrimination in education on the basis of race, color, national origin, religion, sex, age, and disability.

149. U.S. law and practice provide broad and effective protections against, and remedies for, disability-based discrimination. The most notable of these is the Americans with Disabilities Act of 1990 (ADA), the first national civil rights legislation in the world to unequivocally prohibit discrimination against persons with disabilities, which was amended in 2008 to ensure broader protections. These laws cover areas of life including education, health care, transportation, housing, employment, technology, information and communication, the judicial system, and political participation. To ensure their implementation, a variety of technical assistance and remedies have been supported with federal funds. On July 30, 2009, the United States signed the UN Convention on the Rights of Persons with Disabilities and is pursuing the necessary steps toward ratification.

150. Legislation assists employees who face discrimination in obtaining redress for pay discrimination. Specifically, the Equal Pay Act of 1963 prohibits sex discrimination in wages and the aforementioned Title VII of the Civil Rights Act of 1964 provides broader protection

against discrimination in that its protected grounds include race, color, religion and national origin, in addition to sex. The reach of Title VII has been broadened over time, most recently by the Lilly Ledbetter Fair Pay Act of 2009, which enables more workers to allege wage discrimination under Title VII by providing that the statute of limitations for challenging discriminatory compensation resets each time the discriminatory compensation is paid.

151. Lesbian, Gay, Bisexual and Transgender (LGBT) persons are also protected under U.S. law. In 2003, reversing a prior decision, the Supreme Court struck down a state criminal law against sodomy, holding that criminalizing consensual private sexual practices between adults violates their rights under the Constitution. Lawrence v. Texas, 539 U.S. 558 (2003). With the recent enactment of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, the United States bolstered its authority to prosecute hate crimes, including those motivated by animus based on sexual orientation, gender identity, or disability. DOJ actively enforces this and a number of other hate crime laws.

152. Since 1998, employment discrimination based on sexual orientation has been prohibited in federal employment, and many benefits have been extended to same-sex partners of federal employees. In December 2010, Congress passed a statute to repeal Don't Ask, Don't Tell, a law that prevented gays and lesbians from serving openly in the military. In July 2011, the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff certified that repeal is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces, and the repeal became effective on September 20, 2011.

153. Various other federal laws are also designed to safeguard the rights of citizens, including racial and language minorities, to vote. These include the Voting Rights Act of 1965, and the Help America Vote Act. DOJ's Civil Rights Division, Voting Section, brings lawsuits against states, counties, cities, and other jurisdictions to remedy denials and abridgements of the right to vote, and also defends lawsuits brought against the Attorney General under the Act.

154. Application to private activity. The protections against discrimination in the U.S. Constitution and federal laws reach significant areas of non-governmental activity. U.S. civil rights laws (42 U.S.C. 1981, 1982) have been used to prohibit private actors from engaging in racial discrimination in activities such as the sale or rental of private property, admission to

private schools, and access to public facilities. In addition, enforcement against private parties who engage in discrimination in employment and access to public accommodations may also be pursued under Titles II and VII of the 1964 Civil Rights Act, which are based on the commerce power of Congress. Executive Order 11246 provides a basis for public enforcement actions against federal contractors and subcontractors who engage in employment discrimination. The Fair Housing Act forms the basis for enforcement against private parties in the area of discrimination in housing. Finally, the spending powers of Congress form the basis for Title VI of the 1964 Civil Rights Act, which prohibits discrimination on the basis of race, color, and national origin by both public and private institutions that receive federal funds. In addition, under the Equal Credit Opportunity Act, a creditor may not discriminate on the basis of sex, race, color, religion, national origin, marital status, age, or source of income in any credit transaction. Furthermore, the Department of Justice's Civil Rights Division's enforcement of the Immigration and Nationality Act's (INA) anti-discrimination provision deters private actors from engaging in acts of racial discrimination. The INA provision protects authorized immigrants from discriminatory practices by private employers based on the workers' immigration status, how they look or speak, or where they are from.

## **2. State, local and other laws**

155. State, local, tribal and territorial constitutions and laws also play an important role in civil rights protections. As noted above, as a practical matter, the Fourteenth Amendment provides a minimum below which no state may go in according equal protection, and some states afford their citizens greater protections than the federal Constitution requires. Roughly 27 states currently have "equal protection clauses" in their constitutions, some of which provide broader protections than the Fourteenth Amendment. Forty-seven of the 50 states enforce laws prohibiting hate crimes, and states also enforce discrimination laws against private entities. Examples of some state, local, tribal, and territorial laws and enforcement are set forth in Annex A to this Core Document.

### **C. Legal remedies**

156. United States law provides extensive remedies and avenues for seeking redress for alleged violations of human rights and fundamental freedoms. Many federal statutes specifically provide for enforcement through administrative procedures or by civil actions

filed in court. Federal agencies may initiate administrative proceedings to suspend, terminate, or refuse to grant funding to entities whose programs and activities violate federal civil rights statutes prohibiting discrimination. If administrative remedies are insufficient to provide the desired result, the principal method is through recourse to the courts. A person claiming to have been denied a constitutionally protected right may assert that right directly in a judicial proceeding in state or federal court. Remedies for those who succeed in court may include injunctions, compensatory damages, lost wages, punitive damages, and equitable relief (such as requiring employers to hire workers denied work for unlawful reasons), depending on the statute.

157. Where Congress has so provided, the federal government may bring civil actions to enjoin acts or patterns of conduct that violate some constitutional rights. The federal government may also prosecute criminally the violations of some civil rights, for example, the denial of due process through the abuse of police power and conspiracies to deny civil rights. The government may also bring criminal prosecutions against defendants for use of force or threat of force to violate a person's rights. In addition, a person prosecuted under a statute or in conjunction with a governmental scheme (such as jury selection) which he or she believes to be unconstitutional may challenge that statute or scheme as part of the defense in state or federal court. Even in civil actions, the defendant may pose a constitutional challenge to the statute that forms the basis of the suit. Detention pursuant to a statute believed to be unconstitutional or as a result of a procedure that allegedly violated a constitutional right may also be challenged by a writ of habeas corpus in state and federal courts. To a limited degree, post-conviction relief is also available by state and federal writs of habeas corpus or, in the case of federal convictions, by a motion for relief from a sentence. All states have similar remedies as part of their criminal procedures.

158. Under U.S. law, redress may include any of the following, depending on the location of the conduct, the actor, and other circumstances:

- Seeking a writ of habeas corpus, which in certain circumstances allows judicial review of whether there is a valid reason for detention;
- Filing criminal charges, which can lead to investigation and possible prosecution. Under 18 U.S.C. 242, the Department of Justice can prosecute any person who, under color of law, subjects a victim in any state, territory, commonwealth, possession, or

district to the deprivation of any rights or privileges secured or protected by the Constitution or laws of the United States. The government may also bring criminal prosecution for use of force or threat of force to violate a person's right under the 1964 Civil Rights Act, 18 U.S.C. 245. Abuse of police power, denial of rights guaranteed by the Constitution and denials of due process can be reached under these statutes. Under 18 U.S.C. 2340 and 2340A, the Department of Justice can prosecute any person who, outside the United States, commits or attempts to commit the crime of torture, which is defined as an act committed by a person acting under color of law specifically intended to inflict severe physical or mental pain or suffering upon another person within his custody or physical control;

- Bringing a civil action in federal or state court under the federal civil rights statute, 42 U.S.C. 1983, directly against state or local officials for money damages or injunctive relief;
- Seeking damages for negligence of federal officials and for negligence and intentional torts of federal law enforcement officers under the Federal Tort Claims Act, 28 U.S.C. 2671, et seq., or of other state and municipal officials under comparable state statutes;
- Suing federal officials directly for damages under provisions of the U.S. Constitution for "constitutional torts," see Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), and David v. Passman, 442 U.S. 228 (1979);
- Challenging official action or inaction through judicial procedures in state courts and under state law, based on statutory or constitutional provisions. Any court, from the lowest court to the U.S. Supreme Court, may consider such constitutional claims, although normally they must be raised at the earliest opportunity;
- In addition to the remedies discussed above, federal, state and local officials as well as private persons who violate the rights of others may be subject to prosecution under a host of generic federal and state criminal statutes. U.S. Department of Defense personnel may be subject to criminal prosecution under the Uniform Code of Military Justice, 10 U.S.C. 801-940;
- Seeking civil damages from participants in conspiracies to deny civil rights under 42 U.S.C. 1985;
- Bringing civil suits for damages for certain acts of torture and extrajudicial killing perpetrated by officials of foreign governments based on international legal

prohibitions under the Alien Tort Statute and the Torture Victims Protection Act, 28 U.S.C. 1350 and note;

- Pursuing administrative remedies, including proceedings before civilian complaints review boards, for the review of alleged police misconduct;
- The federal government may institute civil proceedings under the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C.14141, to eliminate patterns or practices of misconduct by law enforcement officers of any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority. Similarly, the federal government may institute administrative and civil proceedings against law enforcement agencies receiving federal funds, which discriminate on the basis of race, sex, national origin, or religion;
- Individuals may bring administrative actions and civil suits against law enforcement agencies receiving federal funding that discriminate on the basis of race, sex, national origin, or religion, under the federal civil rights laws. See 42 U.S.C. 2000d (Title VI) and 42 U.S.C. 3789d (Safe Streets Act);
- The government may bring civil actions against private employers or state and local government employers for employment discrimination under applicable laws. Individuals also may file civil actions;
- In the case of persons in detention, the federal government may institute proceedings under the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA), 42 U.S.C. 1997, to eliminate a pattern or practice of abuse in any state prison, jail or detention facility. Under this authority the Department of Justice may investigate facilities and work with the facility to reform its practices and procedures to ensure compliance.

## **D. Enforcement and prevention**

### **1. Federal enforcement**

159. Federal civil rights laws are enforced by a number of federal agencies. These agencies also undertake programs and outreach designed to prevent discrimination and to promote peaceful resolution when problems do occur. This section describes briefly the agencies and divisions of those agencies most heavily involved in enforcement of civil rights laws and in programmatic outreach.

160. Department of Justice (DOJ). DOJ's Civil Rights Division (CRD) is responsible for enforcing federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin, among other laws mentioned throughout the report. In the area of education, CRD brings and monitors school desegregation cases. With regard to employment, CRD investigates and prosecutes both individual acts of employment discrimination and patterns or practices of employment discrimination by state or local government employers. In the area of Fair Housing and Lending, CRD's Housing and Civil Enforcement Section enforces the Fair Housing Act, the Equal Credit Opportunity Act (ECOA), and Title III of the Civil Rights Act of 1964, the land use provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Servicemembers Civil Relief Act (SCRA). This includes pursuit of the Fair Housing Testing Program in which persons with different characteristics pose as potential renters or buyers, seeking housing at approximately the same time.

161. CRD's Special Litigation Section enforces the Violent Crime Control and Law Enforcement Act of 1994 (14141), 42 U.S.C. 14141, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d, and Title VI of the Civil Rights Act, 42 U.S.C. 2000d, all of which authorize the Attorney General to bring civil actions to eliminate pattern or practice law enforcement misconduct, including allegations of racial discrimination.

162. CRD also enforces various federal laws designed to safeguard the right to vote of citizens, including racial and language minorities; this includes lawsuits against states, counties, cities, and other jurisdictions to remedy denials and abridgements of the right to vote.

163. CRD's Coordination and Review Section (CRD/COR) has responsibility for ensuring a coordinated and consistent approach to the enforcement of Title VI anti-discrimination provisions (allegations of discrimination against entities receiving federal financial assistance). Although funding agencies are primarily responsible for investigating and making determinations on alleged violations by their recipients, COR is the nerve center for guiding federal policy, advising individual agencies, and in many cases staffing investigative efforts. As part of its reinvigorated civil rights enforcement, the Department of Justice issued new guidance to federal funding agencies concerning their Title VI obligations, which include ensuring that recipients of federal financial assistance do not employ policies or

methods of administration that have a disparate impact, see [www.usdoj.gov/crt](http://www.usdoj.gov/crt). The Department also committed to providing additional technical assistance to federal agencies in order to strengthen their Title VI enforcement efforts.

164. CRD's Educational Opportunities Section enforces laws in a diverse array of cases involving elementary and secondary schools and institutions of higher education. Specifically, the Educational Opportunities Section enforces Title IV of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974 (EEOA), and Title III of the Americans with Disabilities Act, as well as other statutes such as Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act, the Individuals with Disabilities Education Act, and Title II of the Americans with Disabilities Act, upon referral from other governmental agencies. DOJ may also intervene in private suits alleging violations of education-related anti-discrimination statutes and the Fourteenth Amendment to the Constitution. DOJ also represents the Department of Education in lawsuits.

165. DOJ's Office of Special Counsel for Immigration-Related Unfair Employment Practices enforces the anti-discrimination provisions of the Immigration and Nationality Act (INA). DOJ also enforces violations of federal criminal hate crimes statutes (many such crimes are also enforced at the state level).

166. The DOJ Community Relations Services has as its mission outreach, education, training, and dispute resolution for communities and the general public in order to prevent discrimination, and to promote peaceful resolution when problems occur. In addition, numerous other portions of the Department of Justice conduct outreach and training for law enforcement, judges, and members of the public concerning civil rights in non-discrimination.

167. DOJ coordinates actively with state officials. Through the Federal Bureau of Investigation's (FBI's) quarterly National Academy courses, DOJ/CRD trains state law enforcement officers about the facts required to prosecute hate crimes. DOJ officials coordinate closely with state officials where criminal conduct arguably violates both state and federal law. The Special Litigation Section provides technical assistance and works with state and local jurisdictions to address patterns or practice of discrimination by law enforcement agencies. CRD works with HUD to train housing finance agencies on the

provisions of the Fair Housing Act. The DOJ Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) works with state and local governments on various immigration-related discrimination issues, including training and education regarding discrimination, and provision of grants to facilitate enforcement.

168. Department of Education (ED). ED's Office for Civil Rights (ED/OCR) enforces laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in programs that receive federal financial assistance from the Department of Education – in particular Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975. ED/OCR also provides direct and extensive technical assistance to school districts, local educational agencies, states, state agencies, colleges, and other entities and groups on how to comply with the federal civil rights laws enforced by OCR, and to parents and students with regard to their rights under those laws. In addition, OCR operates the Vocational Education Methods of Administration program (MOA program), which requires state agencies to conduct civil rights compliance reviews of certain sub-recipients of federal financial aid, and supports states with technical assistance and other resources.

169. Department of Labor (DOL). DOL's Civil Rights Center (CRC) enforces non-discrimination laws applicable to workforce programs and activities, including the review of state compliance plans (Methods of Administration), compliance assistance and reviews. These laws include Title VI of the Civil Rights Act of 1964 and Section 8 of the Workforce Investment Act of 1998. DOL's Office of Federal Contract Compliance Programs (OFCCP) is responsible for ensuring that employers doing business with the federal government comply with the laws and regulations requiring non-discrimination and affirmative action in employment, as required by Executive Order 11246, as amended. OFCCP also enforces statutes that prohibit discrimination by covered federal contractors and subcontractors against individuals with disabilities and against certain protected veterans.

170. Equal Employment Opportunity Commission (EEOC). EEOC enforces laws that prohibit discrimination in employment, including Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Title I of the Americans with Disabilities Act of 1990, Sections 501 and 505 of the Rehabilitation Act, and

Title II of the Genetic Information Nondiscrimination Act. EEOC investigates charges of discrimination under these statutes, attempts to resolve these charges through mediation and conciliation where appropriate, and, when such efforts fail, may litigate claims against private employers. EEOC shares enforcement responsibility with DOJ in charges against state or local governments alleging violations of the Civil Rights Act or Americans with Disabilities Act. EEOC also serves as an administrative decision-maker, authorized to award damages and other relief in employment discrimination claims against federal government agencies.

171. Through its 53 local offices, EEOC works closely with state and local human rights agencies, termed “Fair Employment Practice Agencies” (FEPAs). EEOC contracts with 105 FEPAs in 39 states to process more than 48,000 discrimination charges annually – charges arising under state and local laws prohibiting employment discrimination as well as under federal laws enforced by the EEOC. The EEOC also contracts with Tribal Employment Rights Offices (TEROs). These relationships are often memorialized in worksharing agreements, delineating respective jurisdictions and authorities.

172. The Department of Homeland Security (DHS). DHS has statutory authority to investigate complaints involving allegations of violations of civil rights and civil liberties and profiling on the basis of race, ethnicity, or religion by employees and officials of the Department, under 6 U.S.C. 345 and 42 U.S.C. 2000ee-1. On the state level, the Secretary of Homeland Security is authorized to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform limited immigration law enforcement functions under the supervision of sworn U.S. Immigration and Customs Enforcement (ICE) officers in accordance with a Memorandum of Agreement, 8 U.S.C. 1357(g). This program includes training on respecting civil rights and avoiding racial profiling, and inspections by the ICE Office of Professional Responsibility, with the purpose of ensuring fair treatment of migrants.

173. The Department of Health and Human Services (HHS). HHS’ Office of Civil Rights (OCR) enforces laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, religion, and age in programs that receive federal financial assistance from HHS, such as health care facilities and state and local human services agencies. In particular it enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color and national origin. HHS/OCR works with other civil rights agencies throughout

the Federal government and collaborates with such agencies to sponsor conferences and develop technical assistance material to raise awareness and understanding of civil rights requirements.

174. The Department of Housing and Urban Development (HUD). HUD's Office of Fair Housing and Equal Opportunity (FHEO) enforces federal laws that prohibit discrimination in housing. The Fair Housing Act prohibits discrimination based on race, color, national origin, religion, sex, disability, or familial status in most housing-related transactions. The Act covers public, assisted, and private housing, with a few exceptions. Enforcement activities include specific testing to uncover discrimination in certain areas and housing entities. FHEO also educates the housing, lending, and insurance industries, and the American public, about fair housing rights and responsibilities, through grant programs authorized by Congress, media campaigns, and other special initiatives.

175. HUD shares its authority to investigate housing discrimination complaints with state and local government agencies that participate in the Fair Housing Assistance Program (FHAP). To participate in the FHAP, a jurisdiction must demonstrate that it enforces a fair housing law that provides rights, remedies, procedures, and opportunities for judicial review that are substantially equivalent to those provided by the federal Fair Housing Act. HUD pays FHAP agencies for each complaint they investigate, based on the timeliness and quality of the investigation. In addition, HUD provides funding to FHAP agencies for capacity-building, training, and information systems. At the end of FY 2010, there were 102 FHAP agencies.

## **2. Training and Programs to prevent and eliminate negative attitudes and prejudice**

176. Federal, state and local agencies, as well as myriad non-governmental organizations engage in active outreach to the public to prevent the development of negative attitudes that lead to prejudice, and to assist in dealing with prejudice and discrimination when it does occur.

177. The Department of Justice Community Relations Service (DOJ/CRS) was created by the Civil Rights Act of 1964 specifically for the purpose of assisting state and local governments, private and public organizations, and community groups with preventing and resolving racial and ethnic tensions, incidents, and civil disorders, and restoring racial

stability. With the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act in 2009, CRS not only reinforced its efforts to work with communities to employ strategies to prevent and respond to alleged violent hate crimes committed on the basis of actual or perceived race, color, or national origin, but also works with communities to prevent and respond to alleged violent hate crimes committed on the basis of gender, gender identity, sexual orientation, religion, or disability. DOJ's "peacemaker," CRS provides mediation, conciliation, training, and technical assistance to communities throughout the United States and in U.S. territories to prevent and respond to incidents involving discrimination, hatred, and violence. CRS facilitates the development of viable, mutual understandings and agreements as alternatives to coercion, violence, or litigation. It also assists communities in developing local mechanisms, conducting training, and other proactive measures to prevent racial/ethnic tension and violent hate crimes committed on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion, or disability. CRS services allow parties to come to their own agreements and allow communities to develop the capacity to address tension associated with discrimination and to prevent hate violence in the future. CRS deploys highly skilled professional conciliators, who are able to assist people of diverse backgrounds and views.

178. One of DOJ's Civil Rights Division Coordination and Review Section's (DOJ/CRD/COR) primary functions is to provide training, information, and technical assistance to federal government agencies and recipient organizations on anti-discrimination requirements. Most state and local law enforcement agencies, and many state and local prison systems, court, and other governmental organizations that receive federal financial assistance are obligated to comply with non-discrimination provisions of U.S. law and therefore receive such training. Audiences include state troopers, police officers, social workers, and parole and probation officials, as well as judges, attorneys, and advocates.

179. In addition, DOJ's Civil Rights Division (DOJ/CRD) provides ongoing technical assistance to advise law enforcement agencies on best practices and how to conform their policies and practices to constitutional standards in the areas of use of force, search and seizure, non-discriminatory policing, misconduct investigations, early warning systems, citizen complaint intake and follow-up, supervisory review of line officer actions, and other areas. DOJ/CRD's Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) also conducts outreach and education for employers, potential victims of

discrimination, and the general public about their rights and responsibilities under the anti-discrimination and employer sanctions provisions of the Immigration and Nationality Act (INA).

180. The Department of Education's Office for Civil Rights (ED/OCR) conducts training for ED staff, and ED's Office of Elementary and Secondary Education funds 10 Equity Assistance Centers across the country that provide technical assistance and training to schools, districts and other governmental agencies on issues related to equity in education, including desegregation of public schools, meeting the needs of limited English proficient students, and preventing and addressing harassment and bullying on the basis of race and gender.

181. The Department of Health and Human Services Office for Civil Rights (HHS/OCR) conducts programs to educate the public, health care professionals, and public officials about their legal rights and responsibilities to ensure equal access and non-discriminatory services in health care and human service programs. HHS has also developed curricula and guides for health care and human service professionals focused on the provision of culturally competent care, as well as meaningful access to persons with disabilities and individuals with limited English proficiency.

182. To increase the likelihood that individuals will report housing discrimination, the Department of Housing and Urban Development (HUD) administers a robust education and outreach program, through which it educates housing providers, real estate professionals, lenders, insurance companies, developers, architects, engineers and the American public about their fair housing rights and responsibilities. HUD carries out these activities through grant programs authorized by Congress, media campaigns, and other special initiatives.

183. The Department of Homeland Security (DHS) trains its personnel on cultural awareness and non-discrimination. Basic cultural competence training which relates to specific ethnic and religious communities, is available to all DHS employees. This includes such courses as, "An Introduction to Arab American and Muslim American Cultures," "The First Three to Five Seconds: Arab and Muslim Cultural Awareness," and "Guidance Regarding the Use of Race for Law Enforcement Officers." The DHS Office for Civil Rights and Civil Liberties (DHS/CRCL) has also created an in-person course for law enforcement and intelligence analysts on cultural competency relating to these communities. Topics

addressed include: addressing misconceptions and stereotypes relating to Islam and Muslim communities; a how-to guide for community interaction; effective policing, including the rejection of racial or ethnic profiling; and federal approaches to engagement and community outreach. In Fiscal Year 2010, CRCL trained 1,300 international, federal, state, and local law enforcement officers and intelligence analysts on cultural awareness and non-discrimination relating to ethnic and religious communities. In addition, Immigration and Customs Enforcement (ICE) provides extensive training opportunities through the ICE Virtual University, which includes similar courses.

184. The Department of Labor (DOL) sponsors an annual National Equal Opportunity Development Forum attended by state and local workforce professionals from throughout the U.S. and U.S. territories. DOL's Office of Federal Contracts Compliance Programs also conducts compliance assistance seminars to train federal supply and service contractors and subcontractors on the agency's equal employment opportunity laws, regulations, and compliance requirements.

185. The Equal Employment Opportunity Commission (EEOC) devotes significant resources to outreach and training on anti-discrimination issues in the workplace. This normally includes more than 5,000 educational, training and outreach events per year, reaching hundreds of thousands of persons, including private employers and businesses, non-governmental organizations, individual workers, and officials from other federal agencies.

186. The Department of the Interior's Office of Civil Rights (DOI/OCR) has an extensive anti-discrimination program for Department personnel, including mandatory annual diversity training requirement for managers and supervisors.

#### **E. Human rights situation of persons belonging to specific vulnerable groups**

187. The status of specific vulnerable groups in the United States, including but not limited to racial and ethnic minorities, women, persons with disabilities, and LGBT persons, is not as it should be. As noted in its UPR Report, the United States aspires to foster a society in which, as Dr. Martin Luther King, Jr. stated, the success of our children is determined by the "content of their character." Although progress has been made over time in achieving measures of equality and equal protection for all vulnerable groups, the current situation is not satisfactory. For example, it is unsatisfactory: that in February of 2010, the

unemployment rate for Blacks/African Americans was 15.8 %, for Hispanics/Latinos 12.4 %, and for Whites 8.8 %; that a person with disabilities is only one fourth as likely to be employed as a person without disabilities; that fewer than half of Black/African-American and Hispanic/Latino families own homes while three quarters of White families do; that Whites are twice as likely as Native Americans to have a college degree; and that discrimination continues. The United States continues to address such disparities by working to ensure that equal opportunity is not only guaranteed in law, but experienced in fact by all Americans. We need to redouble our efforts, as much more work remains to be done.

188. Based on Census data, the basic situations with regard to vulnerable groups are described in the section on demographic, economic, social and cultural characteristics above and in specific treaty reports. Because of the complex and special legal relationship the United States has with its American Indian/Alaska Native population, this relationship and concerns related to the situation of the American Indian/Alaska Native population are described in more detail here.

#### **American Indians and Alaska Natives**

189. By virtue of their status as sovereigns that pre-date the federal Union, as well as subsequent treaties, statutes, executive orders, and judicial decisions, Indian tribes are recognized as political entities with inherent powers of self-government. The federal government therefore has a government-to-government relationship with the more than 560 federally-recognized tribes in the United States, and promotes tribal self-governance over a broad range of internal and local affairs, including determination of membership, culture, language, religion, education, information, social welfare, maintenance of community safety, family relations, economic activities, land and resource management, environment and entry to non-members, as well as ways and means of financing these autonomous functions. This approach also recognizes the collective nature of indigenous rights, particularly land rights. Rather than representing an aggregation of individual land rights, tribal lands are collectively held. Special and more favorable treatment available to tribes and American Indian/Alaska Native individuals in certain circumstances (e.g., employment preference) is permissible without violating the equal protection standards of the Constitution because it is based on the political relationship between tribes and the U.S. Government rather than the racial heritage of tribal members. Morton v. Mancari, 417 U.S. 535 (1974).

190. When indigenous individuals deal with the federal government in their individual capacities, they are of course entitled to the same constitutional rights as all other citizens. On tribal matters, the tribal representatives deal with the U.S. Government in respect of the government-to-government relationship between the federal government and tribes.

191. Historically, based on this government-to-government relationship, the United States and Indian tribes entered into treaties from 1778 until 1871. Disputes regarding treaty rights arising from conflicting interpretations of the specific language of treaty provisions are heard in federal courts. The United States Supreme Court has adopted three basic principles (commonly referred to as “canons of construction”) to guide courts when interpreting language in treaties between the United States and tribes: (1) unclear language in treaties with Native Americans should be resolved in favor of Native Americans; (2) treaties with tribes should be interpreted as the Native Americans signing the treaty would have understood them at the time of signing; and (3) treaties with tribes are to be liberally construed in favor of the Native Americans involved, see e.g., Choctaw Nation v. United States, 318 U.S. 423, 431-32 (1943); Winters v. United States, 207 U.S. 564, 576-77 (1908); Choctaw Nation v. Oklahoma, 397 U.S. 620, 631 (1970).

192. As the United States grew and expanded into the American west, especially during the nineteenth century, there were conflicts over rights to use the land in various regions between American Indians on one hand, and the government and the new arrivals on the other. Recognizing that indigenous people in the United States were unfairly deprived of the lands they once habitually occupied or roamed, in 1946, the U.S. Congress established a special body, the Indian Claims Commission (ICC), to hear claims by Indian tribes, bands, or other identifiable groups for compensation for lands that had been taken in a variety of ways by private individuals or the government. The ICC provided American Indian/Alaska Native claimants greater access and more flexible rules under which to pursue their claims than would otherwise have been available to the general public. The relief provided by the ICC was monetary. Many tribes received compensation for land claims through the ICC.

193. Within Indian Country, tribes generally have authority over areas of spiritual and cultural significance, though certain laws of general applicability, such as environmental laws, may apply. Those areas where tribes have jurisdiction are protected by tribal law and custom. In addition, United States law provides numerous protections for the rights of Native

Americans as they pertain to areas of spiritual and/or cultural significance that are found on public lands, including protection of tribal sacred sites under the National Historic Preservation Act, protection of sacred and cultural sites under the Archaeological Resources Protection Act, protection of Native American patrimony under the Native American Grave Protection and Repatriation Act, protections under the American Indian Religious Freedom Act, protections under the Religious Land Use and Institutionalized Persons Act, and a number of Executive Orders. In addition, the Secretary of Agriculture has statutory authority to accommodate a range of traditional and cultural purposes of federally recognized tribes on National Forest System lands, see, e.g., 25 U.S.C. 3051 et. seq.

194. Notwithstanding the special legal status, relationship, and protections noted above, many Indian tribes and individuals face serious challenges, including poverty, unemployment, environmental degradation, health care gaps, violent crime, and discrimination. Some reservations currently face unemployment rates of up to 80 percent; nearly a quarter of Native Americans live in poverty; American Indians and Alaska Natives face significant health care disparities; and some reservations have crime rates up to 10 times the national average. For example, the 2005 – 2009 U.S. Census American Community Survey estimates that approximately 12 % of American Indians and Alaska Natives were living at less than 50 % of poverty level, 25.9% at less than 100% of the poverty level, and 33 % at less than 125 % of the poverty level. These percentages are higher than those for any other racial or ethnic group. Violence against women is a serious problem on Indian reservations, and issues continue to arise with regard to exercise of tribal authority over areas of spiritual and cultural significance. In addition, racism and racial stereotyping continue; in May, 2011 the Senate Committee on Indian Affairs held a hearing to examine these issues, entitled “Stolen Identities: The Impact of Racist Stereotypes on Indigenous People.”

195. The United States recognizes past wrongs and broken promises in the federal government’s relationship with American Indians and Alaska Natives, and recognizes the need for urgent attention to these issues. As President Obama has said, “few have been more marginalized and ignored by Washington as long as Native Americans – our First Americans.”

196. The federal government has in place numerous laws and programs to address these problems, many of which are discussed in the specific treaty reports and responses to

Committee concerns and recommendations. However, much more needs to be done. Emphasizing his commitment to regular and meaningful consultation with tribal officials, during 2009, 2010 and 2011, President Obama hosted three historic summits with tribal leaders to develop a policy agenda for Native Americans. During the second summit, in December of 2010, the President announced United States support for the United Nations Declaration on the Rights of Indigenous Peoples, representing a major change in U.S. policy with regard to the Declaration.

#### **F. Special measures**

197. Article 2 of the CERD Convention provides that, when circumstances so warrant, States parties shall take “special and concrete measures” for the “adequate development and protection of certain racial groups or persons belonging to them, for the purpose of guaranteeing to them the full and equal enjoying of human rights and fundamental freedoms.”

<sup>6</sup> The United States is committed to using all the tools at its disposal to address disparities in outcomes, across a host of indicators, for racial and ethnic minorities as well as other disadvantaged groups, and the United States has in place numerous such measures, including measures that are race-based as well as measures that may be based on other factors, such as economic factors.

198. A substantial number of federal ameliorative measures can be considered “special and concrete measures” for the purposes of article 2 (2). These include the panoply of efforts designed to promote fair employment and fair housing; measures such as those in the Affordable Care Act of 2010 and amendments to the Elementary and Secondary Education Act, which address health and educational disparities experienced by racial and ethnic minorities; statutory programs requiring affirmative action in federal contracting; and direct support for historically Black colleges and universities, Hispanic serving institutions and Tribal colleges. Some provisions are hortatory, such as statutory encouragement for recipients of federal funds to use minority-owned and women-owned banks. Others are

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<sup>6</sup> Article 1 (4) in turn specifically excludes from the definition of “racial discrimination” “[s]pecial measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection” in order to provide equal enjoyment of human rights and fundamental freedoms. Such measures may not, however, lead to the maintenance of “unequal or separate rights for different racial groups” or “be continued after the objectives for which they were taken have been achieved.”

mandatory; for example, the Community Reinvestment Act, 12 U.S.C. 2901, requires federally chartered financial institutions to conduct and record efforts to reach out to underserved communities, including, but not limited to, minority communities. Still others focus on targeted research and training efforts.

199. Statutory programs include, but are not limited to:

- The Affordable Care Act of 2010's measures to address health disparities experienced by racial and ethnic minorities, including requiring health plans to cover services that prevent chronic diseases disproportionately affecting racial and ethnic minorities; substantial investments in research and cultural competency training; and establishing an Institute on Minority Health and Health Disparities;
- The Minority Health and Health Disparities Research and Education Act and related acts and programs, such as the National Partnership for Action to End Health Disparities, and the Racial and Ethnic Disparities Action Institute, and Healthy People 2020, all of which seek a better understanding of and elimination of disparities in health and medical treatment;
- The Elementary and Secondary Education Act of 1965, as amended, which seeks to improve performance for all students and to eliminate achievement gaps between minority and non-minority students;
- Department of Education Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), which is a discretionary grant program for high-poverty middle schools, colleges and universities, community organizations, and businesses;
- Department of Education and state and local efforts to help English learner students and parents with limited English proficiency overcome language barriers that impede equal participation in educational programs;
- The Juvenile Justice and Delinquency Prevention Act, as amended in 2002, which contains provisions to address the issue of disproportionate minority contact;
- Programs under the Fair Housing act, which requires that all housing authorities take steps to "affirmatively further fair housing";
- Programs enforced by the U.S. Department of Labor Office of Federal Contract Compliance, which not only prohibit discrimination by federal contractors and

subcontractors, but also require those entities to take affirmative steps to ensure equal employment opportunity in their employment processes;

- Small Business Act requirement that federal agencies set goals for contracting with “small disadvantaged businesses”;
- Small Business Act section 8 (a) Business Development Program for socially and economically disadvantaged small business concerns;
- Small Business Act section 31 HUBZone Contracting Program for small businesses in historically underutilized business zones;
- Small Business Act section 7(j), which enables the Small Business Administration to provide financial assistance (grants or contracts) to organizations providing technical and management assistance to individuals or small business concerns eligible for assistance under sections 7(i), 7(j)(1) and 8(a) – with special emphasis on small businesses located in areas of high unemployment and low income;
- The Department of the Interior Indian Loan Guaranty, Insurance, and Interest Subsidy Program, designed to break through the conventional barriers to financing for tribes and individual Indians and Alaska Natives. The loan program helps facilitate loan financing for borrowers that would not be able to do so otherwise, helping secure reasonable interest rates and reduce risks for all parties involved;
- Department of Agriculture programs designed for “socially disadvantaged” farmers and ranchers;
- Treasury Department Community Development Financial Institutions Fund (CDFI), designed to increase access to capital, credit, and financial services for poor, minority, and Native populations across the nation;
- Treasury Department Minority Bank Deposit Program, Federal Deposit Insurance Corporation (FDIC) Minority Deposit Institutions Program, and Department of Energy Bank Deposit Financial Assistance Program; and
- Department of Transportation preferences for small businesses owned and controlled by socially and economically disadvantaged individuals in DOT-assisted contracts.

200. Numerous actions demonstrate the commitment to using the flexibility in the law to encourage and support programs that eliminate barriers and promote true equality of opportunity for racial and ethnic minorities. For example, in 2010, the EEOC settled a large class action sex discrimination claim that, in addition to paying affected workers \$11.7

million, requires a national retailer to fill its first 50 vacancies with female class members, to offer every other job for the next 50 to female class members, and thereafter to offer every third job to female class members. Consent Decree, EEOC v. Wal-Mart Stores, Inc., Case No. 6:01-CV-339 (E.D. Ky., Mar. 1, 2011). In addition, the Department of Justice filed an amicus curiae brief supporting the University of Texas' consideration of the race and ethnicity of student applicants to promote the education benefits of diversity, Fisher v. Texas, No. 09-50822 (5<sup>th</sup> Cir., Jan. 18, 2011).

201. Under the U.S. Constitution, classification by race is permissible in some circumstances for certain purposes, such as redressing past racial discrimination and promoting diversity in educational settings. Because race has been recognized as a “suspect classification,” classifications based on race will be subject to “strict scrutiny” by the courts. Where a government employer or other government entity has engaged in racial discrimination in the past, it will generally be permitted (and may sometimes be required) to consider race in a narrowly tailored fashion to correct the effects of its past conduct. See Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986). Government entities may also, in certain circumstances, take race into account when necessary to address the discriminatory acts of others where effects of those acts have been perpetuated by government policies. See City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

202. In 2003, the United States Supreme Court addressed affirmative action plans in the education context. In Grutter v. Bollinger, 539 U.S. 306 (2003), the Court recognized a compelling interest in achieving a genuinely diverse student body and held that race could be considered as a means of achieving diversity, including by ensuring enrollment of a critical mass of minority students at universities and graduate schools. Specifically, the Court held that the University of Michigan Law School's interest in “assembling a class that is . . . broadly diverse” is compelling because “attaining a diverse student body is at the heart of [a law school's] proper institutional mission.” Grutter, 539 U.S. at 329. The Court found the Law School's program to be narrowly tailored to achieve this mission because it applied a flexible goal rather than a quota, because it involved a holistic individual review of each applicant's file, and because it did not “unduly burden” individuals who were not members of the favored racial and ethnic groups, among other reasons. Id. at 342-43. At the same time, however, in Gratz v. Bollinger, 539 U.S. 244 (2003), the Court struck down the admissions policies of the University of Michigan's undergraduate affirmative action program, holding

that it operated as a mechanical quota that was not “narrowly tailored” to meet the university’s objective of achieving diversity. See 539 U.S. at 270.

203. In Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007), the Supreme Court addressed the use of racial classifications in the assignment of students to elementary and secondary public schools in two consolidated cases. A majority of the justices held that avoiding racial isolation and seeking diversity are compelling interests for school districts. Id. at 783, 797 (Kennedy, J., concurring); id. at 838-47 (Breyer, J., dissenting). However, the Court also held that, in both particular cases at issue, the school districts’ uses of individualized racial classifications for student assignment were impermissible. See id. at 720-25, 733-35 (plurality opinion); id. at 782 (Kennedy, J., concurring). Justice Kennedy suggested in his concurring opinion in the case that school districts may attempt to further compelling interests in achieving educational diversity and eliminating racial isolation by employing factors that do not rely on the race of individual students or, where necessary, by using the sort of tailored, individualized considerations upheld in Grutter.

204. Based on the Equal Educational Opportunities Act of 1974 (EEOA), and Title VI of the Civil Rights Act of 1964, courts have also continued to uphold the responsibility of states and local school districts to take affirmative steps to ensure that students with limited English proficiency have meaningful access to the schools’ programs, as required by the landmark decision of Lau v. Nichols, 414 U.S. 563 (1974).

205. While strict scrutiny of race-conscious government action requires that a plan be narrowly tailored, it is not necessarily fatal to the program or policy to which it is applied. Carefully constructed programs that consider race are permissible, for example, to promote diversity in elementary and secondary schools and postsecondary schools and, in the case of elementary and secondary schools, reduce or avoid racial isolation. Examples of different educational contexts within which institutions may permissibly consider race to pursue their compelling objectives include, at the elementary and secondary school level, student assignment, student transfers, school siting, feeder patterns, and school zoning; and at the post-secondary school level, admissions, pipeline programs, recruitment and outreach, and mentoring, tutoring, and support programs.

206. It continues to be the view of the United States that, consistent with its human rights treaty obligations, the United States may adopt and implement appropriately formulated special measures consistent with U.S. constitutional and statutory provisions, and is afforded broad discretion to determine both when circumstances warrant the taking of special measures and how, in such cases, it shall fashion such special measures.