

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

Seventy-second session
Geneva, 18 February - 7 March 2008

**QUESTIONS PUT BY THE RAPPORTEUR IN CONNECTION WITH THE
CONSIDERATION OF THE COMBINED FOURTH, FIFTH AND SIXTH
PERIODIC REPORTS OF THE UNITED STATES OF AMERICA
(CERD/C/USA/6)**

Population

1. In addition to the information provided in the report, please provide additional socio-economic data – disaggregated by race, ethnic or national origin, gender, and documented/undocumented status – on the non-citizen population living within the jurisdiction of the State party. (CERD/C/USA/6, paras. 14-16)

Answer:

The Committee seeks socio-economic data – disaggregated by race, ethnic or national origin, gender and documented/undocumented status – on the non-citizen population living in the United States. The material below contains as complete a discussion on these matters as possible in view of limitations in the data available. The United States Census Bureau collects data on the socio-economic characteristics of foreign-born persons in the United States and of the native, naturalized, and non-citizen population. Some, but not all, of the data tables available on the Census website are disaggregated by gender and national origin.¹ However, the data are not disaggregated by legal status; the Census Bureau does not collect data on whether foreign-born persons are documented or undocumented.

The Department of Homeland Security Office of Immigration Statistics has put together several reports that estimate the composition of non-citizens in the United States according to whether these persons are legal permanent residents, refugees, or unauthorized immigrants. Those data, which are from 2006, are disaggregated by region or country of birth. However, they do not include information on socio-economic characteristics.

U.S. Census Bureau:

U.S. Foreign Born Population (Current Population Survey 2003)^{2 3}

¹ If the needs of analysts extend beyond these published tables, public-use micro-data (PUMS) files can be found on the Census Bureau's Web site. Additional information about obtaining PUMS files is provided through American Factfinder at http://factfinder.census.gov/home/en/acs_pums.html.

² The portions of this response concerning foreign-born residents and citizenship status were prepared by the State Department based on data contained in the Census Bureau's Current Population Survey for 2003.

³ All estimates presented are based on CPS sample data. The population represented is the civilian noninstitutional population. Comparative statements have not been tested for statistical significance.

According to the U.S. Census Bureau’s Current Population Survey Annual Social and Economic Supplement (CPS ASEC), in 2003, the foreign-born population in the United States (those not U.S. citizens or U.S. nationals at birth) was estimated to be 33.5 million (approximately 11.7 percent of the total U.S. population). Of the foreign-born population, 50.2 percent were male, with a median age of 37.3 years, and 49.8 percent were female, with a median age of 39.4 years. Overall, 38.4 percent of the foreign-born population was composed of naturalized U.S. citizens, while 61.6 percent were not citizens.

The foreign-born population was located throughout the United States. Foreign-born residents in the United States were most heavily concentrated in the West (37.3 percent), with 29.2 percent in the South, 22 percent in the Northeast, and 11.3 percent in the Midwest.

The foreign-born population comes to the United States from throughout the world. 53.3 percent were born in Latin America (10.1 percent in the Caribbean, 36.9 percent in Central America, and 6.3 percent in South America); 25.0 percent in Asia; 13.7 percent in Europe; and 8 percent in other areas, including Africa and Oceania.

Educational attainment of foreign born residents 25 years and above was as follows: overall, 32.8 percent had less than a high school education, 24.5 percent were high school graduates, 15.5 percent had some college or an associate’s degree, 17.2 percent had a Bachelor’s degree, and 10 percent had advanced degrees. Overall, 67.2 percent were high school graduates or more. Women were slightly more likely to have higher education levels – 68.2 percent were high school graduates or more. Men had slightly lower education levels – 66.2 percent were high school graduates or more.

Educational achievement was related to the region of birth for foreign-born U.S. residents. Immigrants from Asia and Europe, whose median age was 40 and 50.4 years respectively, had the highest proportion of persons with high school or higher levels of education (87.4 percent and 84.9 percent). Immigrants falling into the “Other” category (from Africa, Oceania, and North America) were next, with a median age of 38.7 years, and 83.5 percent with high school or higher levels of education. Immigrants from Latin America, with the lowest median age (35.5 years), had the lowest proportion (49.1 percent) of persons with high school or higher levels of education. (Latin American immigrants are composed of those from the Caribbean, Central America, and South America; the majority of the immigrants in this category are from Mexico.)

Overall, 92.5 percent of foreign-born residents in the civilian labor force age 16 and above were employed, with 7.5 percent unemployed. Women were 92.1 percent employed, and men were 92.8 percent employed. Occupations tended to break down as follows:

Occupation	Total	Female	Male
Management, professional, financial	26.9	29.5	25.1
Service occupations	23.3	30.1	18.7

Sales and office positions	18.0	25.6	12.9
Farming, fishing, forestry	1.6	0.9	2.0
Construction, extraction, maintenance	11.8	0.7	19.3
Production, transportation and material moving	18.4	13.2	22.0
Total	100 %	100 %	100 %

Employment status also varied by birth region. Among residents in the civilian labor force age 16 and above who were born in Europe, 95.7 percent were employed; among those born in Asia, 93.3 percent were employed; among those born in Latin America, 91.3 percent were employed; and among those in the “Other” category, 94.3 percent were employed. Employment status was also related to date of entry into the United States, with those entering prior to 1970 having a 93.4 percent rate of employment, compared to an 89.1 rate of employment for those who had entered in 2000 and subsequently.

Among year-round full-time workers, foreign-born males tended to have higher median earnings – \$28,987, compared to \$25,195 for females.

Median earnings, by birth region, were: total – \$27,047; European – \$36,738; Asian – 38,383; Latin American – \$21,943; and “Other” (Africa, Oceania, and North America) – \$32,348.

Figures for poverty status were as follows: total – 83.4 percent at or above the poverty line; European birth – 91.3 percent at or above the poverty line; Asian birth – 88.9 percent at or above the poverty line; Latin American birth – 78.4 percent at or above the poverty line; and “Other” – 85.9 percent above the poverty line. Females tended to be slightly less likely to be at or above the poverty line, with 82.1 percent of females in this category, compared to 84.6 percent for males.

With regard to housing tenure for families, the figures were as follows: total – 56.2 percent owners and 43.8 percent renters; European birth – 72.3 percent owners and 27.7 percent renters; Asian birth – 64.3 percent owners and 35.7 percent renters; Latin American birth 47.3 percent owners and 52.7 percent renters; and “Other” – 61.8 percent owners and 38.2 percent renters. Female householder families were slightly less likely to be home owners (39.1 percent) than male householder families (39.6 percent). For married couples, 61.6 percent lived in owner-occupied housing.

Citizenship Status (Current Population Survey, 2003)

Based on the Census Bureau’s Current Population Survey Annual Social and Economic Supplement, in 2003, the United States population was 88.3 percent native, 4.5 percent naturalized citizens, and 7.2 percent non-U.S. citizen.

Citizenship rates for foreign-born residents from Europe (55.8 percent), Asia (51.3 percent), and “Other” (Africa, Oceania, and North America, 40.3 percent) were higher than those for Latin American residents (27.5 percent). It is important in

looking at those rates, however, also to look at the year of entry into the United States – as many Latin American born residents have come to the United States more recently than persons from other regions. The following table sets forth the rates of naturalization by birth region and period of entry:⁴

	All Foreign Born	2000-2003	1990-1999	1980-1989	1970-1979	Prior to 1970
All						
Naturalized	38.4	5.6	18	48.3	69.6	80.9
Non Citizen	61.6	94.4	82	51.7	30.4	19.1
Born in Europe						
Naturalized	55.8	6.3	28.5	61.7	73.7	84.5
Non Citizen	44.2	93.7	71.5	38.3	26.3	15.5
Asia						
Naturalized	51.3	6.4	29.8	71.2	86.7	92.0
Non Citizen	48.7	93.6	70.2	28.8	13.3	8.0
Latin America						
Naturalized	27.5	4.6	10.7	34.4	57.6	75.5
Non Citizen	72.5	95.4	89.3	65.6	42.4	24.5
Other						
Naturalized	40.3	9.4	19.4	52.3	72.1	74.4
Non Citizen	59.7	90.6	80.6	47.7	27.9	25.6

Non-citizens 25 years and older tended to have lower levels of educational achievement than naturalized citizens or natives. For example, while 87.5 percent of natives had a high school degree or higher, 77.3 percent of naturalized citizens, and 59.5 percent of non-citizens were in that category. Non-citizen women tended to have slightly higher educational levels than non-citizen men. This was also true for native-born women. However, it was not true for naturalized citizens, for whom the proportion of women with less than high school educations was slightly higher than that for men.

Among naturalized citizens 16 years and older in the civilian labor force, 94.0 percent were employed, compared to 93.8 percent for natives, and 91.6 percent for non-citizens. Looking at specific occupational breakdowns, natives and naturalized citizens were similarly concentrated in management, professional, and financial occupations – 36.2 percent and 36.4 percent respectively – while the percentage of non-citizens in those professions was lower, at 20.8 percent. By contrast, 14.5 percent of non-citizens were in construction, compared to only 7.6 percent for naturalized citizens and 9.0 percent for natives. Service jobs also tended to be held at

⁴ Population Division, U.S. Census Bureau, *Foreign-Born Population of the United States Current Population Survey* tbl 2.6 (2004), available at [tbl 2.6 \(2004\), available at \[tbl 2.6 \\(2004\\), available at\]\(http://www.census.gov/population/www/socdemo/foreign/ppl-174.html\)](http://www.census.gov/population/www/socdemo/foreign/ppl-174.html)

a higher rate by non-citizens – 26.3 percent of non-citizens compared to 18.6 for naturalized citizens and 14.9 percent for natives. As was the case for the foreign born population as a whole, female non-citizens and naturalized citizens tended to be employed at a slightly higher rate than men in management, service, and office jobs, and at lower rates than men in farming and fisheries, construction and production, and transportation and materials moving.

Median family income was \$54,686 for natives, \$53,393 for naturalized citizens, and \$36,580 for non-citizens. Among families, natives were at or above poverty status in 91.3 percent of cases, compared to 90.6 percent for naturalized citizens and 80.2 percent for non-citizens. Median total earnings were \$35,956 for natives, \$35,032 for naturalized citizens, and \$22,687 for non-citizens. Non-citizens were at or above the poverty line in 79.3 percent of cases, compared to 90 percent for naturalized citizens and 88.5 percent for natives.

About 41.6 percent of non-citizen householders owned their homes, compared with 73.3 percent for naturalized citizens and 78.7 percent for natives. Non-citizens tended to live in the central cities of metropolitan areas at a higher rate (47.4 percent) than naturalized citizens (39.5 percent) or natives (26.9 percent). By contrast, non-citizens were much less likely to live in the suburbs of metropolitan areas. Non-citizens were also much less likely to live in non-metropolitan areas (5.7 percent) than natives (20.2 percent).

Department of Homeland Security (DHS):

Estimates of the Unauthorized Immigrant Population in the United States (DHS Data 2006)

The DHS Office of Immigration Statistics calculates estimates of the unauthorized immigrant population by subtracting the legally resident foreign-born population (i.e., legal permanent residents, asylees, refugees, and non-immigrants) from estimates of the total foreign-born population. In January 2006, DHS estimated that there were 11.6 million unauthorized immigrants in the U.S. – 6.6 million of these from Mexico. Immigrants are considered unauthorized until they actually obtain legal permanent residence, asylee, or other temporary protected status (TPS). Although TPS persons may be in a non-authorized status, they are not considered as unauthorized persons for purposes of this estimate.⁵

DHS estimates that the unauthorized immigrant population in the United States increased by 37 percent between 2000 and 2006 – from nearly 8.5 million on January 1, 2000, to 11.6 million on January 1, 2006. The annual average net increase was 515,000, although this figure is believed to vary significant on a year-to-year basis. DHS further estimates that nearly 4.2 million (36 percent) of the unauthorized immigrants have entered the United States since January 1, 2000 – with an estimated 1.3 million (12 percent) entering in 2004-2005. Approximately 45 percent entered during the 1990s and 19 percent during the 1980s.

⁵ Michael Hoefler et al., Dep't of Homeland Security, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2006 (2007)*, available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ill_pe_2006.pdf.

It is estimated that 8.4 million came from North America – Canada, Mexico, Caribbean, and Central America. The region with the second largest influx was Asia, with 1.4 million. South America followed, with 970,000. Mexico is the leading source of unauthorized immigrants; DHS estimates that unauthorized immigrants from Mexico increased from 4.7 million on January 1, 2000 to 6.6 million on January 1, 2006. Next were El Salvador (510,000), Guatemala (430,000), the Philippines (280,000), and Honduras (280,000). The greatest percentage increases were from India (125 percent), Brazil (110 percent), and Honduras (75 percent).

California is estimated to be the leading state of residence for unauthorized immigrants with 2.8 million. Next is Texas, with 1.6 million, and Florida, with 1 million.

In 2006, 1,266,264 immigrants became legal permanent residents in the United States. Over half of these were already living in the United States and adjusted from temporary status to permanent resident status. The leading countries of birth were Mexico (13.7 percent), China (6.9 percent), the Philippines (5.9 percent), India (4.8 percent), Cuba (3.6 percent), Colombia (3.4 percent), Dominican Republic (3.0 percent), El Salvador (2.5 percent), Vietnam (2.4 percent), and Jamaica (2.0 percent). Legal permanent residents from Africa increased by 38 percent – from 85,102 in 2005 to 117,430 in 2006. Half of this was due to the greater numbers of African asylee adjustments.⁶

In 2006, 702,589 immigrants became U.S. citizens. The leading countries of birth were Mexico (83,979), India (47,542), the Philippines (40,500), China (35,387), and Vietnam (29,917). Females accounted for 55 percent of these new citizens.⁷

General legal framework

2. Please provide detailed information on the extent to which the legislative, judicial, administrative and other measures adopted by the State party to give effect to the Convention provisions apply to non-citizens, bearing in mind the Committee's General Recommendation No. 30 (2004) on discrimination against non-citizens.

Answer:

The United States strongly shares the Committee's concerns that citizens and non-citizens alike must enjoy broad protection of their human rights and fundamental freedoms. As a matter of treaty law, the United States notes, however, that Article 1(2) of the Convention states "that the Convention does not apply to distinctions, exclusions or preferences made by a State Party to this Convention between citizens and non-citizens." Thus, the plain language of the Convention clearly exempts distinctions between citizens and non-citizens from the scope of the Convention.

⁶ Kelly Jefferys, Department of Homeland Security, *U.S. Legal Permanent Residents: 2006 (2007)*, available at http://www.dhs.gov/xlibrary/assets/statistics/publications/IS-4496_LPRFlowReport_04vaccessible.pdf.

⁷ Bryan C. Baker, Department of Homeland Security, *Trends in Naturalization Rates (2007)* available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ntz_rates508.pdf.

That does not mean, however, that issues related to citizenship are categorically outside the scope of the Convention. Article 1(3) provides that “Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.” The Convention by its terms does not prohibit distinctions in the enjoyment of rights between citizens and non-citizens, limit a State’s sovereign right to determine access by non-nationals to its territory, or require equal treatment in all respects for non-nationals who do not comply with the conditions of their entry.

The United States does not concur with certain of the interpretive opinions regarding the Convention’s meaning, intent, or application, which are contained in paragraphs one through five of General Recommendation No. 30 (2004), nor does it concur with some of the policy recommendations in paragraphs 6 through 38. However, the United States is in profound agreement with the Committee that every State must be vigilant in protecting the rights that non-citizens in its territory enjoy, regardless of their immigration status, as a matter of applicable domestic and international law.

In discussing the rights of non-citizens, we note as a preliminary matter that the United States has one of the most open immigration programs in the world, which provides a clear path to citizenship. For example, between 2000 and 2006, the United States admitted more than 6 million foreign nationals into the American community as lawful permanent residents, granted full citizenship by naturalization to over 4.37 million people, resettled more than 343,000 refugees from overseas, granted asylum to more than 215,000 individuals seeking refuge in the United States, and granted Temporary Protected Status to more than 340,000 individuals present in the United States who are nationals of countries facing armed conflicts or environmental disasters in their home countries such as Somalia, Liberia, El Salvador, Nicaragua, Honduras, and Sudan. Moreover, in Fiscal Year (FY) 2006 alone, over 33.6 million persons were lawfully admitted to the United States in a status other than that of a lawful permanent resident.

As a matter of U.S. law, aliens within the territory of the United States, regardless of their immigration status, enjoy substantial protections under the U.S. Constitution and other domestic laws. Many of these protections are shared on an equal basis with citizens, including a broad range of protections against racial and national origin discrimination. For example, in *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990), the U.S. Supreme Court recognized that “aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country.” This reaffirms the Supreme Court’s five decade old pronouncement in *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n. 5 (1953). In *Kwong Hai Chew*, the Court acknowledged that “once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders.” In particular, the Supreme Court has held that the equal protection and due process protections of the Fourteenth Amendment “are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality.” *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). Similarly, the Court has held that aliens are “person[s]” within the meaning of the due process protections of the Fifth Amendment. See *Kwong Hai Chew*, 344 U.S. at 596 & n.5; *Zadvydas v.*

Davis, 533 U.S. 678, 693 (2001) (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”).

In addition to the constitutional protections afforded to non-citizens, many federal statutes provide further protections against discrimination for non-citizens. Many of these statutes were enacted because of the recognition that non-citizens may be especially vulnerable and may require additional protections against discrimination, particularly in the employment arena. These federal civil rights laws prohibit discrimination on the basis of race, color, and national origin, and these apply to both citizens and non-citizens.

Under 8 U.S.C. § 1324b(a)(1)(B), recent permanent residents, temporary residents, asylees, and refugees are protected from employment discrimination based on citizenship status, specifically in connection to their recruitment, hiring, discharge or termination. Thus, with certain exceptions, employers may not treat U.S. citizens and work authorized non-U.S. citizens differently based on their citizenship status. As developed more fully in response to Question 30, under U.S. law, the undocumented workers also are expressly entitled to the anti-discrimination protections of federal labor law. For example, the Fair Labor Standards Act, which provides for minimum wages and overtime pay, applies to all employees regardless of their immigration status. Also, the Agricultural Workers Protection Act protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping. Additionally, 8 U.S.C. § 1324b(a)(1)(A) protects non-citizens from national origin discrimination. Employers may not treat individuals differently because of their place of birth, country of origin, ancestry, native language, accent, or because they are perceived as looking or sounding “foreign.”

Additionally, all U.S. citizens and work-authorized individuals alike – regardless of their citizenship status – are protected from document abuse under 8 U.S.C. § 1324b(a)(6). Employers may not request more or different documents than are required to verify employment eligibility, nor may an employer reject reasonably genuine-looking identification documents, or specify certain documents over others with the purpose or intent of discriminating on the basis of citizenship status or national origin.

With regard to education, it is unlawful to deny school children in the United States a free public education on the basis of their immigration status. *See Plyler v. Doe*, 457 U.S. 202 (1982). The Office of Migrant Education (OME) of the United States Department of Education works to improve the pedagogic approach to, learning outcomes for, and achievements of the Nation's estimated 700,000 migrant children and youth. Programs and projects that OME administers are designed to enable children whose families migrate to find work in agricultural, fishing, and timber industries to meet the same challenging academic content and student performance standards that are expected of all children, and services are provided to these migrant students regardless of their citizenship or immigration status. Just like their non-migrant peers, migrant students also receive educational services regardless of their citizenship or immigration status under several other Department of Education grant programs.

Finally, emergency medical care and certain non-cash benefits are available to all persons. All hospitals are required to provide life saving medical care regardless of a person's immigration status or ability to pay. Also the 1,200 community health care centers, discussed below in response to Question 24, provide free health care (emergency and basic/preventative care) regardless of immigration status.

Measures Taken by the United States to Protect These Rights:

The United States takes seriously discrimination against non-citizens. The following contains a discussion of efforts taken at the federal level, and in coordination with states, to protect these rights and to improve the safety and security of all persons regardless of their citizenship or immigration status.

Department of Justice (DOJ):

The U.S. Department of Justice investigates discriminatory conduct against non-citizens under the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. The Department reviews charges relating to citizenship or immigration status discrimination, national origin discrimination, and document abuse discrimination. Attorneys in the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) of the Civil Rights Division work proactively with local communities to prevent, violations of, and also to seek out and prosecute, those who violate anti-discrimination laws in their treatment of non-citizens.

In a similar vein, in the aftermath of September 11, 2001, the Justice Department's Civil Rights Division instituted an Initiative to Combat Post 9/11 Backlash Discrimination. Since that time, Division attorneys have worked proactively to combat violations of the civil rights laws committed against Arab, Muslim, Sikh and South-Asian people, and those perceived to members of these groups. The Initiative combats bias crimes and discrimination by: (i) insuring that there are accessible processes in place for people to report civil rights violations to the Department of Justice, and to make certain that these cases are handled expeditiously; (ii) implementing proactive measures to identify cases involving bias crimes or other discrimination being pursued at the state level that may warrant federal action; and (iii) working with affected communities and other government agencies to ensure accurate referral, effective victim and community outreach, and that comprehensive services are provided to victims of bias crimes.

OSC operates separate hotlines for employers and employees who need guidance. Foreign language assistance is available through OSC staff, who may be proficient in the particular language, or through use of telephonic interpreters that OSC contracts for such service. OSC received a total of 21,084 calls in Fiscal Year (FY) 2007. OSC opened 165 full investigations that same fiscal year. Of these investigations, 88 resulted in favorable resolution, meaning that OSC was able to obtain back wages or reinstatement for aggrieved workers, and/or was able to facilitate corrective action on the part of employers to prevent future discrimination. In FY 2007, OSC facilitated nearly 300 resolutions where the employers took corrective action and workers received the relief sought, which generally consists of back wages and reinstatement.

Following are examples of resolutions reached by OSC in FY 2007:

- *Samuel E. McClain against Hilton Short Hills.* The charging party alleged that Hilton committed document abuse when it rejected his unrestricted Social Security card and driver's license during the employment eligibility (Form I-9) reverification process and terminated his employment. In response to OSC's investigation, Hilton initiated settlement discussions with the charging party and the parties agreed to resolve the matter for \$15,000 in back pay. As the charging party is now employed elsewhere, he did not seek reinstatement.
- *Manaorn Chaikittisikpa against Ford Motor Company.* The charging party alleged that during the hiring process, the company specifically stated that it hired only U.S. citizens and lawful permanent residents. In response to OSC's investigation, the company paid the charging party \$13,000 in back pay and trained its human resources staff about the anti-discrimination provision of the Immigration and Nationality Act.

During FY 2007, OSC also awarded grants totaling \$725,000 to 11 organizations to educate workers and employers in areas with sizable and/or emergent immigrant populations about their rights and responsibilities under the anti-discrimination provision of the INA. In addition, OSC participated in 383 public outreach presentations to employers and community organizations, either directly or through its grant recipients. OSC distributed approximately 87,105 individual pieces of written outreach educational materials to the public. OSC disseminated two issues of its newsletter, *OSC Update*, containing educational material, legal developments, and outreach tips to more than 1,700 national, regional, and local organizations throughout the country.

Additionally, the United States has several programs designed to prosecute and prevent violence against immigrants. Both the Department of Justice and the Department of Homeland Security have strong policies and programs to prevent racial profiling, including against non-citizens, as discussed in greater depth in response to Question 6 below. Additionally, when allegations of misconduct or abuse, including of illegal immigrants, have been raised, the Department of Justice has investigated, and when circumstances warranted, brought criminal prosecutions, as discussed in greater detail in response to Question 18 below. Furthermore, pursuant to the Trafficking Victims Protection Act, enacted in October 2000, the United States has continued to prioritize preventing trafficking, prosecuting traffickers, and providing assistance to victims of trafficking. Further discussion of these efforts is provided in response to Question 19 below.

Measures to serve individuals with limited English proficiency:

The United States also devotes substantial resources to assisting and providing services to non-citizens. For example, Executive Order 13166, titled "Improving Access to Services for Persons with Limited English Proficiency," requires Federal agencies to examine the services they provide, determine whether their services are meaningfully accessible to individuals who have limited English proficiency (LEP), and respond to the needs of those in the limited English proficiency community by developing methods to ensure that LEP individuals can meaningfully access the

services federal agencies provide. This Executive Order, which federal agencies are compelled to follow, helps both citizens and non-citizens who are not proficient English speakers.

Both federal agencies and recipients of federal financial assistance have taken concrete steps and implemented measures to better serve individuals with limited English proficiency. Such measures are too numerous to list, however, a sample of the measures taken is provided below.

Measures taken by federal agencies to better serve limited English proficient individuals:

- The U.S. Department of Justice, Civil Rights Division, Coordination and Review Section maintains a website (<http://www.lep.gov>) that serves as a “one stop shop” for forms and programs available to individuals who are limited English proficient, as well the rights and obligations of both limited English proficient individuals and the agencies that serve them;
- The Equal Employment Opportunity Commission (EEOC) has published fact sheets on employment discrimination in a number of languages, including Arabic, Chinese, Haitian Creole, Korean, Russian, and Vietnamese;
- The Food and Nutrition Service of the U.S. Department of Agriculture (USDA) has published food stamp outreach materials in over three dozen languages, including Spanish, Amharic, Arabic, Chinese, Hindi, Russian, Tagalog, and Yoruba;
- The Centers for Disease Control and Prevention maintains a Spanish language website providing vital health-related information on topics such as HIV/AIDS and tuberculosis, among others;
- The Internal Revenue Service maintains a Spanish language website providing key information and materials to limited English proficient individuals seeking to learn more about tax laws and obligations.
- The Department of Health and Human Services (HHS) has published fact sheets on discrimination in health and human services in a number of languages, including Chinese, Korean, Polish, Russian, Spanish Tagalog and Vietnamese.

Measures taken by recipient organizations to better serve limited English proficient individuals:

- Miranda warning cards translated into Spanish are used by numerous police departments nationwide to advise arrestees of their rights;
- Language identification flashcards are used by numerous police departments nationwide to assist police to accurately identify languages spoken by those they encounter (whether victims of a crime, witnesses to a crime, or others) in order to summon appropriate interpretation assistance. (These language identification flashcards are also used by a variety of other agencies unrelated to law enforcement);
- 911 call centers nationwide utilize telephonic interpretation to communicate with limited English proficient individuals calling for 911 emergency assistance;

- Some states, such as Maine, have adopted administrative orders mandating that interpreters be provided to limited English proficient individuals involved in court proceedings, whether such proceedings are criminal, civil, or even judicially-assisted mediations;
- Some states, such as Minnesota, have made application forms for a number of social service programs available in various languages. Minnesota, for example, has made application forms for health care programs, health care renewal, and combined applications for cash assistance, food support, and health care available in a number of languages, including Serbo-Croatian/Bosnian, Hmong, Cambodian, Laotian, Russian, Somali, and Vietnamese.

Department of Homeland Security (DHS):

The Department of Homeland Security's Office of Border Patrol (OBP) is determined to improve its capabilities to assess border safety activity, apply prevention measures, and respond to humanitarian emergencies in order to create a safer and more secure border.

The Department of Homeland Security has initiated several projects to reduce the dangers faced by immigrants crossing the Mexican border and other U.S. borders regardless of whether or not they are entering the U.S. illegally. For instance, OBP provides a search, trauma, and rescue capability on the border between the ports of entry through its Border Patrol, Search, Trauma and Rescue (BORSTAR) unit. Currently, there are 155 full-time Border Patrol Agents continuously conducting law enforcement and search and rescue operations. They provide emergency medical assistance in remote areas. They provide vital support in accessing, stabilizing and transporting victims to ground or air ambulance services. BORSTAR agents also help local emergency medical services (EMS) agencies by assessing, treating and medically releasing patients in the field.

Throughout the Southwest border, vehicles have been equipped with first-aid kits and medical supplies to assist in responding to both cold and hot weather emergencies while the majority of vehicles that patrol waterways have been equipped with additional flotation devices. During FY 2007, OBP allocated approximately \$1.7 million dollars in funds to the nine southwest border sectors. Through this allocation of funds, the sectors were able to purchase equipment and supplies related to the Border Safety Initiative (BSI) in an effort to increase their border safety effectiveness in their respective areas. Equipment such as: personal flotation devices, rescue beacons, EMT/First Responder equipment, ATVs, GPS, and other miscellaneous equipment were purchased by the sectors. During FY 2007, BSI continued to provide agents with Emergency Medical Technician (EMT) training and First Responder training with the assistance of the BORSTAR team.

Additionally, the Office of Border Patrol has continued its effort of establishing rescue beacons in the high risk desert areas to assist those individuals in distress. A total of 47 rescue beacons have been positioned in the Arizona and California desert areas. Migrants in distress have used these beacons to alert Border Patrol agents of their location and the need for help. Currently, corridors in Texas and New Mexico are being assessed for the placement of rescue beacons.

OBP has continued to work with the Mexican consulates to discourage illegal crossings and to identify those that have perished in the desolate border terrain in their attempt to enter illegally into the United States. The Office is working with Mexican government representatives to review both governments' methodologies and see how we can reduce border related deaths. Additionally, OBP is promoting the "No Mas Cruces en la Frontera" (NMC) ("No More Crosses on the Border") media campaign in order to provide awareness of the dangers and risks associated with crossing the border illegally.

Definition of racial discrimination

3. According to information received, claims of racial discrimination under civil rights statutes must be accompanied by proof of intentional discrimination. Please comment on the consistency of this approach with the definition of racial discrimination provided in article 1, paragraph 1 of the Convention, which covers "any distinction, exclusion, restriction or preference (...) which has the purpose *or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms...". (CERD/C/USA/6, paras. 317-323)

Answer:

The question's incomplete citation to article 1(1) and its emphasis of the words "or effect" could be misconstrued to suggest that all acts – including those drawing no distinctions on the basis of race – that may have adverse effects, even if unintended, on racial or ethnic groups fall within the definition of "racial discrimination." Article 1(1) provides, in pertinent part, that "[i]n this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference **based on race, colour, descent, or national or ethnic origin** which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms" [Emphasis added]. By the terms of article 1, "racial discrimination" for purposes of the Convention requires the existence of a distinction, exclusion, restriction or preference that is based on race, colour, descent, or national or ethnic origin.

Like all States Parties to the Convention, when the United States takes action to combat racial discrimination, governmental authorities in the United States must carefully review relevant facts to determine if particular acts constitute racial discrimination, including judgments on the question of whether an action in question "was based on race, colour, descent, or national or ethnic origin." In doing so, as described more fully below, U.S. law does not invariably require proof of discriminatory intent.

The United States Supreme Court has held that proof of intentional discrimination is required for race discrimination claims brought against public employers under the Due Process Clause of the Fifth Amendment to the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment. *See Washington v. Davis*,

426 U.S. 229, 238-39 (1976). Nevertheless, the Supreme Court has distinguished those constitutional claims from those brought under federal civil rights laws. Claims of racial discrimination in employment under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, need not be accompanied by proof of intentional discrimination.

In addition to prohibiting acts of intentional discrimination, Title VII also prohibits employment actions and practices that are facially neutral but have an unlawful disparate impact upon members of a protected class. *See* Sec. 703(k) of Title VII as amended, 42 U.S.C. 2000e-2(k). The Supreme Court has long held that Title VII prohibits not only intentional discrimination in employment, but also an employment practice that is neutral on its face but discriminatory in effect unless the employer can prove that such practice is job-related and consistent with business necessity. *See Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). Examples of facially neutral practices that may result in an unlawful disparate impact include: the use of written tests as employment selection devices, the imposition of height and weight requirements, and, in some cases, certain educational requirements. Once a plaintiff establishes that a challenged practice has a disparate impact on the basis of a protected class, the practice may withstand scrutiny only if the employer can establish that the practice is “job related for the position and consistent with business necessity.” However, even if the employer proves these elements, the plaintiff can prevail by proving that there exists an alternative practice that would result in less disparate impact and satisfy the employer’s legitimate business interests and that the employer has refused to adopt such practice. Many disparate impact cases are prosecuted by DOJ’s Civil Rights Division under the “pattern or practice” authority of Title VII.

DOJ’s Civil Rights Division is charged with enforcing the Voting Rights Act, which is widely viewed as being one of the most effective civil rights statutes ever enacted by Congress. Pursuant to the Act, the Voting Section undertakes investigations and litigation throughout the United States and its territories, conducts administrative review of changes in voting practices and procedures in certain jurisdictions, and monitors elections in various parts of the country.

Section 2 of the Voting Rights Act strictly prohibits voting practices and procedures, including redistricting plans and at-large election systems, poll worker hiring, and voter registration procedures that discriminate on the basis of race, color, or membership in a language minority group. It prohibits not only election-related practices and procedures that are intended to be racially discriminatory, but also those that are shown to have a racially discriminatory impact. The Attorney General, as well as affected private citizens, may bring lawsuits under Section 2 to obtain court-ordered remedies for violations of Section 2.

Section 5 of the Voting Rights Act freezes changes in election practices or procedures in certain states until the new procedures have been determined not to have a discriminatory purpose or effect either by a special federal court panel or the Attorney General of the United States. This requires proof that the proposed voting change does not deny or abridge the right to vote on account of race, color, or membership in a language minority group. If the jurisdiction is unable to prove that the proposed change is free of a discriminatory purpose or effect, the federal court will deny the requested judgment, or in the case of administrative submissions, the Attorney

General will object to the change, and it remains legally unenforceable.

Additionally, Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The statute applies broadly to important public and private programs. Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity “to effectuate the provisions of [section 601] . . . by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. § 2000d-1. DOJ regulations promulgated pursuant to section 602 forbid recipients of federal funds from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.” 28 C.F.R. 42.104(b)(2) [emphasis added]. As such, with respect to the federal government’s authority to investigate Title VI violations, both intentional conduct, and conduct that is discriminatory in effect are covered.

Under Executive Order 12250, DOJ’s Civil Rights Division, Coordination and Review Section (COR), coordinates and ensures consistent and effective enforcement of Title VI. Though federal agencies that provide federal financial assistance are responsible for enforcing these non-discrimination statutes, COR’s central role as the federal government’s resource and advisor on Title VI issues includes developing, or reviewing and approving, regulations, policies, enforcement standards, and procedures.

Article 2

4. Taking into account the declaration entered at the time of ratification that the provisions of the Convention are not self-executing, please provide detailed information on the specific measures adopted by the State party pursuant to the recommendation contained in paragraph 390 of the Committee’s previous concluding observations to ensure the effective implementation of the Convention at the federal, state and local levels. (CERD/C/USA/6, paras. 58-134 and 310-311)

Answer:

The statement made by the United States regarding the non-self-executing nature of the Convention, which was included in the U.S. instrument of ratification, is a declaration regarding the domestic implementation of the Convention and does not exclude or modify U.S. rights or obligations under the Convention. At the time of ratification of the Convention, the United States undertook a careful review of federal and state laws and determined that U.S. state and federal law was largely consistent with the Convention. In those few areas where U.S. law and the Convention differed or where the terms of the Convention were arguably vague or ambiguous, the United States adopted reservations or other conditions to clarify the nature of the obligation it

was undertaking. As a result of this analysis regarding the consistency of U.S. law with the Convention and its use of limited reservations, understandings, and declarations, the United States determined that it could fully give effect to its obligations under the Convention through operation of U.S. law. The purpose of the non-self-executing declaration was to clarify that the Convention itself did not give rise to a new private right of action by which individuals could seek direct enforcement of the Convention in U.S. courts. As the United States explained in its Initial Report, “[t]here is, of course, no requirement in the Convention that States Parties make it ‘self-executing’ in their domestic law, or that private parties be afforded a specific cause of action in domestic courts on the basis of the Convention itself. The drafters quite properly left the question of implementation to the domestic laws of each State Party.” (CERD/C/351/Add.1, para. 172).

Accordingly, the United States ensures effective implementation of the Convention through vigorous enforcement of the numerous federal and state laws prohibiting discrimination, including the U.S. Constitution’s equal protection guarantees and similar provisions of state constitutions, and civil rights statutes at the federal and state levels. A detailed description of such laws is provided throughout the U.S. report and in response to Question 5 below. Federal and state courts provide opportunities for effective, independent and impartial review and recourse for those who, despite these protections, nevertheless fall victim to discriminatory acts or practices.

5. According to the State party report, various executive departments and independent agencies have responsibilities concerning the elimination of racial discrimination in the political, economic, social and cultural spheres. Please provide more detailed information about the mandate of, and the resources allocated to, these bodies, as well as on the mechanisms in place, if any, to ensure a co-ordinated approach towards the implementation of the Convention at the federal and state levels. (CERD/C/USA/6, paras. 44, 46, 47, 60, 62, 64-66, 67-70, 72-76, 87, 89, 118-123, 189-191, 238-239, 268 and 352-353)

Answer:

As a State Party to the Convention, the United States is bound to apply the Convention throughout its territory and to ensure its effective application at all levels of government – federal, state, and local – regardless of the federal structure of the United States government. In its initial report to the Committee, the United States provided a detailed overview of the numerous entities at the federal level that possess responsibilities for implementing and enforcing anti-discrimination laws, programs, and policies relevant to the Convention (CERD/C/351/Add.1, paras. 54-64), and it provided updated information about the legal framework and enforcement actions thereunder in the periodic report. Noting the extraordinary substantive scope of this question and the extent to which discussion in the initial and periodic reports have discussed these topics, we hereby provide more detailed information about the U.S. constitutional and legal framework, a detailed description of the extensive work of the Department of Justice to enforce anti-discrimination measures throughout the United States, and additional descriptions of the mandates, work, and resources of other

relevant U.S. government agencies, including their coordination with state and local governments.

As the information provided below documents in great detail, the constitutional and legal framework in the United States ensures a comprehensive web of protections at the federal level to prevent and prohibit discrimination throughout society, including in such critical areas as law enforcement, employment (including in employment of work-authorized non-citizens), education, fair housing, voting, and federally funded programs. The mandate and resources of the Department of Justice alone are substantial. But as can be seen below, the work of the Department of Justice's Civil Rights Division supplements and reinforces the work of various other federal agencies in this regard, as well as efforts at the state level. The United States recognizes that the material provided below is quite extensive, but due to the broad scope of the Committee's question, we have included it in the hope that it might provide a clearer picture of how the various entities at the federal and state levels work in coordination and collaboration with each other to ensure the effective enforcement of the nation's laws and policies combating discrimination on the grounds prohibited under the Convention.

Constitutional Framework:

The U.S. Constitution guarantees that no public authority may engage in any act or practice of racial discrimination against persons, groups of persons, or institutions. Foremost among the constitutional provisions enforcing this anti-discrimination principle, the Fourteenth Amendment prohibits state governments from denying any person the "equal protection of the laws." U.S. Const. Amend. XIV. Under the Amendment, any 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" government interest. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). In other words, "racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification." *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003) (quoting *Fullilove v. Klutznick*, 488 U.S. 448, 537 (1980) (Stevens, J., dissenting)).

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.

Several other Amendments to the U.S. Constitution work to eliminate discrimination based on race, color, descent, and national or ethnic origin. The Thirteenth Amendment prohibits "slavery" or "involuntary servitude" throughout the United States or any territory under its jurisdiction. The Amendment has been used to uphold 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 § 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” has been used to justify 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 § 2 of the Fifteenth Amendment).

Statutory Framework:

Title VII of the Civil Rights Act of 1964, 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 within the Department of Justice’s Civil Rights Division 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. Pursuant to Section 707 of Title VII, 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. These cases are factually and legally complex, as well as time-consuming and resource-intensive.

Title VIII of the Civil Rights Act of 1968, as amended, widely known as 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) and the Department of Justice share responsibility for enforcing the Fair Housing Act. DOJ enforces the Fair Housing Act in cases that involve criminal allegations, a suspected pattern or practice of discrimination, possible zoning or land use violations, as well as in HUD election cases and cases to enforce HUD Administrative Law Judge (ALJ) orders and HUD conciliation agreements. Additionally, DOJ 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; the Servicemembers Civil Protection Act (SCRA), which provides civil protections for active duty servicemembers; and Title III of the Civil Rights Act of 1964, which prohibits discrimination in public facilities.

Fifty years ago, in its landmark decision in *Brown v. Board of Education*, the United States 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 and court decisions also mandate that school officials not discriminate against students on the basis of sex, national origin, language barrier, religion, or disabilities. The Educational Opportunities Section of DOJ’s Civil Rights Division enforces these statutes and court decisions 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 and Title IX of the Civil Rights Act, 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. The Section may intervene in private suits alleging violations of education-related anti-discrimination statutes and the Fourteenth Amendment to the Constitution. The Section also represents the Department of Education in lawsuits.

Title VI, 42 U.S.C. § 2000d *et seq.*, enacted as part of the landmark Civil Rights Act of 1964, 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, DOJ's Civil Rights Division, 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. Section 3789d and Title VI of the Civil Rights Act, 42 U.S.C. Section 2000d. These statutes authorize the Attorney General to bring civil actions to eliminate pattern or practice law enforcement misconduct, including allegations of racial discrimination.

Various federal laws also are designed to safeguard the right of citizens to vote, including racial and language minorities. As explained further below, 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 that the Voting Rights Act authorizes to be brought against the Attorney General.

Institutional Framework Relevant to Combating Discrimination in the United States:

The discussion below provides an overview of the work of various federal agencies in areas relevant to implementation of U.S. obligations under the Convention. In response to the Committee's request, the material below includes information about the respective mandates and resources of the relevant federal agencies, as well as coordination with each other and also with state and local governmental bodies.

Department of Justice:

As described above, the Department of Justice's Civil Rights Division 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 and these responses to the Committee's questions.

In 2008, DOJ's Civil Rights Division has a congressionally authorized funding level of \$114,450,000. The Division has 731 authorized full time equivalent employee positions. In addition to the dedicated employees of the Civil Rights Division, whose full-time mission is to enforce federal civil rights laws, hundreds of other lawyers and investigators throughout the Department of Justice in other offices such as the United States Attorneys' Offices and the Federal Bureau of Investigation (FBI) also assist in the implementation of civil rights statutes.

Anti-discrimination Provisions of the Immigration and Nationality Act As Amended by the Immigration Reform and Control Act of 1986

Congress recognized that the employment eligibility verification requirements and potential sanctions against employers for hiring undocumented workers could discourage some employers from hiring certain United States citizens and individuals who are authorized to work in the United States. To address such problems, in 1986, Congress enacted the anti-discrimination provision of the Immigration and Nationality Act (INA) that is enforced by DOJ's Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

OSC receives discrimination charges from injured parties and advocates wishing to file on behalf of an injured party. Charges must be filed within 180 days of the alleged act of discrimination. OSC and/or the injured party may file an administrative complaint against the employer. Complaints are tried before an Administrative Law Judge (ALJ) who is specially trained to hear immigration-related employment discrimination cases. Settlements or successful adjudications may result in civil penalty assessments, back pay awards, hiring orders and the imposition of injunctive relief to end discriminatory practices.

In addition to receiving charges from the public, OSC operates a toll-free worker and employer hotline. OSC's operation of the hotline has served as an early intervention program and cost-effective means of resolving workplace problems before charges are filed. Under this program, OSC's staff resolves questions concerning proper employment eligibility verification procedures and ensures that workers are not refused hire, or fired, based upon immigration-related unfair employment practices.

Each year, OSC awards grants to organizations across the country to conduct local public education campaigns. These campaigns allow information regarding employment discrimination to be spread throughout the country to groups that have been traditionally under served in their communities. In addition, OSC works with its grantees in developing media, outreach, and grant implementation strategies to further educate the public regarding the rights and responsibilities concerning the anti-discrimination provision of the INA.

Civil Actions to Rectify Law Enforcement Abuses

DOJ's Civil Rights Division, 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. Section 3789d and Title VI of the Civil Rights Act, 42 U.S.C. Section 2000d. These statutes authorize the Attorney General to bring civil actions to eliminate pattern or practice law enforcement misconduct, including allegations of racial discrimination.

Education

The mainstay of DOJ's Civil Rights Division's work in the area of education is a substantial docket of open desegregation cases under which school districts remain

under court orders. Each of these districts is required to eliminate the vestiges of the former dual systems to the extent practicable.

To promote compliance by school districts, the Division initiates case reviews to monitor issues such as student assignment, faculty assignment and hiring, transportation policies, extracurricular activities, the availability of equitable facilities, and the distribution of resources. In FY 2007, the Civil Rights Division initiated 43 case reviews. In addition, during that year, the Division obtained additional relief through a combination of litigation, consent decrees, and out of court settlements in 20 cases. Since FY 2000, the Division has initiated more than 275 reviews, which have resulted in the return of local control in more than 175 school districts. The U.S. periodic report references a number of these cases, including *U.S. v. Chicago Bd. of Ed.*, *U.S. vs. Bertie County Bd. of Ed.* (North Carolina), and *U.S. vs. McComb County Bd. of Ed.*. Several additional cases are described here.

- In 2007, in West Carroll Parish, Louisiana, after the Civil Rights Division filed a motion for further relief on student assignment, arguing that the district did not desegregate five of its eight schools, the court ruled in favor of the United States holding that the district had failed to eliminate vestiges in school assignments. After this favorable liability ruling, the parties reached agreement that resulted in a court order closing two elementary schools and assigning their students to two PreK-12 schools to reduce the number of racially identifiable white schools from three to one. *U.S. v. West Carroll Parish Sch. Bd.*
- In 2006, in Calhoun County, South Carolina, the court entered a consent decree that was negotiated by the Civil Rights Division and the school district that will reduce racial disparities amongst the schools. Currently, the district has two schools serving grades PreK-5 and one serving grades 6-8. The decree provides for construction of a new school serving grades PreK-8 that will replace two majority black schools in poor condition and make the facilities at the new majority black school equitable with those at the current majority white school. Furthermore, the majority white PreK-5 will become a PreK-8 and new attendance zone lines will reduce the current significant racial disparities of the existing schools. *U.S. v. Calhoun County Sch. Dist.*
- In a case in Evangeline Parish, Louisiana, in 2007, the Civil Rights Division filed a motion for further relief concerning the facilities at a majority black high school. The Division requested one or more of the following: a new school facility, grade restructuring, or desegregating of the high school by mandatory reassignment of students from other schools. The Division filed its motion after the Evangeline Parish School District failed to fully implement its March 26, 2004 Reorganization Plan, a plan designed to address inequities at the majority black schools in the twelve-school district. In December, the court issued an order requiring the school district to respond to the Division's motion and the parties are to engage in discovery. *Graham and U.S. v. Evangeline Parish Sch. Bd.*

Employment

As mentioned above, DOJ's Civil Rights Division is authorized by statute to investigate and prosecute both individual acts of employment discrimination and patterns or practices of employment discrimination by state or local government employers. Investigations and suits challenging patterns or practices of employment discrimination are complex, time consuming, and resource-intensive. In 2007, the Civil Rights Division initiated twenty-eight investigations of individual claims based on charges referred to it by the EEOC, filed nine court complaints to recover relief for individuals, and resolved four of those individual lawsuits with favorable results.

In 2006, the Division filed three pattern or practice race discrimination suits. In 2007, the Division filed one new suit that challenged a pattern or practice of race and national origin discrimination and also alleged discrimination against certain individual victims of discrimination, resolved one of the suits filed in 2006 with a favorable consent decree, and initiated fourteen new pattern or practice investigations. Following are examples of actions taken in 2007:

- The Division filed a complaint in *United States v. City of New York* (Fire Department), which alleges that the City of New York has engaged in a pattern or practice of racial and national origin discrimination in hiring firefighters. The lawsuit alleges that the City discriminated against African American and Hispanic applicants for entry-level firefighter positions, in violation of Title VII of the Civil Rights Act of 1964, by using a written examination that had a disparate impact based on race and national origin, and that the City's use of the written examination is neither job related for the position of entry level firefighter nor consistent with business necessity. The case is being litigated before the United States District Court for the Eastern District of New York.
- The Justice Department resolved a pattern or practice lawsuit filed against the City of Chesapeake, Virginia. The lawsuit challenged Chesapeake's use of the mathematics component of a written examination called the "POST" to screen applicants for entry-level police officer positions. The Justice Department alleged that while not intentionally discriminatory, the City's use of this test had an unlawful disparate impact based on race and national origin and could not be demonstrated to be job related or consistent with business necessity. The settlement of this case, which was memorialized in a court-approved consent decree, included \$65,000 in monetary relief for victims of the discriminatory practice, as well as eight priority job offers for African American and Hispanic individuals who were victims of discrimination and who are otherwise qualified to be police officers. As part of the settlement of the case, the City also agreed to use the POST test in a manner that eliminated the unlawful disparate impact.
- The Division filed a lawsuit on behalf of two African American individuals against the Robertson Fire Protection District in the State of Missouri. The case challenges race discrimination against the two individuals, who were fire inspectors, as well as retaliatory demotions and wage cuts by the employer after they complained about the discrimination. That case is still being litigated in the United States District Court for the Eastern District of Missouri.

Fair Housing and Lending

As discussed above, the Civil Rights Division's Housing and Civil Enforcement Section enforces the FHA, ECOA, and Title III of the Civil Rights Act of 1964, the land use provisions of RLUIPA, and the SCRA. From January 1, 2001, through December 31, 2007, the Housing Section has filed 260 lawsuits, including 147 cases alleging a "pattern or practice" of discrimination. During FY 2007, the Housing Section filed 35 lawsuits, including 19 pattern or practice cases.

One of the ways the Civil Rights Division develops evidence for its pattern or practice cases is through its Fair Housing Testing Program, in which persons with different characteristics pose as potential renters or buyers seeking housing at approximately the same time. In FY 2007, the Department conducted a record number of undercover housing discrimination investigations, nearly doubling the number of the prior year. The Department conducts these tests to expose housing providers who are discriminating against people trying to rent or buy homes.

In addition to the examples of such cases cited in the periodic report, the following are examples of recent pattern or practice cases, including a case involving evidence developed by the Fair Housing Testing Program.

- On January 22, 2008, the court entered a consent decree resolving *United States v. Pine Properties Inc.*, Case 1:07-cv-11819 (D. Mass.). The complaint, filed on September 26, 2007, was the first case ever filed by the Department based on evidence developed by the Division's Fair Housing Testing Program alleging discrimination against Asian Americans. The complaint alleges that the defendants, who own and manage multifamily housing in Lowell, Massachusetts, discriminated against Cambodian Americans based on national origin by (1) telling Cambodian American persons that their employment and/or credit had to be verified before they could see available dwellings while at the same time taking white persons to see available dwellings without first verifying their employment or credit; and/or (2) telling Cambodian American persons that they had to schedule a separate appointment to see available dwellings while at the same time taking white persons to see available dwellings immediately, with no prior appointment. The consent decree requires the defendants to pay up to \$114,000 to compensate victims, to reform their procedures for taking rental applications and showing apartments, to provide training for employees, and to pay a \$44,000 civil penalty to the United States.
- On August 29, 2007, the court entered a consent decree in *United States v. General Properties Company, LLC*, Case 2:05-cv-71426-GER-VMM (E.D. Mich.), a Fair Housing Act pattern or practice case alleging discrimination on the basis of race. The defendants must pay \$330,000 in damages to 21 victims of race discrimination, \$350,000 in damages and attorney's fees to the Fair Housing Center of Metropolitan Detroit, and a \$45,000 civil penalty to the United States. In addition, defendants must use an independent property management company to handle the rental and application process.

- On March 30, 2007, the court entered a judgment in *United States v. Matusoff Rental Co.*, Case 3:99-cv-00626-WHR (S.D. Ohio), finding that the defendants had engaged in a pattern or practice of discrimination based on race. The court had previously found that the defendants had discriminated against families with children under 18. The court found that 26 persons were victims of defendants' discrimination and ordered the defendants to pay them a total of \$535,000 in damages (\$405,000 in compensatory damages and \$130,000 in punitive damages).

Lawsuits brought by the Civil Rights Division have defended the rights of Americans not only to obtain housing but also to obtain financing on equal terms. The following are recent examples of these lawsuits.

- On November 7, 2007, the court entered the consent decree in *United States v. First Nat'l Bank of Pontotoc*, Case No. 3:06-cv-061-M-D (N.D. Miss.), resolving a lawsuit alleging that a former bank vice-president engaged in a pattern or practice of sexual harassment against female borrowers and applicants for credit in violation of the Fair Housing Act and Equal Credit Opportunity Act. The lawsuit also alleged that the bank was liable for the former vice president's actions. Under the consent decree, the defendants will pay \$250,000 to 15 identified victims, up to \$50,000 for any additional victims, and \$50,000 to the United States as a civil penalty. In addition, bank employees are required to receive training on the prohibition of sexual harassment under federal fair lending laws. The agreement also requires the bank to implement both a sexual harassment policy and a procedure by which an individual may file a sexual harassment complaint against any employee or agent of the First National Bank of Pontotoc.
- On October 16, 2007, the court entered a consent order resolving *United States v. Centier Bank*, Case No. 2:06-CV-344 (N.D. Ind.). The consent order resolves claims that Centier Bank violated the Equal Credit Opportunity Act and the Fair Housing Act by unlawfully refusing to provide its lending products and services on an equal basis to residents of minority neighborhoods in and around Gary, Indiana, thereby making unavailable residential and small business loans to hundreds of prospective African American and Hispanic borrowers. This practice is often called "redlining." Under the consent order the bank already has begun to open new offices and expand its lending operations in the previously excluded areas. The order also requires the bank to invest \$3.5 million in a special financing program and spend at least \$875,000 on outreach, marketing, and consumer financial education in these previously excluded areas over five years.
- On September 4, 2007, the court entered consent orders in *United States v. Springfield Ford*, Case 2:07-cv-03469 (E.D. Pa.) and *United States v. Pacifico Ford*, Case 2:07-cv-03470 (E.D. Pa.). The complaints, which were filed on August 21, 2007, alleged that these two car dealerships engaged in a pattern or practice of discriminating against African American customers by charging them higher dealer markups on car loan interest rates than similarly situated white customers, in violation of the Equal Credit Opportunity Act (ECOA). Under the consent orders, Pacifico Ford will pay up to \$363,166, and

Springfield Ford will pay up to \$94,565, plus interest, to African American customers who were charged higher interest rates. In addition, the dealerships will implement changes in the way they set markups, including guidelines to ensure that the dealerships follow the same procedures for setting markups for all customers, and that only good faith, competitive factors consistent with ECOA influence that process. Both dealerships also will provide enhanced equal credit opportunity training to officers and employees who set rates for automobile loans.

Voting

DOJ's Civil Rights Division enforces various federal laws designed to safeguard the right to vote of citizens, including racial and language minorities. To carry out its mission, the Section brings lawsuits against states, counties, cities, and other jurisdictions to remedy denials and abridgements of the right to vote, and also defends lawsuits that the Voting Rights Act authorizes to be brought against the Attorney General.

Today, the Division is engaged in the most ambitious program in its history to protect the voting rights of language minority citizens. Section 203 of the Voting Rights Act requires certain jurisdictions – based on the presence of large numbers of voting age citizens with limited English proficiency – to provide bilingual voting materials and assistance to American Indians, Asian Americans, Alaskan Natives, and persons of Spanish heritage.

The Division also enforces Section 208 of the Voting Rights Act, which protects the right of voters who need assistance in casting their ballots, such as disabled or illiterate voters, to receive that assistance from a person of their own choice, other than their employer or union official. In addition, the Division enforces the provisions of Section 2 of the Voting Rights Act, which provides that the right to vote may not be denied or abridged on account of race or color, or because of membership in a language minority group. In 2005, the Division challenged the at-large election system in Osceola County, Florida; sued to protect Chinese and Vietnamese voters in Boston from racially discriminatory treatment at the polls (which included taking the ballots from voters and marking them regardless of the voters' wishes); and, early in 2006, filed a successful challenge to discriminatory challenges to the eligibility of Latino voters in Long County, Georgia.

Enforcement of Criminal Statutes – Hate Crimes

Hate crimes are often prosecuted at the state level, but the prosecution of hate crimes is also a high priority for the Department of Justice. Since 2000, approximately 256 defendants have been charged by federal authorities in connection with crimes such as cross-burnings, arson, vandalism, shootings, and assault for interfering with various federally-protected rights (e.g., housing, employment, education, and public accommodation) of African American, Hispanic, Asian, Native American, Arab, Muslim, and Jewish victims. Since 1993, virtually all defendants charged in these cases have been convicted. Courts have punished defendants convicted of these crimes with terms ranging from several months' home confinement to life imprisonment, depending on the severity of the crime.

In February 2007, DOJ announced a partnership among the NAACP, Southern Poverty Law Center, the Urban League, and the Federal Bureau of Investigation (FBI) in its “Cold Case Initiative” to identify other unresolved civil rights era murders for possible prosecution to the extent permitted by the available evidence and the limits of Federal law. The FBI already has identified approximately 100 such cases that merit additional review to determine whether federal criminal charges can be brought. Just this past year, one of those prosecutions, *United States v. Seale*, resulted in three life sentences for a former member of the Ku Klux Klan who was involved in the brutal 1964 murder of two young African American men in Mississippi.

Recently, DOJ began a racial threats initiative to aggressively investigate dozens of noose displays and other recent racially motivated threats around the country that have occurred following incidents in Jena, Louisiana. Where the facts and law warrant, these investigations will result in prosecution.

Following the attacks on September 11, 2001, DOJ began its 9/11 Backlash Initiative under which the Department investigates and prosecutes backlash crimes involving violence and threats aimed at individuals perceived to be Arab, Muslim, Sikh, or South Asian. The Department has investigated more than 800 bias-motivated incidents directed toward individuals perceived to be Arab, Muslim, Sikh, or South Asian since September 11, 2001, has brought Federal charges against 38 defendants and has obtained 35 convictions. With the help of the Justice Department (and its constituent agencies such as the FBI), in many cases, state and local authorities have brought more than 150 bias crime prosecutions since 9/11.

Efforts to Facilitate Coordination of Enforcement of Federal Anti-discrimination Provisions

The Civil Rights Division's Coordination and Review Section's (COR) mandate concerning race, color, and national origin discrimination stems primarily from Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Under Executive Order 12250, COR's very mission is to ensure a coordinated and consistent approach to the enforcement of Title VI anti-discrimination provisions. Though 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, on many occasions, staffing investigative efforts. To this end, COR's staff is engaged in a wide variety of activities. Some of COR's activities include the development of, or review and approval of, regulations, policies, and enforcement standards and procedures. The Section also reviews plans and data submitted by all federal funding agencies describing their civil rights enforcement priorities, activities, and achievements. The Section provides ongoing technical assistance to federal agencies and state actors and, upon request, assists federal agencies in investigations of particular complaints raising novel or complex issues. The Section also coordinates the investigation of complaints filed with multiple agencies.

COR also plays a central role in coordinating compliance with Executive Order 13166, which relates to providing access to services for persons with limited English

proficiency (LEP). A DOJ LEP guidance document serves as the template for agency-specific LEP recipient guidance that each federal agency is tasked with drafting. DOJ, through COR, then reviews and determines whether to approve each agency's draft guidance. Similarly, DOJ, through COR, serves as the "central repository" for the LEP plans of all federal agencies, as envisioned by Executive Order 13166.

COR's purpose is to ensure consistent, effective implementation of Title VI, including LEP, anti-discrimination provisions across the federal government and among federal government recipients organizations. Though many different agencies share Title VI anti-discrimination responsibilities, COR is the single entity that monitors major developments in Title VI anti-discrimination law and policy, and, in many instances, provides feedback, guidance, and personnel resources to Title VI enforcement efforts.

Coordination with State Agencies

Coordination between federal and state officials regarding elimination of racially and religiously motivated violence is achieved through training and through cooperation in the investigation and prosecution of crimes.

Through the Federal Bureau of Investigation's quarterly National Academy courses for selected state officials, DOJ's Civil Rights Division, Criminal Section, regularly trains state law enforcement officers about the facts required to prove violations of federal hate crime statutes. Violence motivated by racial or religious animus may violate both state and federal law. Often, state officials are the first police organizations to investigate, interview, and gather evidence of crimes that might violate federal statutes. In addition to teaching officers about relevant laws, the Section discusses opportunities for joint federal-state investigation and information sharing.

The Criminal Section coordinates its actual prosecution efforts with its state and local law enforcement partners. Where criminal conduct arguably violates state and federal law, federal prosecutors will consult with state officials to determine the most appropriate venue for prosecution. There are many circumstances that might warrant federal prosecutions to proceed before a state's efforts. Issues such as resource allocation, jurisdiction, and potential penalties contribute to the determination of whether the federal or state prosecution should proceed first. The Criminal Section and United States Attorneys offices work closely with their state law enforcement partners to assess the best way to address this kind of violence.

DOJ's Civil Rights Division, Special Litigation Section, enforces the police misconduct provision of the Violent Crime Control and Law Enforcement Act of 1994, mentioned earlier in the response to this question, which authorizes the Attorney General to seek equitable and declaratory relief to redress a pattern or practice of conduct by law enforcement agencies that violates federal law. The Section also is responsible for enforcing the Omnibus Crime Control and Safe Streets Act of 1968, which authorizes the Attorney General to initiate civil litigation to remedy a pattern or practice of discrimination based on race, color, national origin, gender, or religion involving services by law enforcement agencies receiving federal

financial assistance. A significant aspect of the Section's work in enforcing these laws involves providing state and local jurisdictions with technical assistance and working cooperatively with such jurisdictions to voluntarily address concerns regarding discrimination.

DOJ's Civil Rights Division, Housing and Civil Enforcement Section, also works in conjunction with state agencies. The Section obtained consent orders in two cases in September 2007, resulting from a joint investigation with the Pennsylvania Attorney General's office. In *United States v. Springfield Ford* (E.D. Pa.) and *United States v. Pacifico Ford* (E.D. Pa.), the United States alleged that two car dealerships engaged in a pattern or practice of discriminating against African American customers by charging them higher dealer markups on car loan interest rates than similarly situated white customers, in violation of Equal Credit Opportunity Act (ECOA). Under the consent orders, Pacifico Ford will pay up to \$363,166, and Springfield Ford will pay up to \$94,565, plus interest, to African American customers who were charged higher interest rates. The Pennsylvania Attorney General's office negotiated separate settlements with the car dealerships.

The Civil Rights Division also works cooperatively with the National Association of Attorneys General (NAAG). Together with the Department of Housing and Urban Development, the Civil Rights Division trains state housing finance agencies on the provisions of the Fair Housing Act, including the Act's multi-family housing accessibility standards.

The jurisdiction of DOJ's Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), extends to statutes prohibiting discrimination on the basis of national origin and citizenship status. As a general matter, the Division has memoranda of understanding with many state and local Fair Employment Practice agencies to coordinate enforcement of the laws against national origin and citizenship status discrimination. In addition, the Division has awarded grants to various state and local governments to facilitate enforcement, outreach, and education regarding such discrimination. The Division also works on a cooperative basis with state and local governments to educate them on various immigration-related discrimination issues (e.g., work authorization issues affecting the issuance of drivers' licenses). Moreover, as the trend of state legislation on immigration/worksite issues continues, the Division hopes to reach out to state Attorneys General and state legislatures (through their respective national organizations).

Department of Education:

The Department of Education's Office for Civil Rights (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, OCR enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color and national origin.

As explained in the periodic report, OCR's primary objectives are to promptly investigate complainants' allegations of discrimination, and to accurately determine whether the civil rights laws and regulations have been violated. OCR also initiates

"compliance reviews" and other proactive initiatives to focus on specific civil rights compliance problems in education that are particularly acute or national in scope. In addition, OCR pursues compliance by federal fund recipients with the civil rights laws by promulgating regulations implementing those laws, developing clear policy guidance interpreting those laws, and broadly disseminating this information in many different media, including through the Internet and by direct provision of technical assistance, to educational institutions, parents, students, and others.

OCR is composed of a headquarters office, located in Washington, D.C., and 12 enforcement offices representing 12 regions located in the United States and its jurisdictions. The majority of OCR's staff is assigned to the 12 regional enforcement offices. During FY 2007, OCR operated with a total full-time equivalent staff usage of approximately 630 employees. Its budget in FY 2006 was \$90,611,000.

OCR provides direct and extensive technical assistance to 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. OCR's technical assistance presentations provide information and other support services through a variety of methods including on-site consultations, conferences, training, community meetings, responding directly to telephone and other requests, and publishing and disseminating materials – including extensive materials publicly posted on the Internet – to interested parties (which include state education agencies, national education agencies, colleges, school districts, school administrators, teachers, students, parents, and community groups). OCR also participates in national and regional education and civil rights conferences.

In FY 2006, OCR provided approximately 170 technical assistance presentations at over 130 events. Audiences for OCR presentations have included school administrators, educators, parents, students, guidance counselors, psychologists, therapists, school attorneys, school district or university civil rights coordinators, and teachers, including "English as a Second Language" teachers.

In addition, pursuant to 34 C.F.R. § 100.4(b), OCR operates the Vocational Education Methods of Administration program (MOA program). The MOA program both 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. Under the MOA program, civil rights professionals from 70 State agencies conduct a total of over 200 comprehensive civil rights compliance reviews each year. While these are reviews of vocational education (career and technical education) programs and schools, they also involve many issues arising in secondary school districts and community colleges (e.g., issues such as racial and sexual harassment, and physical accessibility to students with disabilities). About 75 percent of these state-investigated MOA civil rights reviews result in corrective actions. OCR conducts annual training conferences for State MOA civil rights staff that provide in-depth training in specific civil rights issues, along with investigative techniques, issue targeting, remedies, monitoring, and the MOA process. State agencies submit biennial reports to OCR for review and technical assistance on the results of their civil rights investigations, as well as their operational plans for which sub-recipients will be "targeted" for upcoming investigations.

Although OCR does not maintain budget data specifically disaggregated for “assistance to the states,” as noted above, the majority of OCR staff nationally are, in part, involved in providing direct technical assistance to States, school districts, other educational entities, parents, and students – in addition to carrying out other anti-discrimination activities such as complaint investigations and civil rights policy development.

The Department of Health and Human Services:

The Office for Civil Rights (OCR) within the Department of Health and Human Services (HHS) 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 HHS. In particular, OCR enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color and national origin.

OCR investigates complaints of alleged discrimination and determines whether civil rights laws and regulations have been violated. If there has been a civil rights violation, OCR works to correct the violation. Frequently, the corrective action that OCR obtains extends beyond the individual complainant and effectuates system-wide reform. For example, OCR investigated a complaint that a South Carolina adoption agency discriminated against an adoptive parent because of the parent’s race. OCR found discriminatory practices in violation of Title VI of the Civil Rights Act and negotiated a compliance agreement with the South Carolina Department of Social Services, ensuring that the 53 state offices serving over 5,000 children in foster care will not deny or delay placement of children into foster or adoptive homes, or deny parents the opportunity to foster or adopt children, because of race, color, or national origin.

OCR actively promotes compliance with civil rights laws by promulgating regulations implementing those laws, developing clear policy guidance interpreting those laws, and broadly disseminating this information in many different media, including through the Internet and by direct provision of technical assistance, to health care providers and human services agencies. OCR works with its sister civil rights agencies throughout Federal government and frequently collaborates with other agencies to sponsor conferences and develop technical assistance material to raise awareness and understanding of civil rights requirements.

OCR is composed of a headquarters office, located in Washington, D.C., and 12 enforcement offices located throughout the United States. The majority of OCR’s staff is assigned to its 12 regional enforcement offices. During FY 2007, OCR operated with a total full-time equivalent staff usage of approximately 240 employees with a budget of \$35 million.

The Department of Homeland Security (DHS):

In addition to traditional internal equal employment opportunity mechanisms against discrimination, the U.S. Department of Homeland Security has a unique statutory responsibility 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, the Officer for Civil Rights and Civil Liberties is required to investigate these complaints and to oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to civil rights and civil liberties of individuals affected by the programs and activities of the Department. The Office handled over 450 complaints alleging civil rights and civil liberties or profiling violations by employees and officials of the Department over the last five years. The work of the office has led to affirmative changes to institutional policies and programs that serve the goals of strengthening DHS programs and engendering public confidence in the fairness of internal reviews. In addition, DHS components ensure compliance with anti-discrimination laws, with oversight from the Office of the Inspector General and the Office of the General Counsel. DHS allocates more than \$130 million towards offices that not only ensure compliance with anti-discrimination laws, but also take proactive steps to prevent such discrimination.

On the state level, the Secretary of Homeland Security is authorized by statute to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions under the supervision of sworn U.S. Immigration and Customs Enforcement (ICE) officers in accordance with a Memorandum of Agreement. *See* Immigration and Nationality Act § 287(g); 8 U.S.C. § 1357(g). State and local law enforcement officers participating in the program must receive appropriate training on topics such as respecting civil rights and avoiding racial profiling, to help ensure fair treatment of migrants.

The Department of Housing and Urban Development (HUD):

The mission of HUD's Office of Fair Housing and Equal Opportunity (FHEO) is to promote equal housing opportunities for all people in America. To help reach that goal, the office enforces federal laws that prohibit discrimination in housing on the basis of race, color, religion, sex, national origin, age, disability, or familial status. In addition to enforcing the nation's fair housing laws, FHEO 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. Two programs administered and managed by FHEO are particularly noteworthy, including for the manner in which they enable HUD to coordinate with state and local government agencies to carry out fair housing. The Fair Housing Assistance Program (FHAP) provides reimbursement to state and local government agencies that investigate housing discrimination complaints filed under laws that HUD has certified as substantially equivalent to the federal Fair Housing Act. Also, the Fair Housing Initiatives Program (FHIP) awards grants to private, nonprofit groups, and state and local government agencies to carry out fair housing enforcement, education, and outreach activities.

In FY 2006, FHEO had a total of 598 full time equivalent staff members. Four-fifths of HUD's fair housing staff were located in regional and field offices throughout the country, while the remaining staff were located in HUD's Washington, D.C. headquarters. In FY 2006, HUD's fair housing budget totaled \$110,531,951 with the U.S. Congress providing more than \$64 million for FHEO salaries and expenses. In addition, the budget included more than \$25 million for the Fair Housing Assistance Program and over \$19 million for the Fair Housing Initiatives Program, both of which are described above.

The Department of Labor:

Thousands of Department of Labor (DOL) financial assistance recipients operate workforce programs and activities authorized under the Wagner Peyser Act, Older Americans Act, Workforce Investment Act (WIA), and other laws. These programs provide a wide array of services to employers, jobseekers, and workers. DOL's Civil Rights Center (CRC), with a full-time staff of 35 employees and a budget of \$6.4 million, administers the non-discrimination laws that apply to all of these programs and activities.

CRC's enforcement strategy begins with compliance assistance and promotes voluntary compliance for securing adherence with Federal equal opportunity and non-discrimination statutes and regulations.

Methods of Administration (MOA)

As a condition of receipt of federal financial assistance under WIA, every state governor is required to establish and adhere to a document referred to as a Methods of Administration (MOA). The MOA must outline the procedures, policies, and systems that the state has put in place to ensure non-discrimination and equal opportunity, and to provide a reasonable guarantee of compliance with related legal requirements under WIA Title I. CRC reviews each MOA to ensure both that the document contains the required information, and that the policies, programs, and systems described therein comply with the regulatory requirements and are likely to provide the required reasonable guarantee of compliance by recipients within the state. Where CRC finds noncompliance in the MOA, and is unable to obtain voluntary compliance by the state's governor, the state is subject to loss of federal financial assistance.

Compliance Reviews

As part of its responsibility for ensuring compliance with the requirements of WIA and its implementing regulations, CRC conducts compliance reviews of covered state and local entities and service providers in the nation's One-Stop Career Center job training system, as well as of training centers in the Job Corps youth residential job training system overseen by DOL itself. These reviews are focused on identifying areas of noncompliance that impose barriers to full participation by members of protected groups. Where a review identifies an area needing improvement, CRC provides technical assistance to the affected recipients; where a review identifies exemplary practices and procedures, CRC shares those practices and procedures with covered entities across the country.

DOL's Office of Federal Contract Compliance Programs

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. To that end, OFCCP vigorously enforces Executive Order 11246, as amended, which not only prohibits federal government contractors and subcontractors

from discriminating against applicants and employees based on race, color, religion, sex, or national origin, but also requires that they take affirmative steps to identify and eliminate impediments to equal employment opportunity. (OFCCP also enforces statutes that prohibit discrimination against individuals with disabilities and against certain protected veterans.) In meeting its enforcement obligations, OFCCP is committed to developing and implementing the most effective enforcement tools to identify and remedy employment discrimination.

During the last five years, OFCCP has increased its focus on finding and remedying systemic discrimination. This approach has allowed OFCCP to (1) prioritize agency resources to address the worst offenders – those who allow discrimination to be their “standard operating procedure,” (2) achieve maximum leverage of OFCCP resources to protect the greatest number of workers from discrimination; and (3) encourage employers to engage in self-audits, by increasing the tangible consequences of not doing so.

OFCCP conducted 4,923 compliance evaluations in FY 2007 with 625 authorized personnel and a budget of \$82,442,000. Through all of its enforcement efforts, the OFCCP obtained approximately \$51.7 million in back pay and other monetary relief for 22,251 employees of federal contractors in FY 2007. The \$51.7 million recovered by OFCCP marks a 78 percent increase over the approximately \$29.0 million recovered in FY 2001.

OFCCP conducted 4,923 compliance evaluations in FY 2007, up from the 3,975 conducted in FY 2006. OFCCP’s costs associated with the above results rose by four percent over the past two years. Some of the increase can be attributed to the rising cost of personnel, which represents almost 80 percent of OFCCP’s budget. OFCCP’s budget for FY 2006 was \$81,285,000 compared to the FY 2007 budget of \$82,442,000. Further, the agency’s personnel authorizations for FY 2006 were 670 compared to 625 authorizations for FY 2007.

Equal Employment Opportunity Commission (EEOC):

As noted in paragraph 60 of the periodic report, the Equal Employment Opportunity Commission (EEOC) enforces federal civil rights laws with regard to discrimination in public and private sector workplaces, sharing enforcement responsibility with the Department of Justice in the non-federal public sector. Of specific relevance to the Committee, the EEOC enforces Title VII of the Civil Rights Act of 1964, as amended, which prohibits non-federal public and private sector employers with 15 or more employees from discriminating against applicants and employees based on race, color, and national origin (as well as religion and gender). Title VII also prohibits retaliation against those who bring or support allegations or complaints of workplace discrimination or who oppose discriminatory practices where they work.

Although the EEOC is headquartered in Washington, D.C., the majority of the Commission’s employees work in field offices located in over 50 U.S. cities (as well as in a Puerto Rico field office), where the Commission receives and investigates charges of discrimination against private and public employers. The Commission engages in mediation efforts during charge processing in an effort to resolve complaints quickly and further engages in a conciliation process with employers

when it determines that the employer may have violated Title VII or other federal civil rights law. The Commission also has litigation authority and usually files between 350-400 lawsuits annually to redress violations of Title VII and the other laws it enforces. Where the Commission finds reasonable cause to believe that Title VII or another law has been violated but chooses not to file its own lawsuit, it provides the complaining party with a letter authorizing that individual to file suit on his/her own behalf.

The Commission's annual budget is approximately \$330 million, of which approximately \$30 million is dedicated to support of state and local fair employment agencies. These agencies enforce state and local law analogues to Title VII, prohibiting workplace discrimination based on, among other bases, race, color, and national origin. The Commission has entered into worksharing arrangements with over 90 such state and local organizations.⁸ The arrangements ensure that charges brought before either the EEOC or a state or local agency under federal and nonfederal laws are fully investigated by one agency, so as to manage carefully the resources available to redress discrimination.

6. Please provide detailed information on the implementation of the measures adopted at the federal and state levels to combat racial profiling, including recent statistical data disaggregated by race, ethnic origin and nationality on persons subjected to stops, questioning, searches, arrests and other law enforcement investigative procedures. Has the End Racial Profiling Act, or similar federal legislation, been enacted? (CERD/C/USA/6, paras. 86, 111-113, and 156)

Answer:

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits any state from denying any person the equal protection of laws. The Due Process Clause of the Fifth Amendment, which has been interpreted to contain an equal protection guarantee, extends this principle to the federal government. Under equal protection principles, government action is subject to strict scrutiny when it makes classifications based on race, national origin, lineage or religion. For example, the Supreme Court has held that the decision whether to prosecute may not be based on "an unjustifiable standard such as race, religion, or other arbitrary classification," *U.S. v. Armstrong* 517 U.S. 456, 464 (1996). *See also Whren v. United States*, 517 U.S. 806, 813 (stating that "the Constitution prohibits selective enforcement of the law based on considerations such as race"); *Chavez v. Illinois State Police*, 251 F.3d 612, 635 (7th Cir. 2001) (stating that if "officers utilize impermissible racial classifications in determining whom to stop, detain, and search . . . it would amount to a violation of the Equal Protection Clause of the Fourteenth Amendment.").

President Bush has stated the policy of the United States government that racial profiling "is wrong and we will end it in America."⁹ Building upon the protections

⁸ Only Alabama, Arkansas, and Mississippi have no state or local fair employment practice agency participating in this worksharing arrangement.

⁹ President George W. Bush, *Address of the President to the Joint Session of Congress*, February 27, 2001.

provided by the U.S. Constitution, the current Administration was the first to issue racial profiling guidelines for federal law enforcement officers and remains committed to the elimination of unlawful racial profiling by law enforcement agencies. See Civil Rights Division, U.S. Dep't of Justice, *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* (2003), available at http://www.usdoj.gov/crt/split/documents/guidance_on_race.htm.

Racial profiling is the invidious use of race or ethnicity as a criterion in conducting stops, searches, and other law enforcement investigative procedures. Racial profiling is based on the erroneous assumption that a particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity. The United States government condemns such discrimination. Specifically, the U.S. Department of Justice enforces the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. Section 14141, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. Section 3789d and Title VI of the Civil Rights Act, 42 U.S.C. Section 2000d. These statutes authorize the Attorney General to bring civil actions to eliminate pattern or practice law enforcement misconduct, including allegations of racial discrimination.

The Department of Justice receives and investigates allegations of a pattern or practice of racial profiling by a law enforcement agency. If a pattern or practice of unconstitutional policing is detected, the Department will typically seek to work with the local agency to revise its policies, procedures, training, and protocols to ensure conformity with the Constitution and federal laws. The Department's enforcement efforts have included court orders and settlement agreements that prohibit racial profiling and require the collection of statistical data. For example, in *United States v. New Jersey*, No. 99-5970 (D. N.J. 1999), the governing consent decree requires New Jersey to take various measures to ensure that officers of the New Jersey State Police do not engage in racial profiling. Statistical data regarding stops conducted by New Jersey State Police are reported by the Independent Monitoring Team in semiannual reports publicly filed with the court. Copies of the reports, which include statistical data, are available at: <http://www.nj.gov/lps/decreehome.htm>. In *United States v. Los Angeles*, No. 00-11768 (C.D. Cal. 2001), the governing consent decree requires the Los Angeles Police Department to collect statistical data regarding traffic stops. Reports from the Independent Monitor and statistical data compiled by the LAPD can be found at: http://www.lapdonline.org/consent_decree. In addition, the Department recently concluded a Memorandum of Agreement with the City of Villa Rica, Georgia, which required the City's police department to take specific actions to ensure that police officers did not engage in racial profiling including requirements that the police department collect and analyze data regarding traffic stops.

The Department of Justice also produces national statistical information on contacts between the police and public, allowing some analysis for patterns of profiling. Every three years, the Department's Bureau of Justice Statistics (BJS) reports data on the nature and characteristics of contacts between residents of the U.S. and the police over a 12-month period. Using a nationally representative survey of more than 60,000 residents age 16 or older (for the 2005 survey), BJS is able to provide detailed information on face-to-face contacts with the police, including the reason for and outcome of the contact, resident opinion on police behavior during the contact, and whether police used or threatened to use force during the contact. In the 2002 and

2005 surveys, BJS reports that whites, blacks, and Hispanics experienced traffic stops at similar rates, with black and Hispanic drivers more likely to be searched if stopped than were white drivers. However, because the study did not take into account other factors that might explain these disparities, such racial disparities do not necessarily demonstrate that police treat people differently based on race or other demographic characteristics. The most recent report – released in April 2007 – is available at <http://www.ojp.usdoj.gov/bjs/abstract/cpp05.htm>.

Additionally, the United States combats racial profiling by restricting funds to law enforcement agencies that engage in the practice. The receipt of federal funds subjects law enforcement agencies to the anti-discrimination laws of Title VI, as well as any program-specific anti-discrimination provisions, such as the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d(c). These laws prohibit both individual instances and patterns or practices of discriminatory misconduct, *i.e.*, treating a person differently because of race, color, national origin, sex, or religion. The misconduct covered by such anti-discrimination laws prohibits, for example, harassment or use of racial slurs, unjustified arrests, discriminatory traffic stops, coercive sexual conduct, retaliation for filing a complaint with the Department or participating in an investigation, or refusal by the agency to respond to complaints alleging discriminatory treatment by its officers.

The Department of Justice coordinates the consistent and effective enforcement of Title VI, including receiving and pursuing complaints of racial profiling. Currently, the Department is actively investigating a variety of individual racial profiling allegations against recipients of federal funds, including state and local law enforcement agencies.

The Community Relations Service (CRS) of the Department of Justice also presents a program entitled, “Responding to Allegations of Racial Profiling.” Trained CRS conciliators provide racial profiling training to law enforcement officials around the country. The program’s objectives are teaching aspects of racial profiling, analyzing appropriate police action, discussing the history of racial profiling, recognizing competing perceptions of the community and the police, and addressing racial profiling concerns of police departments and communities throughout the country. CRS’s racial profiling program is offered free of charge to those communities or departments who have experienced tension or conflict associated with allegations of racial profiling.

Department of Homeland Security:

When the Department of Justice released its “Guidance Regarding the Use of Race By Law Enforcement Agencies” in June 2003, the Department of Homeland Security immediately adopted it and began implementing it. The Secretary of Homeland Security reiterated this commitment to race neutrality in June 2004, and again in July 2005 in the wake of the London bombings through memoranda to DHS employees. To ensure thorough implementation of the DOJ Guidance, the DHS Office for Civil Rights and Civil Liberties (CRCL) worked with the Federal Law Enforcement Training Center (FLETC) to strengthen the training provided to all initial entry trainee federal law enforcement officers. DHS also developed training materials for in-service personnel entitled, “Guidance Regarding the Use of Race for Law

Enforcement Officers.” Those training materials, which are provided for all employees in web-based and CD-ROM format, provide a tutorial on the DOJ Guidance and DHS policy, as well as practical tips drawn from real life situations on how law enforcement personnel can avoid engaging in racial profiling.

The DHS component offices and bureaus have adopted the DOJ Guidance as agency policy, as directed by the DHS leadership, and incorporated it into their mission and shared it with their personnel, to ensure effective implementation. For instance, the Transportation Security Agency (TSA) reinforces the Department’s commitment to race and ethnicity neutrality, stating in a clear and widely disseminated policy that the public will be treated in a lawful and non-discriminatory manner, without regard for race or ethnicity. The U.S. Coast Guard (USCG) also prohibits racial profiling in its role as a front line law enforcement and security agency. Similarly, U.S. Customs and Border Protection (CBP) prohibits racial profiling, conducting its wide-ranging enforcement duties in accordance with relevant constitutional and statutory authority, related case law, and Departmental policy. Furthermore, CBP has a stated policy of striving to treat all persons with respect and in a professional manner.

Additionally, U.S. Immigration and Customs Enforcement (ICE) emphasizes the agency’s zero tolerance standard for bias and prejudice during performance of official duties. All ICE basic officers and agents receive training on these policies through the Integrity Reinforcement Training provided by the ICE Office of Professional Responsibility (OPR). In addition, approximately 420 ICE employees to date have taken the training on “Guidance Regarding the Use of Race for Law Enforcement Officers,” referenced above. ICE officers also receive instruction from the ICE Academy at the Federal Law Enforcement Training Center. In the ICE Basic Deportation Officer’s course, trainees are shown “The First Three to Five Seconds” video, which provides guidance on how to avoid racial profiling during initial encounters with individuals given that most law enforcement decisions tend to be made in the first seconds of contact. One hour of class time is further dedicated to ensuring that new ICE officers understand the DOJ Guidelines on the Use of Race and advanced training courses provide refresher instruction to journeymen officers. The ICE OPR closely monitors and investigations any allegations of racial profiling made against ICE or CBP employees. In October 2005, ICE OPR launched a new case management system that gave racial profiling a distinct file name which enabled close monitoring of this type of allegation, but based on complaints received, racial profiling does not appear to be a significant problem within either agency.

TSA provides air transportation security screening for roughly 2 million air travelers daily and does not deny access to air travel except on security grounds. CBP admits roughly 1.1 million individuals into the United States per day, while denying admission to an average of 860 individuals each day. A determination of whether an alien is inadmissible is based on admissibility grounds set forth in the Immigration and Nationality Act, including grounds relating to immigration fraud, national security, and criminal activity.

State Efforts:

The End Racial Profiling Act has not been enacted. Nevertheless, individual states have enacted legislation to prohibit racial profiling and imposed data collection

requirements upon police officers. In 2006, Maryland extended a study of information on traffic stops to determine the extent and severity of racial profiling within that state. In 2005, Arkansas, Florida, Kansas, Montana, New Jersey and Tennessee adopted or strengthened racial profiling laws. Twenty-seven states (Arkansas, Arizona, Colorado, Connecticut, Florida, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington and West Virginia) now have laws that require law enforcement agencies to collect information, including the race and gender of each driver stopped by police, and what actions were taken. New Jersey makes racial profiling illegal and collects data on traffic stops by state troopers, but not other law enforcement agencies. In addition, governors in Kentucky, Wisconsin and Wyoming have issued executive orders that ban racial profiling, and police in other states collect traffic stop data voluntarily. See “Policy Brief: Racial Profiling” by Center for Policy Alternatives, www.cfpa.org/issues/issue.cfm/issue/RacialProfiling.xml, citing data from the Racial Profiling Data Collection Resource Center at Northeastern University; see also W. Va. Code § 17G-1-3 (West Virginia); Neb. Rev. St. §§ 2-502, 20-501 (Nebraska); Okl. St. Ann. § 34.3 (Oklahoma).

7. Please provide additional information on the use of “pattern and practice” investigations in addressing systematic discrimination cases, including patterns of racial discrimination. (CERD/C/USA/6, para. 62-63, 87, 111 and 173)

Answer:

This answer provides responsive information about employment discrimination enforcement programs conducted by both the Department of Justice and the EEOC.

Department of Justice:

Before filing lawsuits challenging employment discrimination under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.*, the Department of Justice investigates state and local government employers who are suspected of engaging in a pattern or practice of discrimination in violation of Title VII. Title VII prohibits discrimination on several bases, including race. The Department’s investigations can be initiated based on several grounds including review of available demographic and employment statistics, news stories, citizen reports, or other complaints. Pattern or practice investigations are labor and resource intensive investigations, often requiring the use of non-attorney experts and taking many months, if not years, to complete. During 2007, the Department of Justice initiated fourteen new pattern or practice investigations, some of which are ongoing. Also during 2007, the Department filed three pattern or practice lawsuits based on previous investigations and resolved one previously filed lawsuit through a consent decree. (The following were also mentioned in response to Question 5 above.)

- One such pattern or practice investigation resulted in the filing of *United States v. City of New York* (Fire Department), in which the United States alleges that the City of New York engaged in a pattern or practice of

discrimination against African American and Hispanic applicants for firefighter positions by using a written examination that had a disparate impact based on race and national origin but could not be demonstrated to be job related or consistent with business necessity.

- In June of 2007, the Department of Justice resolved a pattern or practice lawsuit filed against the City of Chesapeake, Virginia. The lawsuit challenged Chesapeake's use of the mathematics component of a written examination called the "POST" to screen applicants for entry-level police officer positions. The Department of Justice alleged that, while not intentionally discriminatory, the City's use of this test had an unlawful disparate impact based on race and national origin and could not be demonstrated to be job related or consistent with business necessity. The settlement of this case, which was memorialized in a court-approved consent decree, included \$65,000 in monetary relief for victims of the discriminatory practice, as well as eight priority job offers for African American and Hispanic individuals who were victims of discrimination and who are otherwise qualified to be police officers. As part of the settlement of the case, the City also agreed to use the POST test in a manner that eliminated the unlawful disparate impact.

With regard to racial profiling, as described in the response above to Question 6, the Department's pattern or practice investigations have been effective in addressing systemic discrimination cases. Specifically, in enforcing the noted statutes, the Department receives and investigates allegations of a pattern or practice of racial profiling by a law enforcement agency. The Department utilizes subject matter consultants to assist in conducting an investigation. The consultants travel with Department personnel on site to the police department under investigation to evaluate police policies, procedures, and practices, to interview and observe officers and chain of command supervisors, and to interview potential victims of racial profiling. The Department uses the investigatory information to develop remedial measures tailored to the problems identified and to the particularities of the law enforcement agency. If a pattern or practice of unconstitutional policing is detected, the Department enters into a settlement agreement with the police department. The Department will typically work with the local agency to revise its policies, procedures, training, and protocol to ensure conformity with the Constitution and the negotiated agreement.

One hallmark of the Department's police investigations is that it supplies all of the departments it has investigated with recommendations or "technical assistance" for incorporating best practices into their training, policies, and procedures. In this way, the Division fully enforces the law, respects the sovereignty of local government, and serves the public interest in law enforcement that fights crime while protecting civil rights.

Equal Employment Opportunity Commission:

In April 2006, the Equal Employment Opportunity Commission launched its Systemic Initiative, a program that focuses on strengthening the Commission's nationwide approach to investigating and litigating systemic cases. Systemic cases are those that involve a pattern or practice, policy and/or class cases where the alleged discrimination has a broad impact on an industry, profession, company, or geographic

location. The Commission adopted this initiative in order to focus its limited resources more effectively on proactively identifying, investigating, and litigating pattern or practice cases. The Systemic Initiative emphasizes the use of enhanced technology, increased expert resources, and nationwide coordination. As the chart below indicates, the Initiative has resulted in an increase in the number of charges that Commissioners themselves have initiated as well as the number of suits that the Commission has filed seeking relief for large numbers of victims.

	FY 2006	FY 2007
Commissioner charges signed	11	24
Suit filings with 20+ victims	11	14
Suit resolutions with 20+ victims	7	20
Suit resolutions with 100+ victims	0	4

Two examples of the type of suits the Commission has filed under the Systemic Initiative follow. In the first, the Commission filed a lawsuit against a national pharmacy store chain on behalf of African American retail management and pharmacy employees alleging race discrimination in promotion and assignment. After mediation, the parties agreed to a total of \$20 million (plus attorneys' fees) in payments to an estimated 10,000 class members. The decree establishes benchmarks, provides for independent oversight of implementation and compliance, and mandates the hiring of outside experts to improve the employer's employment practices. In the second, the EEOC filed suit against a global engine systems company on behalf of African Americans, Hispanics, Asians, and women with respect to pay, promotions and training. Under a settlement agreement, \$5 million in funds (plus attorneys' fees) are being shared by 352 class members, which include both minority and female employees, plus injunctive relief and independent oversight of implementation and compliance.

8. Please provide additional information on the way in which civil rights law statutes adopted at the federal and state levels have been used to prevent private actors from engaging in acts of racial discrimination. (CERD/C/USA/6, paras. 77-80)

Answer:

In its periodic report, the United States provided multiple examples of federal civil rights laws that extend to actions by private actors. *See* paragraph 78 (42 U.S.C. 1981, 1982; Titles II, VI and VII of the 1964 Civil Rights Act; Executive Order 11246; and the Fair Housing Act). 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 upon the workers' immigration status, how they look or speak, or where they are from.

The report also contains numerous examples of enforcement of civil rights laws by states against private persons and entities. These include a discussion of Kentucky's enforcement against discrimination by proprietary schools and private clubs under Kentucky state law (paragraph 79); Kentucky law providing for civil damages for cross burning (paragraph 76); enforcement by Arizona against housing discrimination and redlining by private entities (paragraph 76); enforcement of Maryland State law against private persons engaged in employment and housing discrimination and racial harassment (paragraph 76); and numerous examples of enforcement of state laws against private persons and entities in the areas of housing, employment, and access to public facilities, set forth in Annex 1 (Illinois, New Mexico, Oregon, and South Carolina).

9. Please comment on the consistency of recent Supreme Court decisions, such as *Parents Involved in Community Schools v. Seattle School District No. 1* and *Meredith v. Jefferson County Board of Education*, with the obligation undertaken by the State party under article 2, paragraph 2 of the Convention to adopt special measures, when the circumstances so warrant, to secure the adequate development and protection of certain racial, ethnic or national groups. (CERD/C/USA/6, paras. 126-134 and 334)

Answer:

As noted in paragraph 127 of the periodic report, the United States acknowledges that article 2(2) requires States parties to take special measures "when circumstances so warrant." The decisions concerning when such measures are in fact warranted and what types of measures should be taken are left to the judgment and discretion of each State Party, and it is the United States position that, consistent with the Convention, special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection may or may not in themselves be race-based.

In *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S.Ct. 2738 (2007), consolidated with *Meredith v. Jefferson County Board of Education*, No. 05-915, the Supreme Court addressed the use of racial classifications in the assignment of students to public schools. The Supreme Court affirmed the well-established rule that the government distribution of benefits or burdens on the basis of race is constitutionally suspect. The Court further held that the school districts in question had not demonstrated that their race-conscious assignment plans were narrowly tailored to achieve a compelling government interest. *Id.* at 2759-61.

The *Seattle* decision is fully consistent with United States obligations under Article 2 of the Convention. Most significantly, as noted above, Article 2 does not require that the "special and concrete measures to ensure the adequate development and protection of certain racial groups" be explicitly race-based. Unlike the assignment plans in *Seattle*, race-neutral measures – for instance, those based on economic status

– do not trigger strict scrutiny, and are instead subject to the rational-basis standard applicable to general social and economic legislation. *See generally City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985). Moreover, although the Court in *Seattle* struck down the race-based student assignment plans in question, it left open the possibility that race-based classifications could be used where necessary to “remedy[] the effects of past intentional discrimination.” *See* 127 S.Ct. at 2752-53. In addition, please see our response to Question 11 below for other measures available to states to advance integration and equality of educational opportunities.

Article 3

10. According to information received, persons belonging to racial, ethnic and national minorities, especially Latino and African American persons, are disproportionately concentrated in poor residential areas characterised by sub-standard housing conditions, limited employment opportunities, inadequate access to health care facilities, under-resourced schools and high exposure to crime and violence. Please provide detailed information on the measures adopted by the State party to reduce residential segregation based on racial and national origin, as well as its negative consequences for the persons concerned.

Answer:

The United States shares the Committee’s concern about the concentration of racial, ethnic, and national minorities in poor residential neighborhoods, whether or not such concentrations are the result of racial discrimination under the Convention. As we described in the periodic report, both the Department of Justice’s Civil Rights Division and the Department of Housing and Urban Development’s (HUD) Office of Fair Housing and Equal Opportunity enforce numerous laws and Executive orders that combat housing discrimination, including based on racial and national origin. The legal framework and numerous examples of enforcement actions were addressed in detail in the periodic report and also in response to Question 5 above. *See* paragraphs 47, 59, 64-70, 72, 76, 78, 89, 121, 147, 243, 246, 247, 249-254, 298, and 332. In response to the Committee’s question, the United States again highlights the following laws and Executive Orders enforced by both DOJ and HUD that relate to combating discrimination in housing on the basis of either race or national origin:

- Title VI of the Civil Rights Act of 1964 (Title VI), as amended, which prohibits discrimination based on race, color, or national origin in programs and activities receiving federal financial assistance.
- Title VIII of the Civil Rights Act of 1968, as amended, widely known as the Fair Housing Act, which prohibits discrimination in the sale, rental, and financing of dwellings and in other housing-related transactions on the basis of race, color, national origin, religion, sex, familial status, or disability.
- Section 109 of the Housing and Community Development Act of 1974 (Section 109), as amended, which prohibits discrimination on the basis of race, color, national origin, sex, or religion in programs and activities receiving financial assistance from HUD programs, including the Community Development Block

Grant Program, Urban Development Action Grants,¹⁰ Economic Development Initiative Grants, Special Purpose Grants, and the Section 108 Loan Guarantee Program.

- Section 3 of the Housing and Urban Development Act of 1968 (Section 3), which requires that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons.
- Executive Order 11063, which prohibits discrimination in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.
- Executive Order 12898, which requires that each federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that does not exclude persons based on race, color, or national origin.
- Executive Order 13166, which eliminates, to the extent possible, limited English proficiency as a barrier to full and meaningful participation by beneficiaries in all federally assisted and federally conducted programs and activities.

HUD's Fair Housing Office includes an enforcement arm that receives complaints and investigates cases. As discussed above in response to Question 5, the Department of Housing and Urban Development shares responsibility with the Department of Justice in enforcing the Fair Housing Act, which prohibits discrimination in the sale, rental, financing, and insuring of housing. In FY 2007, HUD and state and local government agencies that it has certified as enforcing laws that are substantially equivalent to the federal Fair Housing Act received 10,154 complaints. The following are examples of recent Fair Housing Act cases that were investigated by HUD.

- On January 4, 2008, the court entered a consent decree in *United States v. Luke*, a Fair Housing Act case of discrimination on the basis of national origin. HUD investigated this case and charged the owners of an apartment complex with discrimination on the basis of national origin. HUD charged that the owners terminated the leases of Hispanic tenants to replace them with Vietnamese tenants, misrepresented the availability of units to non-Vietnamese prospective tenants, and made statements in connection with the rental of apartment units that expressed a preference, limitation, or discrimination based on national origin. HUD referred this case to the Department of Justice (DOJ), which added a pattern or practice claim and filed and litigated the case. The consent decree obtained by DOJ calls for training, a non-discrimination policy, record keeping and monitoring. Additionally, the respondents will pay \$174,000 in damages to private plaintiffs; \$59,344 to counsel for private plaintiffs in the form of attorney's

¹⁰ Urban Development Action Grants have not been funded since FY 1988.

costs, fees and litigation expenses; \$30,000 in civil penalties to the United States; and \$7,500 in damages to an aggrieved individual.

- On December 21, 2007, a HUD Administrative Law Judge (ALJ) issued a decision in *HUD v. Godlewski*, a Fair Housing Act case of discrimination on the basis of familial status. This complaint was filed by the mother of a 10 year-old son that alleged that the owner of a three-family dwelling posted a “for rent” sign that stated “no kids.” HUD investigated the complaint and found that even though the owner was exempt from the Fair Housing Act’s provisions against discrimination because the building contains no more than four units and the owner resides at the property, the owner violated the Act by posting a discriminatory advertisement. The Fair Housing Act explicitly bans those exempt from the other provisions of the Act from making discriminatory statements, notices, and advertisements. The ALJ ordered the owner to pay \$20,000 to the complainant for emotional stress. The ALJ also ordered the owner to pay \$23,394.16 in damages and \$56,742 in attorney fees to the Chicago Lawyers’ Committee for Civil Rights Under Law, who had assisted the complainant. Additionally, the ALJ ordered the owner to pay an \$11,000 civil penalty and prohibited him from disposing of the subject property or any other real property until he has satisfied the judgment.
- HUD settled a case against Cincinnati-based Fifth Third Bank for alleged lending discrimination. FHEO pursued the case against Cincinnati-based Fifth Third Bank on behalf of an African American woman, who alleged that she was denied a loan to purchase a house in Newport, KY, solely because of her race. In settling the complaint, Fifth Third Bank paid the complainant \$125,000.
- In May 2007, HUD conciliated a complaint filed by the National Community Reinvestment Coalition (NCRC) against First Indiana Bank. NCRC alleged that policies in First Indiana Bank’s General Loan Requirements discriminated against African Americans. These policies included: (a) minimum property value restrictions; (b) minimum loan amounts; and (c) refusal to make loans on row houses. As part of the conciliation, First Indiana Bank agreed to pay NCRC \$100,000 and to discontinue its minimum property value and no-row home policies.
- HUD negotiated a similar settlement with SouthStar Funding LLC of Atlanta, a large, national lender, for allegedly refusing to make loans on any row house valued at less than \$100,000 and on all row houses in Baltimore.

Since HUD studies show that housing discrimination tends to be underreported, HUD increasingly uses its authority to investigate discrimination. Under the Fair Housing Act, the Secretary of HUD has the authority to initiate investigations of housing providers, lenders, and others in the housing industry that it suspects are engaging in unlawful discrimination, even if no one has filed a complaint. For example, if HUD suspects that a rental company is refusing to rent to families with children, it may conduct an investigation of that company and, if warranted, file a complaint against the company.

Two examples of HUD initiated investigations under the Fair Housing Act in FY 2006 follow. One of the investigations involved allegations that the City of Manassas, Virginia, has implemented and enforced land use ordinances that discriminate on the basis of national origin and familial status. HUD referred the case to DOJ for appropriate action, and DOJ has an ongoing investigation. Another investigation examined whether race played a role in the decision of Iberville Parish, Louisiana, to pass a resolution disallowing the Federal Emergency Management Agency (FEMA) from establishing trailer parks in specific sites within the Parish. In December 2006, HUD and Iberville Parish agreed to resolve the matter by entering into a conciliation agreement. As part of the agreement, Iberville Parish admits no wrongdoing, but agrees to allow mobile home park owners of commercial sites to place FEMA mobile homes or trailers on these commercial properties. The Parish also agreed to sponsor public service announcements on fair housing provided by the Department for television and radio broadcasts and publications in print media.

In addition to its enforcement measures to combat discrimination in housing, HUD takes seriously its affirmative obligation under Section 808 (e) 5 of the Fair Housing Act to administer its programs and activities in a manner to affirmatively promote fair housing. Towards this end, HUD pursues the following objectives in its programs:

- Analyze and eliminate housing discrimination in the jurisdiction
- Promote fair housing choice for all persons
- Provide opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familial status, disability, and national origin
- Promote housing that is structurally accessible to, and usable by, all persons, particularly persons with disabilities
- Foster compliance with the non-discrimination provisions of the Fair Housing Act.

In addition, HUD Federal Housing Administration (FHA) program-funded recipients must conduct affirmative fair housing marketing to ensure that the persons who are least likely to apply for the housing are informed on the availability of the housing. HUD regulations require the housing providers to carry out an affirmative program to attract buyers or renters, regardless of race, color, national origin, sex, religion, familial status or disability. Such programs involve publicizing to minority persons the availability of housing opportunities regardless of race, color, national origin, religion, sex, disability or familial status. This outreach may be conducted through minority publications or other minority media (radios, TV, etc.).

Additionally, across HUD's programs, HUD invests significant resources to overcoming obstacles to equal opportunity in housing through its education and outreach programs. The objective of such outreach programs is to increase the likelihood that individuals will report housing discrimination and to prevent housing discrimination by informing housing providers of the requirements of fair housing and civil rights laws. These outreach measures are described in great detail in response to Question 32 below.

11. Please provide information on the measures adopted by the State party to address the alleged phenomenon of racial re-segregation of public schools, especially in

the southern and western states. Please also indicate which specific measures school districts can use to advance integration and equal educational opportunities in racially segregated and/or re-segregated schools and school districts in the light of recent Supreme Court decisions, such as *Parents Involved in Community Schools v. Seattle School District No. 1* and *Meredith v. Jefferson County Board of Education*. (CERD/C/USA/6, para. 267)

Answer:

Even before the Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738 (2007), consolidated with *Meredith v. Jefferson County Board of Education*, No. 05-915, (*Parents Involved*), the Department of Education had encouraged a number of race-neutral methods that school districts may voluntarily employ in order to further integration in situations where the district is under no legal obligation to desegregate. Methods available to school districts in order to advance integration and equal educational opportunities in racially segregated and/or re-segregated schools and school districts depend upon the type of segregation involved in the school system. Where the segregation is the result of intentional discrimination, then the school district may use race in a manner that is narrowly tailored to remedy the illegal discrimination. *Freeman v. Pitts*, 503 U.S. 467, 485 (1992). Where segregation is a result of demographic patterns rather than state action, school systems are under no legal obligation to remedy segregation. *Id.* at 495.

Since the 1995 Supreme Court decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), which held that use of racial classifications in federal programs must serve a compelling interest and be narrowly tailored to serve that interest, the Department of Education's Office of Civil Rights (OCR) has encouraged race-neutral methods to achieve the goal of further integration. As noted in paragraph 298 of the United States periodic report, OCR published *Achieving Diversity: Race-Neutral Alternatives In American Education*, detailing a wide array of workable race-neutral approaches to advance integration. Among the methods available are:

- *Magnet Schools*: the goal of the Magnet School Assistance Program (MSAP) is to reduce, eliminate, or prevent minority group isolation in elementary and secondary schools with substantial proportions of minority students. 20 U.S.C. §7231. The MSAP program provides grants to local educational agencies to operate magnet schools that “promote desegregation” and “increase interaction among students of different social, economic, ethnic, and racial backgrounds.” 20 U.S.C. §7231d(b). MSAP funds are available both to school districts under a legal mandate to remedy segregation and to districts taking voluntary means to address minority group isolation.
- *Race-neutral factors*: The use of a race neutral factor – such as socioeconomic status – instead of students' racial classification in assigning students to schools can further integration in many school districts.
- *Lotteries*: Other school districts have found that the use of a race-neutral lottery system instead of racial classification of students in assigning students to schools can further diversity and integration.

- *School Choice*: There are a variety of programs that encourage school choice that can contribute to integration. Under the *No Child Left Behind Act*, parents with a child enrolled in a school identified as needing improvement to transfer the child to another public school or receive funds for supplemental education services such as tutoring. Federal laws also support the creation of charter schools as another means of promoting choice and innovation within public school systems.

Since the Supreme Court’s decision in *Parents Involved*, these and other measures remain for school systems that seek to advance integration. *Parents Involved* applies to school systems that voluntarily seek to promote desegregation. In his concurring opinion in this case, Justice Kennedy suggested a number of approaches that, in his view, “are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible.” *Parents Involved*, 127 S. Ct. 2738, 2792 (2007) (Kennedy, J., concurring). Such approaches mentioned by Justice Kennedy include “strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race.” *Id.* Justice Kennedy also noted that school districts may use, “if necessary, a more nuanced individual evaluation of school needs and student characteristics that might include race as a component” in seeking to enroll a diverse student body. *Id.*

To remedy *de jure* racial segregation, school districts can continue to use race conscious measures. The Department of Justice’s Civil Rights Division continues to monitor and engage in litigation, where appropriate, in desegregation cases in which school districts remain under court orders. Of the approximately 240 open desegregation cases in which the United States is a party, the majority of cases are in southern states. As noted in response to Question 5, since 2000, the Civil Rights Division has initiated over 275 case reviews and has monitored these school districts in areas including student assignment, faculty hiring and assignment, transportation, extracurricular activities, the availability of equitable facilities, and the distribution of resources.

Article 4

12. In addition to the information provided in the report, and as recommended in paragraph 391 of the previous concluding observations, please provide further information on the measures – legislative or otherwise – adopted by the State party at the federal and state levels to prohibit and punish racially motivated crimes in accordance with article 4 of the Convention. Please also provide information on the number of prosecutions and convictions, and on the sanctions imposed, under the criminal statutes referred to in paragraph 140 of the report with regard to criminal offences relating to racial discrimination. (CERD/C/USA/6, paras. 136-146)

Answer:

As discussed in the periodic report, hate crimes are often prosecuted at the state level. See periodic report, 192-197. As in all criminal cases, pursuant to constitutional protections afforded all persons in the United States regarding allegations of criminal conduct, law enforcement officials in the United States may only proceed with criminal processes where evidence indicates that a crime has been committed and that the individual under investigation is responsible for that offense. According to a survey of crime victims conducted by the Department of Justice's Bureau of Justice Statistics, police took action in 85 percent of all hate crimes that victims said were reported to police. See Caroline Wolf Harlow, U.S. Dep't of Justice, *Hate Crime Reported by Victims and Police* (2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/hcrvp.pdf>. Victims' self-reports indicated that police responded to violent hate-motivated crimes as they did to non-hate based violent victimization. For all hate crimes, in half of the reported victimizations, police took a report; in about a third, they questioned witnesses or suspects; in about a quarter, police made an arrest.

With respect to state activity concerning hate crimes, 47 states have hate crimes laws. States actively enforce those laws, as well as engaging in aggressive efforts to track and prevent such crimes. A few examples are set forth here.

Organizations to combat hate crimes exist in a number of states, including, *inter alia*, North Carolina, Florida, Michigan, Oregon, Illinois, Pennsylvania and Kentucky. These are often broad-based coalitions involving both state and federal authorities, as well as other community groups. The Michigan Alliance against Hate Crimes (a partnership between the Michigan Civil Rights Commission and Department, and the U.S. Attorneys for Michigan), for example, brings together a coalition of more than 70 federal, state and local law enforcement agencies, civil and human rights organizations, community and faith-based groups, educators, victims support groups, and anti-violence advocates to ensure complete and effective response to hate crimes and bias incidents.

Pennsylvania's Human Relations Commission compiles a Bias Incident Database for use in both preventing and responding to civil tension. For the year 2006, Pennsylvania had 162 bias incidents – 66 anti-African American, 29 anti-Hispanic, 3 anti-Asian-Pacific Islander, 6 anti-Arab American, 2 anti-White, and 56 multi-racial. In one 1998 Pennsylvania case, *Commonwealth of Pennsylvania v. ALPHA HQ*, a white supremacist, Ryan Wilson, and his organization, Alpha HQ, along with two other organizations, were charged under state law with terroristic threats, harassment, and harassment by communication in connection with material on a website. Upon the filing of the complaint, the defendants agreed to remove the site from the internet and the matter was resolved without going to court.

Vermont's hate crimes statutes enhance penalties for hate-motivated crimes and provide injunctive relief protection for hate crime victims. In 2003-04, there were 56 recorded hate crimes in Vermont, of which 35 were race, ethnicity, or national origin-based. In 2004-05, there were 34 recorded hate crimes, of which 14 were race, ethnicity, or national-origin based. Vermont has also recently amended and strengthened its law prohibiting harassment and hazing in Vermont educational

institutions. Vermont-certified police officers receive mandatory training on the hate crimes statute, and the Attorney General's Civil Rights Unit and the Vermont Human Rights Commission conduct public education through school and community programs that explore diversity acceptance and awareness.

In Maryland, there were 374 hate incident cases in Fiscal Year 2005, including 32 race-related incidents in the Maryland public school system, and six race-rated incidents in colleges and universities. Race and ethnicity accounted for over 70 percent of the hate crimes cases processed during the year. In one Maryland civil case, *MCHR v. Elton Smith, Jr.*, an African American defendant, who harassed an interracial couple in the neighborhood, was ordered to pay damages of more than \$3,500 and a civil penalty of \$5,000, plus interest.

In a 2004 Kentucky case, the perpetrators of a cross-burning pled guilty to three federal counts of violation of civil rights, intimidation, and aiding and abetting, plus violations of the U.S. Fair Housing Act and Kentucky Civil Rights Act. The Kentucky Hate Crimes Advisory Group, which includes state as well as federal officials, actively tracks reported incidents of hate violence, and also makes recommendations to the Kentucky Commission on Human Rights concerning hate crimes.

The prosecution of hate crimes is also a high priority for the Department of Justice. Since the release of the periodic report, *see* paragraph 186, there have been 20 additional federal defendants charged in connection with crimes such as cross-burnings, arson, vandalism, shootings, and assault for interfering with various federally-protected rights (e.g., housing, employment, education, and public accommodation) of African American, Hispanic, Asian, Native American, Arab, Muslim, and Jewish victims for a total of 260 defendants. Courts have punished defendants convicted of these crimes with terms ranging from several months' home confinement to life imprisonment, depending on the severity of the crime.

In February 2007, DOJ announced a partnership among the NAACP, Southern Poverty Law Center, the Urban League, and the FBI in its "Cold Case Initiative" to identify other unresolved civil rights era murders for possible prosecution to the extent permitted by the available evidence and the limits of Federal law. The FBI already has identified approximately 100 such cases that merit additional review to determine whether federal criminal charges can be brought. Just this past year, one of those prosecutions, *United States v. Seale*, resulted in three life sentences for a former member of the Ku Klux Klan who was involved in the brutal 1964 murder of two young African American men in Mississippi. (This case and the instances below were also described in response to Question 5 above.)

Recently, DOJ began a racial threats initiative to aggressively investigate dozens of displays of nooses and other recent racially motivated threats around the country that have occurred following incidents in Jena, Louisiana. The United States abhors such conduct and is committed to work with relevant State and local law enforcement authorities to bring such people to justice. Where the facts and law warrant, these investigations will result in prosecution.

As reported in paragraph 187 of the periodic report, the Department has investigated more than 800 bias-motivated incidents directed toward individuals perceived to be Arab, Muslim, Sikh, or South Asian since September 11, 2001. The Department also has brought federal charges against 38 defendants and has obtained 35 convictions.

Article 5

13. Please provide further information on the extent to which the systemic inadequacies in the indigent defense systems existing in several U.S. states – including the lack of adequate funding and the failure to monitor and oversee its effective functioning – disproportionately affect racial, ethnic and national minorities, and indicate which measures the State party has adopted to improve the quality of legal representation provided to indigent defendants and ensure that public legal aid systems are adequately funded and supervised.
(CERD/C/USA/6, para. 152)

Answer:

Court-appointed legal representation for indigent criminal defendants plays a critical role in the United States' criminal justice system. In 1999, an estimated \$1.2 billion was spent by indigent criminal defense programs that primarily handled felony cases at the trial level in the 100 most populous U.S. counties. As stated in the periodic report, by law counsel for indigent defendants is provided without discrimination based on race, color, ethnicity, and other factors. *See* paragraph 152. Federal, state and local governments use a variety of methods for delivering indigent criminal defense services, including public defender programs, assigned counsel programs, and contract attorneys. According to statistics gathered from 1997, in state prisons, 69 percent of white inmates reported they had lawyers appointed by the court and 77 percent of blacks and 73 percent of Hispanics had public defenders or assigned counsel. In the federal system, 65 percent of blacks had publicly financed attorneys and about the same percentage of whites and Hispanics used publicly financed attorneys (57 percent of whites and 56 percent of Hispanics). Bureau of Justice Statistics, Dep't of Justice, *Defense Counsel in Criminal Cases* (2000), available at <http://www.ojp.usdoj.gov/bjs/abstract/dccc.htm>.

In recent months, the United States has undertaken several initiatives to improve the quality of indigent legal services. For example, in September 2007, the College Cost Reduction and Access Act became law. Pub. L. No. 110-84 (Sept. 27, 2007). Sections 203 and 401 of the Act enable public interest lawyers to pursue careers in indigent defense or civil legal aid. Under those provisions, certain federal student loan borrowers who work in full-time public service for 10 years may have their student loan forgiven at the end of the ten year period. The bill encourages lawyers to engage in public service, including civil legal aid and public defense.

Several other proposals benefiting indigent legal services are pending before Congress. The John R. Justice (JRJ) Prosecutors and Defenders Incentive Act of 2007 would benefit the criminal justice system by creating a student loan repayment program for law school graduates who wish to pursue careers as prosecutors or public defenders. The bill establishes a program of student loan repayment for borrowers

who agree to remain employed for at least three years, as state or local prosecutors or as state, local, or federal public defenders. It allows eligible attorneys to receive student loan debt repayments of up to \$10,000 per year, with a maximum aggregate over time of \$60,000. The legislation would authorize up to \$25 million per year for loan repayments. The program would be administered by the Department of Justice. *See* § 952 of the Higher Education Amendments of 2007, S. 1642.

Additionally, the Civil Legal Assistance Loan Repayment Act authorizes up to \$10,000,000 for aid to “civil legal assistance” attorneys. Participants can receive up to \$6,000 per year up to a total amount of \$40,000 per participant. Under the bill, the Department of Education would be the agency administering the program. *See* S.1167

In addition to the right to counsel, the U.S. Constitution also guarantees the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Accordingly, all criminal defendants, regardless of race, ethnicity, or other factors, may bring an ineffective assistance of counsel claim.

14. Please provide updated information on the measures adopted by the State party to eliminate the racial disparities existing in the criminal justice system of the State party, and to ensure that such disparities are not due to a harsher treatment that defendants belonging to racial, ethnic and national minorities, especially African American persons, allegedly receive at various stages of criminal proceedings, from investigation to sentencing, with respect to both juveniles and adults. (CERD/C/USA/6, paras. 162-167 and 327-329)

Answer:

The United States is committed to ensuring equal justice for all people in the United States and prohibits discrimination in the administration of justice on the basis of race, color, descent, or national or ethnic origin. As stated in the United States periodic report, the reasons for the disparities in outcomes in the criminal justice system are complex. *See* paragraphs 165, 327. Some scholarly research indicates that disparities are related primarily to differential involvement in crime by the various groups, rather than to differential handling of persons in the criminal justice system. Moreover, recent data indicate that the rate of growth for African Americans in incarceration for both jail and prison has been below that for White non-Hispanics and Hispanics. This is a hopeful sign. As a matter of longstanding U.S. constitutional and procedural law, the United States takes firm action to guarantee the right of everyone to equal treatment before the court and other administrative and judicial entities. Neither race nor ethnicity is a criterion in access to courts or other tribunals, the selection of jurors, or the provision of counsel for the indigent. Likewise, immigration status is not a factor in access to courts.

As a matter of public policy, the United States is concerned by differential rates of criminality and consequential punishment of individuals in the criminal justice system – even if these disparities are not the result of race discrimination. The United States, through the operation of its democratic processes, is working to determine the nature and scope of the problem and to explore ways of addressing it. To the extent any of

the disparities are the result of racial discrimination, the United States is committed to continuing its efforts to stamp out any such practices. In addition, to the extent that varying incarceration rates may be related to socio-economic factors, the United States continues to work to eliminate the impact of such factors.

15. Please provide detailed information on the measures adopted by the State party pursuant to the recommendation, contained in paragraph 396 of the Committee's previous concluding observations, to address racial bias in the application of death penalty. Please also comment on the Supreme Court decision *McCleskey v. Kemp*, which allegedly limits the capacity of defendants to challenge the death sentence pronounced against them on the basis of racial discrimination in sentencing. (CERD/C/USA/6, paras. 166-170 and 328-329)

Answer:

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution guarantees all individuals in the United States equality before the law. To establish that a violation of this guarantee has occurred, a criminal defendant must show that his prosecution or conviction was the result of purposeful discrimination. Any criminal defendant who alleges that the application of the death penalty was racially motivated in his particular case may challenge such sentencing not only in state courts, but also in U.S. federal courts.

Indeed, the scope of this guarantee was the subject of a constitutional challenge to the death penalty that was carefully considered by the U.S. Supreme Court. In *McCleskey v. Kemp*, 481 U.S. 279 (1987), a convicted murderer claimed that his death sentence should be overturned because the Georgia state capital system was racially biased in violation of the Equal Protection Clause, based on a statistical study purporting to show that murderers of white victims were more likely to be sentenced to death than murderers of black victims. (The *McCleskey* study, as virtually all studies subsequent to it, demonstrated no statistically significant evidence of discrimination based on the race of the defendant. The debate about racial disparities has therefore focused on the race of the victim.) The Supreme Court rejected McCleskey's claim, holding that a statistical study, even if true, could not prove intentional discrimination in his individual case. In addition, the Court held that the study, even if true, could not prove that the entire system had been adopted and maintained by the Georgia state legislature for racially discriminatory purposes and could not prove that the system was arbitrary and capricious as applied to his own case or resulted in a sentence disproportionate to his crime.

Although the Supreme Court, for purposes of argument, accepted the validity of the underlying statistical study at issue in the case, the study was decisively rejected by the district court that reviewed the study and the facts of the case. The district court found errors and missing information in the databases used in the study, unwarranted assumptions, unreliable statistical models, and flawed interpretations of the data. It concluded, "[T]here is no statistically significant evidence produced by a reasonably comprehensive model that prosecutors are seeking the death penalty or juries are imposing the death penalty because the defendant is black or the victim is white."

Indeed, the extent of racial disparities in capital cases in the United States is controversial and the subject of considerable debate and public scrutiny. For example, a widely quoted General Accounting Office (GAO) review of research published in 1990 purported to show a race-of-the-victim effect. As the Department of Justice pointed out, however, the GAO review was seriously flawed. Only 10 of the 23 studies reviewed by the GAO were, by the GAO's own terms, "high-quality." Furthermore, five of the seven of those high-quality studies that considered imposition of sentence actually showed no race-of-the-victim effect. As the Department stated in testimony to Congress, "[T]he high-quality studies support the conclusion that legally relevant considerations overwhelmingly account for any apparent race-of-the-victim effect." Since that time, evidence is equivocal; some studies show effects of the race of the victim, but others show none when characteristics of the crime are controlled for. For example, a study commissioned by the New Jersey Supreme Court in 2001 demonstrated no racial bias in application of the death penalty, a conclusion accepted by the state commission that urged elimination of the death penalty. (Again, no studies show statistically significant effects based on race of the defendant.)

With regard to the federal system, figures released by the Department of Justice regarding federal death sentences in 2000 indicated that the proportion of minority defendants in federal capital cases exceeded the proportion of minority individuals in the general population. Subsequent analysis suggested that racial and ethnic bias was not the cause of this disparity. Rather, the cause was the focus of federal prosecutions on large-scale drug trafficking and associated lethal violence, which is disproportionately committed by gangs whose members are drawn from minority groups. In the most recent study on the subject, released in July 2006, the RAND Corporation, a private organization, found that controlling for legitimate considerations, such as applicable aggravating and mitigating factors, eliminated the race effects and demonstrated that decisions to seek the death penalty by federal prosecutors were motivated by the heinousness of the crimes rather than by the defendant's or victim's race.

16. In addition to the information provided in the report, and as requested in paragraph 394 of the previous concluding observations, please provide further information on the measures – legislative or otherwise – adopted by the State party to punish police brutality against persons belonging to racial, ethnic or national minorities and ensure the access of victims to effective legal remedies and just and adequate reparation. Please also provide recent statistical data, if any, disaggregated by race, ethnic origin and nationality, on prosecutions launched and sanctions imposed on law enforcement officials, as well as information on reparation awarded to victims of racially-motivated violence. (CERD/C/USA/6, paras. 153-161 and 324-326)

Answer:

Federal law prohibits the use of excessive force by any law enforcement officer against any individual in the United States. The laws prohibiting excessive force and official misconduct protect racial, ethnic, and national minorities to the same extent that they protect every other individual. U.S. law provides various avenues through

which victims of police brutality may seek legal remedies such as criminal punishment of the perpetrator or damages in a civil lawsuit. Depending on the location of the conduct, the actor, and other circumstances, any number of the following remedies may be available:

- 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.
- 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); *Davis 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;
- Seeking civil damages from participants in conspiracies to deny civil rights under 42 U.S.C. § 1985;
- 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 that 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); 42 U.S.C. § 3789d (Safe Streets Act).
- 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.

Since 2000, DOJ has convicted more than 400 officers and public officials for criminal misconduct. Many of these defendants were convicted for abusing minority victims. According to statistics compiled by the Department of Justice’s Bureau of Justice Statistics, there were 6.6 complaints of police use of force per 100 full-time sworn officers among large state and local law enforcement agencies and 9.5

complaints per 100 full-time sworn officers for large municipal police departments. See Bureau of Justice Statistics Special Report, Citizen Complaints about Police Use of Force, June 2006, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ccpuf.pdf>. The data were not disaggregated by race, ethnic origin or nationality. Of the complaints received in 2002 that had a final disposition, 34 percent were not sustained, 25 percent were unfounded, 23 percent resulted in officers being exonerated, and 8 percent were sustained.

17. In addition to the information provided in the report, and bearing in mind the Committee's Statement on racial discrimination and measures to combat terrorism of 8 March 2002 (A/57/18), please provide further information on the outcome of the various measures adopted by the State party in the wake of the 9/11 attack to prevent and punish all forms of discrimination against Arabs, Muslims and South Asians, as well as persons perceived to be Arab or Muslim. (CERD/C/USA/6, paras. 85, 121, 159-160, 187-188, 295, 300, and 325)

Answer:

Preventing race and ethnicity-based discrimination is a fundamental American value that is enshrined in our Constitution and laws, and we agree with the Committee that active and effective measures are required to combat such discrimination. The periodic report describes in great detail the protections and programs that are designed to achieve this objective. These are available to all Americans, including Muslims and individuals of Arab or South Asian descent. Additionally, the United States provided detailed information in its periodic report about its widespread and systematic efforts to address issues of discrimination against Arabs, Muslims, and South Asians after the 9/11 attacks, as well as those perceived to be members of those groups. This information is contained in paragraphs 85 and 300 (Civil Rights Division initiatives), 119-124, 159 & 190-191 (Department of Justice Community Relations Service initiatives), 144 (prosecution of threat cases against members of these communities), 160 (Department of Homeland Security initiatives), 161 (local law enforcement initiatives), 187-188 (prosecution of hate crimes against these communities by DOJ), 295 and 325 (law enforcement training on understanding Arab, Muslim, Sikh, and South Asian communities), 301 (employment discrimination outreach to these communities by the Equal Employment Opportunity Commission), 302 (education discrimination), and 303 (housing discrimination).

The discussion below will not seek to repeat the descriptions of the ongoing activities in the paragraphs of the periodic report cited above but rather will provide further updates in specific key areas and provide information about certain areas not covered explicitly in the periodic report.

Hate Crimes

Prosecution of hate crimes against Muslims, Arabs, South Asians, and Sikhs remains a top priority of the Civil Rights Division of DOJ. Senior Division attorneys remain in regular contact with community organizations and leaders to identify and investigate incidents of hate crimes against these groups. DOJ has now investigated more than 800 such crimes since 9/11 and has charged 38 defendants with federal

crimes and obtained 35 convictions. The Department also has assisted with more than 160 criminal prosecutions at the state level. The number of backlash hate crime incidents has decreased steadily in the last three years. While there were more than 300 such incidents in 2001 and an average of 107 incidents per year for the following three years, in 2005 the number dropped to 84 such incidents in the United States. In 2006 there were 45 such incidents and 52 in 2007. The cases in general also have been less violent in recent years, with more cases involving email and telephonic threats rather than physical violence. Despite the drop in the number of incidents and the shift to less violent crimes, identifying and prosecuting hate crime cases against these communities remains a top priority.

Community Outreach by DOJ, FBI, and DHS

As set forth in the periodic report, engagement with the Muslim, Arab, South Asian, and Sikh communities remains a top priority of the United States government. The U.S. Government believes that it is a wise investment to spend significant amounts of its time communicating with the public, providing information, and hearing and responding to concerns, so that we might serve the public better. We are convinced that our efforts to secure the country while safeguarding our liberties are strengthened by listening to the views of the American people. Groups of individuals with whom we have active and open dialogues include, among others, Arab, Muslim, Sikh, Middle Eastern, and South Asian Americans, who have been an integral part of the fabric of the United States for generations.

Engagement with these communities is a key tool in our ability to identify particular incidents of hate crimes and discrimination, and to identify patterns and problem areas. The Assistant Attorney General for the Civil Rights Division holds a bimonthly meeting in Washington, D.C. that brings together leaders from these communities with senior officials from key federal agencies to address areas of concern.

The Federal Bureau of Investigation (FBI) also has undertaken comprehensive efforts to reach out to these communities. In Fiscal Year 2007, the FBI held more than 150 liaison outreach events, such as town hall meetings, with Arab American and Muslim organizations. The FBI's Community Relations Executive Seminar Training (CREST), created in 2006 to introduce community leaders to the operations and function of the FBI, has graduated 409 Arab Americans and Muslim Americans thus far. The CREST is a shorter version of the FBI's longer and more intensive Citizens Academies, which also have had substantial participation by Arab and Muslim Americans. The FBI also recently established geographic regional Arab American, Muslim, Sikh, and South Asian advisory councils around the country.

The Department of Homeland Security Office for Civil Rights and Civil Liberties (DHS/ CRCL) performs similar outreach in cities around the country. Over the past four years, DHS has institutionalized regularly-held community roundtable meetings between advocacy groups, community leaders, and U.S. Government representatives. DHS holds these forums in key cities across the country and they are a central component of its outreach and engagement efforts. Participating in these meetings allows government officials to provide information, respond to questions, and hear about concerns first hand. From the community leaders' perspectives, the

roundtables provide a venue to raise concerns as well as to access information and guidance that may of interest to their constituents. DHS CRCL currently leads or plays a significant role in meetings held in Washington, D.C., Houston, Chicago, Los Angeles, and Detroit. In addition, local DHS and other U.S. Government officials hold similar meetings in other cities across the country.

DHS has also strengthened community relationships by participating in numerous conferences, conventions, and other significant events. During the past year, U.S. Government representatives have given speeches, participated on panels, and attended events hosted by the National Association of Muslim Lawyers, the American-Arab Anti Discrimination Committee, the Muslim Public Affairs Counsel, the Sikh American Legal Defense and Education Fund, and the Muslim Public Service Network, among other organizations. DHS also held its own conference in 2007, entitled a “Roundtable on Security and Liberty: Perspectives of Young Leaders Post-9/11.” This entailed inviting over 40 young American Arab, Muslim, Sikh, South Asian and Middle Eastern leaders to Washington, D.C. to meet with DHS Secretary Michael Chertoff and other U.S. Government officials to hear their perspectives on topics including: (1) The State of Arab, Muslim, Sikh, South Asian, and Middle Eastern American Youth; (2) Civil Rights in America: Challenges and Opportunities; (3) Toronto, London and Madrid: Can it Happen in America?; and (4) Careers in the U.S. Government.

Learning from the aftereffects of September 11, DHS has assembled an Incident Community Coordination Team (ICCT). The goal of the group is to provide American Arab, Muslim, Sikh, Middle Eastern, and South Asian community leaders with timely and relevant information from government agencies in the aftermath of any future terrorist act or homeland security incident.

In 2007, DHS Officer for Civil Rights and Civil Liberties Daniel W. Sutherland convened the ICCT following the attempted terrorist attacks at Fort Dix and JFK Airport, and after the release of the National Intelligence Estimate. Additionally, on June 22, 2007, CRCL convened an unprecedented tabletop exercise of the ICCT in which over 40 representatives of Government and community organizations participated. An example of strengthened ties between the U.S. Government and these key communities, this exercise highlighted a number of issues that both government agencies and community leaders need to grapple with in order to adequately prepare for any future attack on the United States.

Education Discrimination

The Civil Rights Division of DOJ, as detailed in paragraphs 69-70 and 93-97 of the periodic report, enforces federal protections against racial, sex-based, ethnic, and religious discrimination in education. Since 9/11, cases involving harassment of Muslim students in public schools have made up the largest category of the Division’s cases involving discrimination based on religion. Most of these cases have been resolved by corrective action being taken by the school voluntarily, or through settlement. For example, in one case in the State of Delaware, a Muslim student had been subject to a teacher telling her class that Islam teaches hatred and ridiculing the girl because her mother wore a headscarf. This led to pervasive harassment by other students that forced the girl to stop attending school. After an investigation by the

Civil Rights Division, the school district reached a settlement with the Division to take disciplinary action against the teacher and provide cultural training to all teachers and students in the school system. In another case, the Civil Rights Division successfully sued an Oklahoma school district and won the right of a Muslim student to wear a headscarf to school.

Employment Discrimination

Employment discrimination against Muslims, Arab, Sikhs, and South Asians remains a matter of significant concern. The Equal Employment Opportunity Commission received over 1,000 complaints of discrimination filed by Muslim Americans for the period following 9/11 to date. This represents a doubling in the number of complaints over a comparable six-plus year period. As of December 2007, the Commission obtained relief through its administrative process exceeding \$4 million for 152 persons aggrieved by backlash claims. The Commission also has obtained almost \$1.5 million in monetary benefits for 21 persons in 10 separate lawsuits filed in federal courts. Recent EEOC-litigated cases include an August 2007 \$25,000 settlement of a harassment case involving a Muslim; a June 2007 jury verdict of \$287,000 in favor of a Muslim woman terminated for wearing a head scarf to work; and a June 2006-filed lawsuit, still pending, filed on behalf of seven Muslims working aboard a cruise ship who were terminated despite a finding that they posed no security threat to the ship or otherwise.

The EEOC investigates all complaints of individual cases of discrimination and brings lawsuits in cases where the defendant is a business or labor union. DOJ brings lawsuits where the defendant is a government employer, in individual cases on referral by the EEOC, and in cases involving a pattern or practice of discrimination on its own initiative. Two such pattern or practice cases are currently pending involving Muslim Americans. In one case, the Department of Justice is suing the New York Metropolitan Transit Authority over its refusal to permit Muslim women and Sikh men to wear religious headcoverings while working as subway and bus drivers. In the other case, the Department is suing the New York Department of Correctional Services over its refusal to allow Muslim correctional workers to wear kuffis while working.

Housing Discrimination

The Housing and Civil Enforcement Section within the Department of Justice's Civil Rights Division has been active in bringing cases involving discrimination against Muslims, Arabs, South Asians, and Sikhs in housing and in access to public accommodations. For example, the Section brought suit against the San Francisco Housing Authority over its failure to protect Muslim and Iraqi tenants in public housing from harassment and attack. This case was resolved by a consent decree. The Section further resolved several cases involving persons discriminated against in restaurants and other public accommodations because they were wearing religious headcoverings. The Section also has in place an extensive housing testing program, in which, based on assessments of regions or particular properties where there is suspected discrimination, pairs of applicants with comparable incomes and objective criteria, one of a particular race, religion, or ethnicity, and one from a control group apply for housing in order to evaluate how they are treated.

Training of Government Officials at the Federal, State and Local Level

As noted in Paragraph 159 of the U.S. periodic report, in the aftermath of 9/11 the Department of Justice's Community Relations Service (CRS) provided technical assistance and targeted training efforts towards establishing dialogue between government officials and the Arab, Muslim, and Sikh communities. In addition to the dialogues facilitated by CRS and the publications and videos produced by the Agency, CRS developed a program curriculum for law enforcement officials throughout the United States for improving relationships with various Arab, Muslim, and Sikh communities. CRS has offered this training to over 250 law enforcement departments and agencies throughout the nation.

One particular program facilitated by CRS for law enforcement occurred in the fall of 2005 when the U.S. Department of Homeland Security's (DHS) Transportation Security Administration (TSA) recognized that passengers from Arab, Muslim, and Sikh cultural backgrounds were experiencing difficulties proceeding through airport security checkpoints. Some airport personnel did not understand traditional cultural practices of these travelers, creating the potential for misunderstanding. As a result, CRS conducted an Arab, Muslim, and Sikh Cultural Awareness Seminar for TSA employees of the Bradley International Airport in Hartford, Connecticut, to assist them in interacting with members of the foregoing communities during non-emergency situations. The program helped to avoid further misunderstandings between law enforcement and community groups that stemmed from a lack of understanding of various cultural practices.

Additionally, based on recommendations made as a result of outreach to Arab, Muslim and Sikh communities, DHS has also worked to improve the cultural competency of all DHS personnel. For example, DHS has produced and widely distributed training posters on common types of Muslim and Sikh American head coverings; developed a training DVD on basic aspects of Arab and Muslim cultures; and recently completed a poster on the kirpan, a Sikh article of faith. Additionally, for the past two years, DHS components have provided training to security officers on what to expect during the Hajj travel season, an idea that was developed through community outreach efforts. Our experience has shown that these training efforts not only protect civil rights, but they improve job performance by helping DHS employees distinguish cultural and religious norms from suspicious conduct. DHS's experience has shown that these training efforts not only protect civil rights, they help DHS employees do their jobs better by helping them distinguish cultural and religious norms from suspicious conduct.

DHS's Transportation Security Administration also provides cultural awareness trainings to the Transportation Security Officer workforce on the cultural norms of the Sikh American culture and the American Arab and Muslim American cultures. The cultural awareness trainings are designed to help prevent the discriminatory treatment of Arabs, Muslims, and South Asians in the security screening process. Substantiated discriminatory treatment of any member of the travelling public is addressed through the disciplinary process. Immigration and Customs Enforcement (ICE) also provides extensive training through the ICE Virtual University, which includes courses developed by the DHS Office for Civil Rights and Civil Liberties

such as, “An Introduction to Arab American and Muslim American Cultures” and “Guidance Regarding the Use of Race for Law Enforcement Officers.” ICE also requires civil rights training and an overview of the DOJ Guidance for state and local law enforcement with 287(g) agreements. (For additional information on 287(g) agreements see response to Question 5.)

18. Please provide information on the measures adopted by the State party to prevent and punish various forms of ill-treatment against undocumented migrants crossing the borders between Mexico and the United States of America, allegedly perpetrated by border patrol agents and private vigilante groups.

Answer:

The U.S. Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) has policies and procedures in place to ensure the proper treatment of illegal aliens apprehended by Border Patrol Agents. Border Patrol Agents are informed of these policies and procedures in Basic Training at the Border Patrol Academy and reinforced throughout their career in advanced training and through other methods, such as daily briefings at the beginning of each work shift by local leadership and occasional guest speakers, videos, and messages. When an allegation of mistreatment is made, CBP works closely with the DHS Office of Civil Rights and Civil Liberties, the Office of Refugee Resettlement within the Department of Health and Human Services, DHS’s Office of Inspector General, the U.S. Attorney’s Office and other Federal, State, and local entities that have jurisdiction. Allegations of misconduct are investigated by the Office of Internal Affairs and/or the Office of the Inspector General. Additionally, as discussed below, an agent found to have engaged in misconduct related to the treatment of illegal aliens could be subject to criminal prosecution and/or disciplinary proceedings. All allegations made involving citizen patrol groups are reported within CBP Significant Incident Reporting Procedures and are coordinated with all domestic and foreign parties having an enforcement or service role.

The Department of Justice has also prosecuted attacks on immigrants that occur at the hands of Border Patrol and other law enforcement officers. For example, in *United States v. Gonzales*, DOJ obtained convictions of two Immigration and Naturalization Service (INS) detention officers who assaulted a Mexican alien they had arrested, sprayed him with pepper spray, and then ignored his repeated pleas for medical help. The victim later died of a broken neck. In 2006, these convictions were upheld by the Fifth Circuit in *United States v. Gonzales*, 436 F.3d 560 (5th Cir. 2006). Also, in *United States v. Rosario* (2006), a Border Patrol Agent pled guilty to sexually assaulting two undocumented illegal alien victims after he stopped them along the United States-Mexico border.

Additionally, the Department of Justice’s enforcement of anti-trafficking laws and provision of assistance to the victims of trafficking is discussed below in response to Question 19. Moreover, the Department of Homeland Security’s numerous efforts to create safer and more secure borders is described in response to Question 2 above.

19. Bearing in mind the Committee's General Recommendations No. 25 (2000) on gender-related dimensions of racial discrimination and No. 30 (2004) on discrimination against non-citizens, please provide detailed information on the measures adopted by the State party to prevent and punish violence and abuse against women belonging to racial, ethnic or national minorities, with particular regard to Native American and Alaska Native American women, migrant workers and domestic workers.

Answer:

As discussed in response to Question 2 above, United States constitutional and legal protections against abuse apply regardless of gender and equally to citizens and non-citizens. State and federal prosecutors routinely prosecute cases in which the victims are non-citizens or minorities. With regard to the Committee's efforts to integrate gender perspectives into its analysis, the United States also notes that its constitutional and legal protections against racial and ethnic discrimination apply with equal force irrespective of gender.

Department of Justice:

The United States is committed to prosecuting gender-related criminal offenses involving racial minorities. In particular, DOJ vigorously investigates and, where the facts so warrant, prosecutes cases involving sexual misconduct by law enforcement officers and public officials (some of which may involve victims who were racial minorities or non-citizens). DOJ can and does prosecute state and federal law enforcement officers and prison officials for deprivations of constitutional rights, including the rights secured by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. These prosecutions include cases involving sexual assaults on immigrants that have occurred at the hands of Border Patrol agents and other law enforcement officers. Since 2000, the Criminal Section of the Civil Rights Division, working in conjunction with United States Attorneys' Offices around the country, has charged 56 defendants with acts of misconduct ranging from inappropriate sexual contact to forcible rape to false statements made in connection with sexual assaults. DOJ recently has obtained lengthy sentences of up to 30 years in prison for law enforcement officers and prison officials convicted of sexual assault.

DOJ also prosecutes human trafficking cases, which disproportionately impact women, girls, and ethnic minorities. Since 2001, the Department has rescued more victims of human trafficking and prosecuted more traffickers than ever before. This effort is a continuation of the Department's decades-long commitment to protect the civil rights of all people. Human trafficking is a modern day analog to slavery, involving the exploitation and enslavement of society's most vulnerable members – often minority women and children, migrant workers, domestic workers, those who are unemployed, the poor, and others who lack access to social safety nets. Human trafficking ranks among the world's most vile and degrading criminal practices. Human trafficking offenses transgress the victims' human liberty in violation of the United States Constitution's Thirteenth Amendment's guarantee of freedom. As such, trafficking offends the core civil rights on which the United States' Constitution and society are based.

Over the last several years, DOJ has greatly increased the investigation and prosecution of human trafficking offenses. From FY 2001 to FY 2007, the Department prosecuted 449 human trafficking defendants, secured approximately 340 convictions and guilty pleas, and opened more than 800 new investigations.

In addition to prosecuting the perpetrators of these horrible crimes, DOJ's Criminal Section also aids its victims. Under the 2000 Trafficking Victims Protection Act, 1,377 trafficking victims from eighty countries have obtained eligibility for refugee-type benefits from the United States Department of Health and Human Services (HHS) with the aid of the Civil Rights Division and other law enforcement agencies. Federal law also provides for restitution and asset forfeiture for victims of human trafficking.

Further, DOJ's Bureau of Justice Statistics, pursuant to a Congressional requirement set out in the Trafficking Victims Protection Reauthorization Act of 2005, is currently conducting a project to develop a common operational definition of "severe forms of human trafficking." As part of the project, this definition will be used in an effort to accurately estimate the incidence and prevalence of severe forms of human trafficking in the United States. Presently, there is concern among practitioners and policymakers at the lack of reliable numbers on the scope of human trafficking in the United States. Given that policy agendas and budgeting decisions require the most accurate benchmarks available, this effort by BJS is a critical part of the nation's effort to combat trafficking in persons.

In addition, Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on gender, including gender-based harassment or other abuse in the workplace. The statute's protections extend to all women, including those who are members of racial or national origin minority groups. The Justice Department's Civil Rights Division enforces Title VII against non-federal public employers on behalf of individual women and also has filed pattern or practice lawsuits to protect women against workplace abuse. One such suit alleged a pattern or practice of sexual harassment against female police officers, secretaries, and dispatchers in the police department of Belen, New Mexico. Many of the victims were Hispanic women, and the suit involved an alleged rape and other forms of unwelcome physical and verbal sexual conduct. The Division achieved a resolution of that case that resulted in substantial monetary relief for the victims of discrimination and established a reporting and monitoring system for complaints of sex harassment. In 2004, the Division also filed a pattern or practice lawsuit against Gallup, New Mexico, alleging discrimination against Native American applicants for employment, many of whom were women. The case was resolved through a consent decree that awarded monetary relief and job offers to victims. More recently, in 2007, the Division filed four lawsuits on behalf of individual women to challenge sexual harassment, sex discrimination, and pregnancy discrimination in the workplace.

The Fair Housing Act and the Equal Credit Opportunity Act prohibit discrimination in housing and credit based on gender, including gender-based harassment. The statutes' protections extend to all women, including those who are members of racial or national origin minority groups. The Justice Department's Civil Rights Division enforces the Fair Housing Act and the Equal Credit Opportunity Act. The Department brings cases that involve sexual harassment of women who have few

housing choices and are vulnerable to landlords who condition favorable housing terms on sexual favors. In Fiscal Year 2006, the Civil Rights Division filed more sexual harassment cases than in any year in its history. In November 2007, the Department obtained a \$350,000 settlement in a lawsuit alleging that a former bank vice president in Mississippi engaged in a pattern or practice of sexual harassment against female borrowers and applicants for credit. In 2004, DOJ obtained the largest verdict ever obtained by the Department in a Fair Housing Act case. Kansas City, Missouri, landlord Bobby Veal was ordered to pay damages of over \$1.1 million for sexually harassing female tenants, demanding sexual favors from tenants and evicting certain tenants who did not submit to his advances.

Specifically, as the question pertains to Native Americans, the United States has long recognized the serious problem presented by violence against women in Indian Country¹¹, and has been actively working on various fronts to combat this problem. In fact, the United States Department of Justice has identified violent crime in Indian Country as a particular area to focus certain investigative, prosecutorial, and other funding resources.

The United States' role in prosecuting crimes of violence against women in Indian Country is directed by statute to the most serious offenses (e.g., murder, assault resulting in serious bodily injury, assault with a dangerous weapon, rape, sexual assault). Lesser offenses, such as domestic violence resulting in a minimal level of bodily injury, which involve a domestic relationship between tribal members is often prosecuted by tribal authorities in tribal court. The United States, through the Department of Justice and United States Attorney's Offices, aggressively investigates and prosecutes such serious offenses where federal jurisdiction exists. United States Attorney's Offices even have specially designated prosecutors to address violent crime in Indian Country. Additionally, specially designated attorneys in United States Attorney's Offices, known as Tribal Liaisons, work with local tribal governments to ensure a strong government-to-government relationship between the federal government and tribal governments as they maintain constant communication with tribal governments and tribal law enforcement officials. Many districts with Indian Country responsibilities also have dedicated specific task forces and multidisciplinary teams organized to work cooperatively with the tribes on issues related to sexual assault. The United States Department of Justice works hand-in-hand with tribal and state prosecutors and law enforcement officials to ensure crimes against women are investigated and prosecuted.

¹¹ The United States uses the term "Indian Country" as defined in our domestic law (18 USC 1151): Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

In 2006, the Department of Justice worked with the United States Congress to pass three laws to help protect the safety of women in Indian Country. These included: (1) the creation of a federal habitual domestic offender law which provides for federal Indian Country jurisdiction over individuals who have previously committed two domestic assaults under federal, tribal, or state law; (2) the broadening of federal firearms provisions which restrict the possession of guns by individuals convicted of a misdemeanor crime of domestic violence to include qualifying convictions under tribal law; and (3) the expansion of arrest authority for Bureau of Indian Affairs' police officers to permit warrantless arrests in cases of misdemeanor domestic violence, where the officer has reasonable grounds to believe that an offense has been committed.

Furthermore, over the past six years, the Department has provided more than \$642 million to tribal governments and law enforcement agencies through the Office of Justice Programs, the Office of Community Oriented Policing Services, and, especially, the Office on Violence Against Women (OVW). At the heart of OVW's mission is the charge to help communities across the country to develop coordinated community responses to crimes of violence committed against women by using the force and effect of the criminal justice system to promote victim safety and offender accountability. Resource issues result in many tribes struggling to provide critical criminal justice infrastructure, such as law enforcement officers, courts, and prosecutors. Many tribes that do operate their own criminal justice systems struggle to fully fund such agencies. These infrastructure gaps can jeopardize the safety of all Native Americans, including women. OVW grant programs have provided Indian tribal governments the opportunity to obtain funding to hire dedicated criminal justice professionals who can focus their efforts exclusively on responding to violence against Native American women.

Since its creation in 1995 following the enactment of the Violence Against Women Act (VAWA), OVW has awarded more than \$100 million to Indian tribal governments, tribal nonprofit organizations, and tribal coalitions to combat domestic violence, sexual assault, stalking, and teen dating violence. In FY 2007 alone, OVW awarded approximately \$47 million in grant funding to Indian tribes and other nonprofit organizations to address violence committed against Native American women. OVW currently funds more than 110 tribal governments and nonprofit organizations that serve more than 200 tribal communities. While much remains to be done to effectively address the high rate of sexual assault and domestic violence committed against Native American women, OVW, since its inception, has provided an array of resources to assist in this effort.

For example, through its Technical Assistance Initiative, OVW has sought to provide a broad range of very practical solutions to help tribal governments become more engaged in preventing domestic violence and sexual assault among their members. Over the past few years, OVW has supported several training and technical assistance events for its tribal grantees that have focused on sexual assault. The Southwest Center for Law and Policy, for example, has used OVW funding to support its highly successful National Tribal Trial Training College (NTTC). The goal of the NTTC is to provide Indian Country victim advocates, civil legal assistance attorneys, and criminal justice, social services, and health care professionals with the skills

necessary to improve the adjudication of violence against Native American women cases in federal, state and tribal courts.

In addition to tribal governments, through the Tribal Domestic Violence and Sexual Assault Coalitions Program (Tribal Coalitions Program), OVW funds broad anti-violence coalitions of grassroots community organizations, often composed of affected women who assume leadership roles in advocating for systemic change. Funding from the Tribal Coalitions Program currently supports the operation of twenty-two tribal domestic violence and sexual assault coalition programs across Indian Country. The tribal coalitions funded by OVW provide training to both Native and non-Native organizations and agencies that serve Native American victims of domestic violence, sexual assault, and dating violence. They also conduct public awareness and community education campaigns in tribal communities to increase the public's understanding of violence committed against Native American women, and provide technical assistance to the tribal government victim services programs and tribal nonprofit programs that make up their membership. The work that these coalitions have done with tribal government leaders and community members, as well as federal, state, and local leaders, to raise awareness about violence committed against Native American women has had a tremendous impact on national policy.

Recently, statistics have been cited for the proposition that high levels of violent crime in Indian Country are not being addressed by federal law enforcement. These accusations are largely based on misreadings of statistical studies that deal with a subject that is inherently difficult to quantify. It is unfortunate that this misunderstanding has detracted from the successful work being done by tribal, federal, and state prosecutors to eradicate sexual violence in Indian Country.

One of the Department's studies that has been misunderstood in relation to Indian Country is American Indians and Crime, A BJS Statistical Profile, 1992-2002, which relies on the National Crime Victimization Survey (NCVS) to provide data on the level and nature of victimization among Native Americans in the general population. Although American Indians and Crime is a significant publication, the data in the report primarily reflect the experience of Native Americans living outside of Indian Country. Less than one-third of one percent of households in the NCVS sample are occupied by Native Americans residing in Indian Country. This sample size is insufficient to produce a reliable estimate. Thus, the statistics in that report cannot, and do not, speak to crime occurring in Indian Country. Instead, the report is reflective of those crimes occurring outside of Indian Country, an area in which federal jurisdiction is limited by the Constitution and the Congress.

In addition, even considering the unreliable sample size of households in Indian Country, the NCVS cannot generate estimates of violence on reservations, in tribal communities, or on trust lands because the sampled households in NCVS are derived from geographic units that include reservations, but do not uniquely identify them. Moreover, during NCVS interviews, Native Americans self-identify themselves, but do not provide details of tribal affiliation. As a result, the NCVS sample is not reflective of Indian Country and can only provide estimates of victimization rates among Native Americans residing off the reservation, where the states, not the Federal Government, are responsible for general crimes of violence.

The Department recognizes the need for better data on crime occurring in Indian Country – including crimes against women – and, consequently, has increased its efforts in this field. The Bureau of Justice Statistics (BJS) is working with State Statistical Analysis Centers (SACs) to generate State Based Tribal Crime Reports. BJS has actively sought to generate estimates that compare tribal (reservation or tribal community) crime to jurisdictions adjacent to the reservations. This localized comparison provides a truer picture of criminal activity on tribal lands than does an aggregated national average that is possibly skewed for a variety of factors. BJS is currently working with BIA to obtain such data from six states (including data from 40 tribes) in the West.

In addition, the Department is currently in the process of establishing a task force to assist in conducting a National Baseline Study to Examine Violence Against Women in Indian Country under VAWA. The members of the task force will possess a broad and varied knowledge of the complexities of federal Indian law, the nature of domestic violence, dating violence, sexual assault, and stalking committed against Native American and Alaskan Native women, and the cultural considerations that must be observed when conducting research in tribal communities. OVW is working to ensure that the proposed nominees will maintain a geographic balance representative of many of the challenges unique to Indian Country. In creating the task force, the Department is taking steps to ensure that the task force is established as a federal advisory committee under the provisions established by the Federal Advisory Committee Act.

This task force will assist the National Institute of Justice (NIJ) in the development and implementation of a national baseline study to examine violence against Native American women in Indian Country. In particular, the NIJ study will examine the types and magnitude of violence against women in Indian Country; will evaluate the effectiveness of federal, state, and local responses to violence against native women; and will propose recommendations to increase the effectiveness of these responses. Within the study, the crimes that will be reviewed include domestic violence, sexual assault, dating violence, stalking, and murder.

20. Please provide explanations on the specific requirements imposed on nationals of some countries by the federal legislation on immigration, such as the USA Patriot Act and the National Entry and Exit Registration System, as well as more information on the measures adopted by the State party to ensure that its legislation in this field does not discriminate against nationals of such countries on the basis of race, ethnic or national origin.

Answer:

As a preliminary matter, the United States would like to note that nationality-based distinctions in a country's immigration law are not inherently suspect under the Convention. Under Article 1 of the Convention, the relevant inquiry for determining whether such distinctions amount to prohibited discrimination is whether they have the "purpose or effect of nullifying or impairing the enjoyment or exercise, ... of human rights and fundamental freedoms..."

Moreover, the United States is not alone in employing nationality-based distinctions in its immigration laws. Countries routinely employ nationality-based distinctions as a basis for determining their requirements for entry into their territories. For example, in the United States, the “Visa Waiver Program” (VWP), authorized by section 217 of the Immigration and Nationality Act, 8 U.S.C. § 1187, authorizes the waiver of visa requirements for aliens who are nationals of countries that satisfy a number of objective criteria and are seeking admission as tourists for 90 days or less. Many of the VWP criteria are security-related, but others are designed to determine the likelihood of immigration-related violations. The statute also requires that U.S. nationals receive reciprocal treatment from VWP countries. Numerous countries have agreed to such reciprocal arrangements and thereby have also recognized the permissibility of nationality-based requirements in the immigration context. Such programs do not constitute racial discrimination and do not fall within the scope of the Convention.

Regarding the Committee’s interest in the USA PATRIOT Act of 2001, the U.S. Congress passed the reforms in the wake of the 9/11 attacks primarily to provide prosecutors and investigators with the critical tools needed to investigate and prevent terrorism. The USA PATRIOT Act principally did four things. First, it helped eliminate legal and bureaucratic barriers to effective information sharing and coordination. Second, it updated anti-terrorism and criminal laws so that they reflect current technologies. Third, it closed significant gaps in our ability to investigate terrorists. And fourth, the Act increased penalties for those who commit terrorist crimes. Although the USA PATRIOT Act also expanded certain terrorism-related definitions in the INA determining the admissibility of non-U.S. citizens to the United States, the United States does not believe the USA PATRIOT Act amends U.S. immigration law to require new nationality-based restrictions.

With respect to the National Security Entry and Exit Registration System (NSEERS), this program was implemented by the former Immigration and Naturalization Service (INS), then part of the Department of Justice, to respond to the 9/11 terrorist attacks. 67 FR 40581, June 13, 2002. NSEERS was established to deter, disrupt, and prevent potential national security threats. The program, implemented under the Immigration and Nationality Act,¹² required certain individuals to register with the INS at the time of entry into, periodically during their stay within, and upon departure from the U.S. As part of this registration, individuals generally are interviewed, fingerprinted and photographed. The special registration requirements are designed to ensure that nonimmigrant aliens comply with the terms of their visas and admission and to ensure that they depart the U.S. at the end of their authorized stay. By operation of the Homeland Security Act of 2002, most immigration enforcement authorities and programs, including NSEERS, were transferred to the Department of Homeland Security (DHS).

Nonimmigrant aliens are required to register in NSEERS if they are nationals of a country or territory designated in the Federal Register or are determined by consular or DHS officers to meet pre-existing criteria indicating the need for closer monitoring

¹² Section 262 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1302, provides for the registration of aliens who meet certain criteria. Section 263 of the INA, 8 U.S.C. § 1303, provides for the registration of special groups, and section 264, 8 U.S.C. § 1304, authorizes and directs the preparation of forms for registration and fingerprinting.

of their compliance with the terms of their visas or admission because of national security or law enforcement interests of the United States.¹³ Since its inception, aliens from over 150 countries have been registered as part of the NSEERS program.

The NSEERS registration program is consistent with U.S. obligations under the Convention. The registration requirements are rationally related to national security, public safety, and immigration law enforcement objectives and proportional to the achievement of those objectives, do not subject foreign nationals to arbitrary arrest or detention, and do not pose an undue burden on freedom of movement.

Moreover, the detention and removal procedures applicable to non-US citizens in the United States are consistent with the human rights of non-immigrant aliens. Aliens may be detained and subject to removal proceedings if information collected at any stage in the application process leads to a determination of inadmissibility or deportability under the applicable law. Aliens are accorded ample process of law in any ensuing removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a.

U.S. federal courts have consistently upheld the NSEERS nationality classifications against challenges under the equal protection and due process clauses of the Fifth Amendment to the U.S. Constitution.¹⁴ The same is true with regard to previous nationality-specific alien registration programs.¹⁵

Recognizing the burdens associated with registration, however, DHS amended the NSEERS regulations in December 2003 to significantly reduce those burdens by, among other things, suspending the requirement for annual registration interviews.¹⁶ DHS has also developed procedures to expedite repeat registrations at time of entry for frequent travelers, such as airline crews. Over the past several years, DHS has examined opportunities to capture the information needed and perform the security functions through other mechanisms with a view toward further reducing the burdens on non-immigrant aliens. DHS will continue to refine its programs to meet the changing national security needs and interests.

21. Please provide further information on the measures adopted by the State party – including special measures adopted pursuant to article 2, paragraph 2 of the Convention – to ensure the equal and effective enjoyment by persons belonging

¹³ 8 C.F.R. § 264.1(f).

¹⁴ See, e.g., *Kandamar v. Gonzales*, 464 F.3d 65, 73-74 (1st Cir. 2006), and cases cited therein.

¹⁵ See *Narenji v. Civiletti*, 617 F.2d 745, 747-48 (D.C. Cir. 1979) (sustaining, against equal protection challenge, regulation requiring all alien postsecondary school students with Iranian citizenship to provide information as to residence and maintenance of nonimmigrant status and providing that failure to comply with reporting requirement would subject alien to deportation proceedings and, more specifically, holding that distinctions on basis of nationality may be drawn in the immigration field by Congress or the executive so long as such distinctions are not wholly irrational); cf. *Malek-Marzban v. INS*, 653 F.2d 113, 116 (4th Cir. 1981) (The United States is not bound to treat the nationals of unfriendly powers with the same courtesy and consideration it extends to nationals of friendly powers. The Iranian Government had committed serious unfriendly acts against the United States and its diplomatic representatives in Tehran. No resolution of that crisis had then been achieved. It was a perfectly rational response to provide for the early departure of Iranian nationals illegally in this country and to limit to fifteen days the time within which an immigration judge might permit voluntary departure.”).

¹⁶ 68 Fed. Reg. 67,578 (2003).

to the American Indian and Alaska Native (AIAN) and Native Hawaiian and Other Pacific Islander (NHPI) populations of their rights under article 5 (e) of the Convention. (CERD/C/USA/6, paras. 18-24)

Answer:

This question requests the United States to provide further information on the measures adopted by the State party, including special measures pursuant to article 2, paragraph 2, to ensure the equal and effective enjoyment by persons belonging to the American Native American and Alaska Native (AIAN) and Native Hawaiian and Other Pacific Islander (NHPI) populations of their “rights” under article 5(e) of the Convention. Article 5 requires States parties to guarantee equality and non-discrimination in the enjoyment of certain enumerated “rights,” including economic, social and cultural rights relating, *inter alia*, to employment, housing, public health and medical care, education and training and participation in cultural activities (Article 5(e)). The United States notes that some of the items listed in Article 5(e) are not enforceable “rights” under U.S. law. However, Article 5 does not affirmatively require States parties to provide or to ensure observance of each of the listed rights themselves, but rather to prohibit discrimination in the enjoyment of those rights to the extent they are provided in domestic law.

The programs discussed below do not constitute an exhaustive review of efforts in economic, social, and cultural areas but provide a sense of the scope and nature of initiatives that focus particularly on AIAN and NHPI populations.

As provided for in U.S. law, the federal government recognizes Native American tribes as political entities with powers of self-government. Special rights, benefits, or treatment under these programs are based on this special political relationship between Indian tribes and the federal government, rather than on the ethnic background of tribal members; accordingly the programs related to Native Americans and tribes are in full compliance with equal protection guarantees of U.S. law.

American Indian and Alaska Natives:

Native American Hiring Preference

With regard to employment, there are a number of programs designed to increase employment opportunities broadly and to ensure Native American participation in developing and promoting federal policies regarding tribal self-government. Federal law provides for an Indian preference in hiring that applies to both the Bureau of Indian Affairs (BIA) within the Department of the Interior (DOI) and the Indian Health Service (IHS) within the Department of Health and Human Services (HHS). AIAN individuals constitute roughly 80.6 percent of the combined 9,745 positions in BIA and the Bureau of Indian Education (BIE), both part of DOI. Of the Indian Health Service’s more than 15,000 positions, AIAN employees fill 70.6 percent.

This Indian hiring preference affords absolute hiring preference to qualified Native American individuals who are enrolled in a federally recognized tribe and can provide valid documentation. This means that if there are qualified Native American applicants for a vacancy, a selection is made from those qualified applicants and non-

Native American applicants are not considered. Indian preference has contributed to the obvious benefits of having Native Americans administer matters that affect Native American individuals and tribes, and in 1974 the Supreme Court held that the law does not violate constitutional or federal non-discrimination laws and that its provisions are reasonably and rationally designed to encourage Native American self-government (*Morton v. Mancari*, 417 U.S. 535, (1974)).

Economic Development

The Department of the Interior's Office of Indian Energy and Economic Development (IEED) was created by the Secretary of the Interior to address the overarching issue of economic development as it relates to tribes. In order to maintain a solid foundation for tribal self-governance, IEED works with tribes to promote economic infrastructure in Indian Country, increase business knowledge, encourage capital investment in tribal economies and businesses, and provide technical and advisory assistance for the development of energy and mineral resources. To identify persistent obstacles to Indian Country business and job growth as well as approaches that are succeeding, IEED conducted the Native American Economic Policy Summit in Phoenix, Arizona in May 2007, in partnership with the National Congress of American Indians. There, over 500 tribal and federal decision makers made 100 recommendations for regulatory and legislative reform to improve reservation economies. IEED looks to these recommendations to establish its Indian Country action priorities. A few examples of IEED initiatives are set forth below:

- To address the "digital divide" that prevents remote reservations from enjoying access to the Internet and the global high-technology economy, IEED has been working since August, 2006 with the Native American Chamber of Commerce (NACC), SeniorNet (the world's leading technology educator of older adults), and IBM to place IBM-donated computer equipment and software and provide high-technology training at various reservation locations, called Achievement Centers. The computer equipment and software that IEED has arranged to be donated to tribes is being used for employment training, job searches, internet commerce, home-based businesses, and many other purposes. The first Achievement Center was dedicated at Blackfeet Nation on September 28, 2006. In FY 2007, others were established for the Leech Lake Band of Ojibwe at Cass Lake, Minnesota and the Tigua Tribe at the Ysleta del Sur Pueblo in Socorro, Texas.
- To guide Native Americans who wish to set up their own businesses, IEED will distribute a Tribal Business Structure Handbook throughout Indian Country in 2008. It will provide a general guide to the key factors to be considered when structuring a business or project. It will aid tribes in determining whether business formation should occur under tribal, state, or federal law. And it will help tribes determine which structure will work best to protect tribal assets, preserve tribal sovereignty, minimize tax liability, and maximize the use of incentives available for tribal economic development.
- During Fiscal Year 2007, IEED partnered with Tribal Work Group representatives, the Citizen Potawatomi Nation, and others to create an American Indian/Alaska Native Business Opportunity Workforce

Development Center, targeting underused disadvantaged business enterprises (DBEs) that possess the capacity and capabilities to compete for federal highway contracts. The objectives of the Center include business growth and expansion, an increase in the number of contracts awarded to American Indian/Alaska Native DBEs, placement of on-the-job employees with DBEs, and increased American Indian/Alaska Native community participation and employment on local highway projects. The overall goal is to develop a core of strengthened and knowledgeable DBEs that are able to successfully bid on the over \$300 billion federal highway construction projects currently scheduled on or near Native American lands.

The EEOC also works with tribal governments and has established working relationships with 64 Tribal Rights Employment Offices (TERO). A TERO is a unit within the tribal government structure whose purpose is to encourage and facilitate the use of Native American employment in businesses and industries located within the geographical boundaries of the reservation. To achieve these ends, the TERO seeks to identify, eliminate and remedy illegal employment discrimination. Because EEOC and the TEROs both address employment discrimination, the EEOC provides some funding for TEROs to assist in promoting and protecting the employment rights of Native Americans working for private employers on reservations.

TEROs operating under contracts with EEOC enforce their ordinances, serve as referral and placement links between employers and residents of the reservations and take and process complaints of employment discrimination. TEROs also direct seminars and conferences, making tribal members more aware of their special preference rights and their federal employment rights.

A wide range of other federal agencies also have programs or sections that focus on employment and economic issues specific to AIAN populations. The Department of Commerce Minority Business Development Agency funds a network of Native American Business Development Centers in states like New Mexico and Oklahoma that provide individual entrepreneurs with management technical assistance for business ventures. Within the Department of Labor, the Division of Native American Programs and the Native American Employment and Training Center provide employment and training services to AIAN communities. Other organizations such as the Small Business Administration and the General Services Administration also have initiatives that serve members of AIAN communities through lending and procurement programs and the dissemination of information on obtaining government contracts for businesses.

Health

In the area of health, the Indian Health Service (IHS) within HHS provides comprehensive health services to the AIAN community. The IHS works to assist tribes in developing health programs through activities such as health management training, technical assistance provision, and human resource development. The IHS provides health care services tailored to the needs and American Indians and Alaska Natives which including hospital and ambulatory medical care, preventive and rehabilitative services, and development of community sanitation facilities.

Annually, tribal and IHS facilities receive over 13 million visits, which include inpatient, outpatient, and dental visits.

Within the wider network of health services, which are provided directly and through tribally contracted and operated health programs, IHS focuses on specific issues such as traditional medicine, women's health, elder care, injury prevention, domestic violence, and child abuse. Most IHS funds are appropriated for Native American communities on or near reservations although Congress has also authorized programs that provide some access to care for AIAN individuals living in urban areas – there are 34 urban programs, ranging from community health to comprehensive primary health care services.

In Fiscal Year 2007 the IHS had a budget appropriation of roughly \$3.2 billion dollars and served a population of nearly 2 million American Indians residing on or near reservations and 600,000 individuals in urban clinics. The IHS clinical staff consists of approximately 2,700 nurses, 900 physicians, 400 engineers, 500 pharmacists, 300 dentists, and 150 sanitarians. The IHS also employs various allied health professionals, such as nutritionists, health administrators, and medical records administrators.

Social Services

The Bureau of Indian Affairs conducts the Human Services program, which works with tribal governments in the social services sector. The program, which has an FY 2008 budget of over \$120 million, is generally aimed at improving quality of life in AIAN communities and focuses on specific areas such as social services, welfare assistance, child welfare, and financial protection services. The social services component supports federal staff and more than 900 tribal governmental staff who coordinate activities at the tribal, local, and federal levels. Social workers also serve as the contact point for numerous social service agencies that are responsible for child protection and placement.

In addition, IEED implements the Indian Employment, Training and Related Services Demonstration Act (Public Law 102-477) of 1992, which authorizes tribal governments to integrate a variety of education, employment, training, and social services under a single plan, single budget, and single reporting system. Federal programs that are covered under P.L. 102-477 include any program which provides services to Native American youth or adults that: (1) helps such persons succeed in the workforce, (2) encourages self-sufficiency, (3) familiarizes youth or adults with the workplace environment, (4) facilitates the creation of job opportunities, (5) allows tribes to use a portion of the funds for economic development, or (6) provides services related to any of these goals. A tribe wishing to participate under P.L. 102-477 initially submits an integrated service plan and budget to the IEED which serves as the lead organization. Following an interagency review of the plan and budget, the Secretary of the Interior approves the plan and all affected agencies transfer their funds for the tribe to IEED for award to tribal governments under contracts and compacts. IEED serves as the lead federal organization for implementation of P.L. 102-477. It distributed approximately \$90 million to tribes in Fiscal Year 2007 for providing employment, training, education, childcare, welfare reform, economic development, and related services to assist the economically disadvantaged,

unemployed, or underemployed. IEED is managing numerous contracts including 56 agreements with approximately 243 federally-recognized tribes. Approximately 90 percent of the clients reach their goals every year.

Education

Educational services for AIAN children are provided in a variety of ways. Approximately 90 percent of AIAN children attend local public schools. When public elementary and secondary schools are located on reservations, they are eligible to receive supplemental funds (in addition to regular funding) for Native American students from the Johnson O'Malley (JOM) Program, which is run by the Bureau of Indian Education (BIE) in the Department of the Interior. JOM funds are used for tutoring, academic support, cultural activities, after school activities, and summer education programs. In addition, the Office of Indian Education within the Department of Education supports the efforts of local educational agencies as well as tribal organizations to meet the unique educational and cultural academic needs of AIAN students. The Office of Indian Education awards grants to local educational agencies, tribes, and organizations to meet the unique educational and culturally related academic needs of AIAN students in over 1,000 schools. The average grant in 2007 by the Office of Indian Education was \$76, 663.

Some tribes choose to run or contract out their own schools on Indian reservations. Public Law 93-638 authorizes tribes to take over previously run federal schools and other services on reservations. There are 122 tribally controlled grant school facilities. These tribal schools also are eligible for a variety of other funds available to other schools systems such as the public schools system.

Some AIAN students attend schools administered by the BIE in some tribal areas. The BIE has responsibility for 184 elementary and secondary schools and dormitories as well as 24 colleges, and the Bureau-operated Haskell Indian Nations University and Southwest Indian Polytechnic Institute. The majority of the elementary and secondary schools are located in Arizona and New Mexico, with most of these schools located on the Navajo Reservation, but also including the Pueblos and Apache of New Mexico and the Pima, Tohono O'odham, Hopi and Apache of Arizona. The area with the second greatest number of schools encompasses the states of North Dakota and South Dakota on the reservations of the Lakota, Nakota, Dakota, Mandan, Hidatsa, Arikara and Ojibwe. The area with the third greatest number of schools is located in the northwest region of the United States. The remaining schools are scattered on reservations throughout the United States. BIE post-secondary institutions, schools and dormitories are located on 63 reservations in 23 states across the United States serving approximately 60,000 students representing 238 different tribes. The federal government continues to increase its financial support for BIE schools.

Cultural Protection

For information on cultural protection issues, please see the most recent Periodic Report at paragraph 346 as well as the answer to Question 28.

Native Hawaiians:

A number of federal programs provide services for Native Hawaiians. Several of these are described briefly here.

Housing

The Office of Native American Programs in the Department of Housing and Urban Development (HUD) administers programs designed to support affordable housing and community development activities for low income Native Hawaiians eligible to reside on Hawaiian Home Lands. One of the programs is the Native Hawaiian Housing Block Grant program, for which approximately \$9 million in funding was available in Fiscal Year 2007. In addition, the Section 184A Native Hawaiian Loan Guarantee Program is a 100 percent loan guarantee program designed to offer home ownership, property rehabilitation and new construction opportunities for eligible Native Hawaiian individuals and families wanting to own homes on Hawaiian Home Lands. The funds for these programs are administered by the Hawaii State Department of Hawaiian Home Lands (DHHL).

The Hawaii State Office of Hawaiian Affairs reported in November 2007 that under a revamped Native Hawaiian Loan program, Native Hawaiians would be able to receive loans for home improvement and education uses as well as business opportunities under a restructured Native Hawaiian Revolving Loan Fund. The Malama Loan program, administered by the First Hawaii Bank, was to offer 5 year, 5 percent loans of up to \$75,000 for eligible consumer and businesses, with loans expected to be approved and disbursed to eligible applicants within 5 days.

Education

The Department of Education administers several programs to support Native Hawaiian students and institutions. The Native Hawaiian Education Program supports innovative projects that enhance educational services provided to Native Hawaiian children and adults. Authorized activities include, among others: early education and care programs; family-based education centers; beginning reading and literacy programs; activities to address the needs of gifted and talented Native Hawaiian students; special education programs, professional development for educators; and activities to enable Native Hawaiian students to enter and complete postsecondary education programs. In FY 2007, the Department awarded approximately \$34 million for this program. The Department also administers the Native Alaskan and Native Hawaiian Institutions Program that helps eligible institutions of higher education increase their self-sufficiency and expand their capacity to serve low-income students by providing funds to improve and strengthen the academic quality, institutional management, and fiscal stability of eligible institutions. In FY 2007, the Department awarded approximately \$ 11.8 million in grants under this program. In the area of career and technical assistance, the Department awards funds to community-based organizations primarily serving and representing Native Hawaiians to support career and technical education and training projects. In FY 2007, the Department awarded approximately \$ 3 million in grants under this program.

Health

Under the Native Hawaiian Health Care Improvement Act, the Department of Health and Human Services (HHS) provides outreach, health promotion, disease prevention and primary health care services. One of the objectives of the program is to attempt to integrate traditional health concepts with western medicine so that existing barriers to health care can be removed. Approximately \$14 million was available for programs under the Native Hawaiian Health Care Improvement Act in Fiscal Year 2007.

A 1991 grant from HHS funded the Native Hawaiian Center of Excellence (NHCOE) at the John A Burns School of Medicine in Honolulu, which works with Native Hawaiians interested in going into the medical profession. (Native Hawaiians are underrepresented in the medical profession in Hawaii in comparison to their percentage of the population.) In November 2002, NHCOE also received an endowment of \$4.6 million from the National Center on Minority Health and Health Disparities of the National Institutes of Health. The award is to be used for research on health disparities among Native Hawaiians. The Native Hawaiian Cancer Research and Training Network, part of the National Cancer Institute of the National Institutes of Health, has also addressed issues of disparities in cancer.

In addition, the Hawaii State Office of Hawaiian Affairs runs a Native Hawaiian Health Scholarship Program. This program, which is funded by HHS through the U.S. Public Health Service, assists Native Hawaiian students in selected, accredited health professions training programs. The program has a service requirement, which requires recipients to do service work for the number of years for which they received scholarship assistance (2 to 4 years). The requirement must be fulfilled in Hawaii, serving Native Hawaiians in any one of the five Native Hawaiian Health Care Systems or in a federally designated primary health care site.

The HHS Administration on Aging also provides grants to organizations representing Native Hawaiians under Title VI of the Older Americans Act. These grants provide for meals for elders in poor health, special nutrition services, nutrition education and counseling and related services.

Pacific Islanders:

Pursuant to various executive orders, the Secretary of the Interior has administrative responsibility for coordinating federal policy in such territories as American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. The Department's Office of Insular Affairs (OIA) carries out the Secretary's responsibilities for these U.S.-affiliated insular areas and provides assistance in a range of areas with the goal of increasing economic self-sufficiency in the insular areas. From 2004 to 2007, federal assistance to insular areas made up between 25 and 30 percent of the total GDP of the insular economies. Most of OIA's budget reflects mandatory commitments to U.S.-affiliated insular areas and is permanently appropriated – the FY 2008 budget proposal is \$408.3 million.

Support for education is an important component of OIA's mission of serving the communities of the insular areas. Funding for education is a component of individual operations budgets for the insular areas and also takes the form of block grants. For

example, different Operations and Maintenance Improvement Program (OMIP) grants support educational institutions like the American Samoa Community College. Through a partnership with the USDA Graduate School, OIA provides assistance for several general and specialized certificate programs in order to increase the capabilities of the insular governments in the area of accountability and financial management while developing local expertise at the same time. In FY 2006, forty-four weeks of professional development in a range of different courses was provided under this initiative. The Department of Health and Human Services (HHS) also provides assistance to local departments of education through programs like Head Start or directly to educational institutions for particular programs.

Much of the assistance to insular areas is focused on economic growth and infrastructure development. OIA oversees investment in the capital infrastructure of insular territories through Stewardship Expenditures which target a number of different sectors. In FY 2005, Stewardship Expenditures accounted for over \$28 million and in FY 2006 the islands expended over \$34 million on capital infrastructure. The water, waste-water, solid waste, and energy sectors composed roughly half of these expenditures while 20 percent of the yearly expenditures were on hospitals, 14 percent on schools and the remainder on public buildings, roads, and ports.

22. Please provide information on the measures adopted by the State party – including special measures adopted pursuant to article 2, paragraph 2 of the Convention – to eliminate discrimination in access to certain professions, such as the legal profession and public accounting, across the State party and in particular states such as California.

Answer:

Under federal law, an employer who employs more than fifteen employees cannot use any hiring practices or criteria that intentionally or unintentionally discriminate against racial minorities. This federal law, Title VII of the Civil Rights Act of 1964, applies to employers within all professions, including the legal and accounting professions. Many states have similar state laws prohibiting discrimination that may also apply to employers who employ less than fifteen employees. That being said, this question may be asking about programs in the United States to encourage racial minorities to enter into various professions. Encouraging groups that historically have been underrepresented in professions is an important policy objective at both the federal and state level within the United States. This response describes programs of the Department of Labor and provides a few examples of the myriad programs undertaken at by state and local governments and professional associations within the United States to encourage such entry and retention.

The Department of Labor's Employment and Training Administration (ETA) administers a variety of training programs, primarily through state and local workforce development systems, designed to help people develop the skills they need to enter the workforce in a high-growth, high-demand occupations. All such programs adhere to Federal equal opportunity and non-discrimination statutes and regulations.

In addition to training programs, ETA oversees the National Apprenticeship System that combines employment, on-the-job learning, related technical instruction, and mentoring to develop a skilled workforce. Registered Apprenticeship programs are available in over 1,000 occupations in the United States. Apprenticeship programs with the highest numbers of apprentices include: Electrician, Carpenter, Plumber, Pipe Fitter, Sheet Metal Worker, Power Plant Operator, and Boilermaker, all of which are in the construction industry. Apprenticeship programs are also being developed and implemented in other high-growth, high-demand industries such as health care, geospatial technology, biotechnology, and information technology. Examples of occupations include certified nursing assistant and database technician. Under federal regulations at 29 CFR part 30, all registered apprenticeship program sponsors are required to adhere to an Equal Employment Opportunity pledge. Additionally, sponsors with five or more apprentices must have an approved affirmative action plan and selection procedure, which contains dissemination of apprenticeship opportunities activities, including outreach with majority groups, women's groups, and advertisements in the local newspapers with large circulation for the corresponding geographical area covered by the apprenticeship program.

ETA is also actively engaged in addressing the integration of immigrants into the U.S. workforce. To that end, ETA has initiated research and demonstration projects that provide English language and occupational training to ensure that individuals with limited English proficiency can obtain career ladder positions in high growth industries. For example, the New Americans Centers Demonstration Project has provided grants to Iowa Workforce Development and to the Arkansas Department of Workforce Services to speed the transition of new Americans into communities, promote stability and rapid employment with good wages, and enhance economic development. New Americans Centers will be located within existing One-Stop Career Centers, and will provide job placement and small business assistance, in addition to other services.

Additionally, the Department of Labor also administers the Job Corps Outreach program. Job Corps is an equal opportunity program that targets all eligible youth through outreach activities. Marketing and recruitment efforts target an ethnically diverse student population. In an effort to reach the Hispanic demographic, Job Corps provides Spanish-language recruitment brochures, booklets, and parents' guides, in addition to airing television and radio recruitment spots on Spanish-language networks. Because women constitute only 39.9 percent of Job Corps participants, a female recruitment magazine, Get This, has been published to increase female enrollment.

A recent case brought by the EEOC will also serve to enhance the rights of some lawyers and other professionals to be free from employment discrimination. This case, *EEOC v. Sidley & Austin*, No. 05 cv 0208, 2007 WL 2915852 (N.D. Ill. 2007), challenged the involuntary retirements of certain partners and the expulsion of others on account of age. Prior to this case, partners in law firms and other professional partnerships were considered beyond the reach of U.S. anti-discrimination laws, because once a professional was designated as a "partner" in a firm, he or she was no longer an "employee" within the meaning of anti-discrimination laws. In the *Sidley* case, the EEOC argued that partners who do not control their own destinies are, in fact, employees, entitled to legal protections. After a series of precedent-setting court

decisions in the agency's favor, the case was resolved by a \$27.5 million consent decree in which the firm itself agreed that the affected partners were employees. The EEOC believes that the *Sidley & Austin* decision will ultimately mean that federal prohibitions against age, as well as race, color and national origin discrimination will protect all who are, in fact, employees – even if they are designated otherwise by their employers.

In addition to federal programs designed to help a diverse cross-section of persons in America develop career and professional skills, states, counties, cities, and private professional organizations also actively pursue such efforts. Because the Committee has asked about the legal and accounting professions, and specifically about state involvement (in particular, California) this section concentrates specifically on areas of interest expressed by the Committee. Many similar programs in other employment areas and by others of the fifty states could also be described.

In 2006, the California Bar Association published the California Diversity Pipeline Report – a report on diversity programs being employed by associations, law firms, corporate offices, governmental entities, law schools and courts, to increase the diversity of persons in the legal profession. That report, which is available at calbar.ca.gov/calbar/pdfs/reports/2006-Diversity-Pipeline-Report.pdf, states that a key priority of the California State Bar is to achieve greater diversity in the legal profession in California and also in participation in Bar activities. The goal is to achieve a demographic in the legal profession that reflects the demographics of the state population as a whole.

The periodic report describes two State Bar programs designed to support greater diversity – the State Bar Center for Access and Fairness, and a Diversity Awards Program. It also highlights a number of successful, sustainable programs in the State of California and throughout the United States that provide models for use in California. These include, *inter alia*:

- The Bay Area Minority Summer Clerkship Program – a collaboration of the Alameda County Bar Association, the Bar Association of San Francisco, the Contra Costa County Bar association and the Santa Clara County Bar Association, which exposes minority students to large law firms and exposes firms to talented students who might not otherwise have been selected for summer clerkships;
- The Bar Association of San Francisco Diversity Program – over 100 Bay Area legal employers voluntarily adopt goals and timetables for minority hiring and advancement. The 2010 goals are 37 percent minority associates (including 9 percent African American and 9 percent Hispanic), and 15 percent minority partners.
- The Bay Area Minority Law Student Scholarship Program – sponsored by the Bar Association of San Francisco, provides scholarships to minority law students.
- The Boston Bar Association Diversity Committee and Children and Youth Outreach Pipeline Program – for students in Boston public schools and young

adults who may consider careers in law; includes job shadowing, law office summer programs, and law firm partnering with high schools.

- The Utah Minority Bar Association Program – runs from high school through entrance into the judiciary. Since its institution, the number of minority attorneys in Salt Lake City has increased dramatically.
- The ABA Section on Real Property, Probate and Trusts – a joint program with more than 20 minority bar associations to upgrade the skills of minority lawyers in these specialized areas of the law.
- Numerous law firm programs, including mentoring, scholarships and work opportunities.
- Corporate programs – Wal-Mart, Street Law Inc. and the Association of Corporation Counsel, Intel Corporation, Starbucks, Corporation – many of these have increased diversity in corporate legal staffs.
- Government programs – for example, the San Francisco District Attorneys Office provides high school mentoring, internships, and law clerk programs.

The periodic report includes many other programs reaching down to the elementary school level, designed to interest minority students in being lawyers and judges.

Similar efforts are being made in the accounting profession. For example, the American Institute of Certified Public Accountants has a Minority Initiatives Committee that oversees a comprehensive program of scholarship support, faculty development, and partnerships with outreach organizations. These include accounting scholars leadership workshops, scholarships for minority accounting students, and fellowships for minority PhD students. For these purposes, partnerships have been established with the Association of Latino Professionals in Finance and Accounting, the Diversity Pipeline Alliance, the National Association of Black Accountants, and the National Asian American Society of Accountants. The American Accounting Association also has a Diversity Section.

As is the case for the legal profession, accounting diversity programs target students from high school through later years of education. For example the University of Texas School of Business and the accounting firm, Ernst & Young, LLP, have sponsored a program that brings top Hispanic and African American high school students to campus for summer programs in accounting. The PhD Project, a multi-million dollar corporate and academic-led effort to increase minority representation among business school professors was founded in 1994. The KPMG Foundation, a lead sponsor and administrator of the Project, reported in 2006 that the number of minority business school faculty members had increased from 294 to 815, with approximately 400 more candidates in the pipeline to become faculty members within the next 5 to 6 years. In 2005, the new CALCPA (California Certified Public Accountants) Chair (the first Asian American to serve in that position) reported that diversity was increasing in the accounting profession, especially in younger CPAs. He also reported that more than half of the persons now entering the profession (56 percent) were women.

23. Please provide more information on the measures adopted at the federal and state levels to assist those displaced by Hurricane Katrina – most of whom are African American residents – to return to their homes, where feasible, or to have access to adequate and affordable social housing in the place of habitual residence. (CERD/C/USA/6, para. 255)

Answer:

Section 308 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5151, prohibits discrimination on the basis of race, color, national origin and other bases in the provision of federal disaster services and benefits.¹⁷ Section 308 required the President to issue regulations necessary to guide personnel carrying out Federal assistance functions at the site of a major disaster or emergency and which include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status. Additionally the Act requires that governmental bodies and other organizations are required to comply with these regulations as a condition of participation in the distribution of assistance or supplies under the Act or of receiving assistance thereunder.

The Federal Emergency Management Agency (FEMA) fully complies with Section 308 of the Stafford Act. Over the two and a half years since the devastation of Hurricanes Katrina and Rita, FEMA has provided an unprecedented level of support and assistance to the people and communities of the Gulf Coast. FEMA sheltering and housing programs have reached and assisted millions of disaster victims, and provided or facilitated the means for hundreds of thousands of displaced evacuees to successfully find and move into long-term housing.

During this period, over \$7.7 billion has been provided to more than 1.4 million households through FEMA's Individual and Households Program (IHP). This includes nearly \$5.6 billion in Housing Assistance, and over \$2.1 billion in Other Needs Assistance. Over 1.1 million households received emergency housing assistance totaling over \$2.3 billion through the expedited assistance program. Nearly \$2.5 billion of rental assistance has been distributed to over 730,000 households. FEMA has provided over \$437 million in home repair payments, helping make more than 185,000 homes habitable across the Gulf Region following Katrina and Rita. In addition, FEMA has provided more than \$345 million to over 34,000 households to assist them towards the purchase of replacement housing.

Additionally, in response to Hurricanes Katrina and Rita, FEMA conducted the largest temporary housing operation in the history of the United States, providing temporary housing units to more than 143,000 families across the Gulf Coast. While most of these families have transitioned to self-sufficiency, FEMA continues to

¹⁷ Regulations promulgated pursuant to section 308 of the Stafford Act are found at 44 C.F.R. § 206.11.

support the remaining households, those who continue to need assistance as they find and transition into longer-term, and more stable, housing solutions.

In order to address the longer-term housing needs of those still in need of assistance, FEMA and the U.S. Department of Housing and Urban Development (HUD) established the Disaster Housing Assistance Program (DHAP), a temporary housing rental assistance and case management program for eligible individuals and households displaced by Hurricanes Katrina and Rita. The program is currently being administered through HUD's existing infrastructure of Public Housing Authorities (PHAs). Local PHAs were awarded grants to provide rent subsidies to eligible individuals and households through March 2009. The PHAs also provide case management services, which will include a needs assessment and individual development plan (IDP) for each family. The objective of the case management services is to promote self-sufficiency for the participating individuals and households. Over 28,000 eligible residents displaced by the 2005 Gulf Coast hurricanes will continue to have their rent paid through this collaborative partnership with HUD.

The U.S. Congress also appropriated \$400 million for FEMA to conduct an Alternative Housing Pilot Program (AHPP) to identify and evaluate alternatives to travel trailers and mobile homes. After a competitive process, pilot projects in Alabama, Mississippi, Louisiana, and Texas were selected for grant awards. These pilot projects not only will provide the Federal government with valuable experience on how to meet the needs of victims in future disasters, they will also provide additional housing resources for those who have been impacted by Hurricanes Katrina and Rita.

For those who were displaced as a result of Hurricanes Katrina and Rita, FEMA also announced a reimbursement program that will provide relocation assistance to disaster victims displaced by Hurricanes Katrina and Rita. For applicants returning to their pre-disaster state, relocation assistance is available for those who relocate to housing that is not provided by FEMA and is not a hotel or motel. For those families that are already living in their pre-disaster state in FEMA travel trailers or mobile homes, FEMA will pay moving expenses to a FEMA-funded rental resource anywhere in the continental United States. (FEMA will pay for an in-state move only if the new location is greater than 50 miles from the present location of the applicants.) The program will reimburse eligible applicants for relocation expenses up to \$4,000 that were or will be incurred between August 29, 2005, and February 29, 2008, for Hurricane Katrina, or September 24, 2005, to February 29, 2008, for Hurricane Rita. Funding for relocation expenses must be available within the FEMA Individuals and Households Program cap and the applicant must not have received funds from any other state, federal or voluntary agency subsidized travel home program. To be eligible for the program, the applicant must have been displaced from their primary residence in a disaster-declared area as a result of hurricanes Katrina and Rita and have incurred or will incur relocation travel expenses within the defined period. Relocation Assistance will be limited to travel costs including airfare, train, bus and/or a rental vehicle.

Transportation expenses for furniture also are eligible, including commercially rented equipment for hauling and commercially purchased moving materials or moving

services to include cost of liability insurance and taxes. Mileage, gas, cost of liability insurance and taxes incurred while using commercial rented equipment are eligible costs. If the distance between the current residence and the new residence is more than 400 miles, lodging cost for one night and one room is also eligible. However, moving costs for recreational or large luxury items such as boats or recreational vehicles are not eligible expenses under this program.

HUD also has in place a number of programs. For Louisiana, these include:

- Road Home Program – this program, which helps victims get back into their homes, is administered by the Louisiana Recovery Authority (see below). It has recently received an additional three billion dollars, which fully funds the effort.
- Small Rental Program – this program has issued a total of \$502 million in conditional awards to rehabilitate 9,975 affordable rental units. A total of 5,939 rental properties have been assisted.
- Piggyback Program – this program supports affordability for especially low-income Louisianans in properties receiving Gulf Opportunity Zone Low Income Housing Tax Credits for a total loan amount of \$417,559,023.
- Entergy New Orleans – this program is designed to mitigate extraordinary levels of public utility rate increases that might otherwise have been passed on to New Orleans gas/electric utility ratepayers.
- Local and State Infrastructure Match Programs – these programs provide up to \$95.5 million to local governments and up to a proposed \$277.5 million to state governments to cover the required FEMA match for emergency infrastructure projects.
- Long Term Recovery Program – this program, approved for \$200 million in August of 2007, will distributed funds among the parishes based on an estimate of damage inflicted by Hurricanes Katrina and Rita.
- Fisheries Infrastructure and Assistance Program – this program would provide \$20 million of disaster Community Development Block Grant funding for fisheries assistance.

HUD has also established similar programs for Mississippi – including a homeowner assistance program (\$3.24 billion); a public housing program (\$105 million); a regional infrastructure plan (\$617.5 million); a ratepayer and wind pool mitigation assistance program (\$440 million); an economic development program (\$160.3 million); and a small rental assistance program (\$262 million).

Many elements of these programs are administered by the state and local authorities. For example, the State of Louisiana Recovery Authority has established a number of programs to address recovery from Katrina and Rita, using federal and other funds. These programs, as well as the City programs mentioned below, are available to all

eligible recipients, without distinctions, exclusions or preferences based on race or ethnicity. A few of the programs are noted below:

- Road Home Program – As of December 6, 2007, there had been 186,159 recorded applications, and 148,313 benefits calculated with an estimated value of \$9.3 billion. 71,816 applicants received compensation averaging \$65,371 each (data from HUD).
- Housing Search Program – this program provides a free web-based service to list and search for properties for rent and sale.
- Louisiana Loan Fund – this fund provides financing (funds from HUD) to develop affordable and mixed income housing. Funds are available to developers who acquire land or buildings for development to replace housing that was lost or damaged. The program is jointly managed by Enterprise Community Partners and the Local Initiatives Support Corporation. Eligible applicants may borrow up to \$200,000 for early pre-development project feasibility and up to three million dollars for pre-development financing.
- Business Recovery – The Gulf Opportunity Zone (GO Zone) involves a number of tax and other incentives to attract business and industry to the area. These include tax exempt bond financing, enhancement of low-income housing tax credits, tax credits for employees, increased tax credits for rehabilitation expenditures and cleanup, and others.
- Small Rental Program – this program provides financial assistance to small rental property owners so they can return an estimated 18,000 affordable and ready-to-be occupied units to the rental housing market. A small portion of the funds (\$40 million) have been set aside for a pilot program to assist in creating home ownership opportunities for renters. The program is administered by the Louisiana Housing Finance Agency.
- Fisheries Assistance – the Fisheries Infrastructure Assistance Program is designed to preserve the fishing industry and maintain employment in both commercial and recreational fishing. Funds for this program come from HUD.
- Louisiana Land Trust – this is a non-profit organization formed to manage the properties purchased by the State of Louisiana under the Road Home Program.

As a result of the Louisiana Recovery Authority's efforts to secure federal resources, Community Development Block Grant funding for Louisiana has more than doubled, from \$6.2 Billion to \$13.4 Billion since 2005. Approximately \$43.5 billion (nearly 70 percent) of all the federal dollars that have been earmarked for Louisiana's recovery have been spent thus far – including more than \$10.4 Billion invested in permanent reconstruction projects. The Disaster Recovery Unit works with the Louisiana Recovery Authority to administer Community Development Block Grant Disaster Recovery Funds, in the amount of \$10.4 Billion.

Additionally, the City of New Orleans has undertaken noteworthy recovery measures. The City of New Orleans recovery plan focuses initially on 17 target recovery zones,

approved by the Louisiana Recovery Authority – granting the City access to \$117 million in rebuilding funds from the Authority. The City can also take advantage of \$350 million in the state revolving loan fund, a \$260 million bond issue, \$514 million in Go Zone Bonds for local projects, \$54 million from the Federal Highway Administration and \$77 million in federal matches for roadway projects. In total, the City plans \$363 million in roadway projects.

The State of Mississippi also has in place similar programs for hurricane recovery. According to the Governor's Office of Recovery and Renewal, approximately \$23.5 billion was directed to Mississippi state and federal recovery efforts, and the state intends to seek another \$8.5-\$10 billion for longer-term environmental restoration projects. Most of this funding comes from the Stafford Act and from Congressional appropriations, particularly from HUD's Community Development Block Grant program. These funds are administered by the Mississippi Development Authority. Some funding also comes from foundations and other private donors. Among the programs run by the State of Mississippi are the Homeowners Assistance Program, which has distributed approximately \$1 billion to homeowners; the Mississippi Alternate Housing Program, which received \$281 of the \$400 million available to all states, to move citizens still in temporary housing to more comfortable accommodations; the employment program, which had returned unemployment rates to pre-Katrina levels by the beginning of 2007; and programs to get children back to school, and to support the mental health of victims.

24. Please provide further information on the implementation of the measures described in the report, such as the Medicare Modernisation Act and the National Action Agenda to Eliminate Racial and Ethnic Disparities in Health, to ensure that low-income persons belonging to racial, ethnic and national minorities have equal access to health insurance and adequate health care and services. (CERD/C/USA/6, paras. 106-110 and 256-263)

Answer:

The Department of Health and Human Services is actively engaged in ensuring that the health insurance and health care needs of all persons, including those belonging to racial and ethnic minorities are met. In addition to addressing the measures referred to in the Committee's question, the information below describes the wide range of programs administered by the Department of Health and Human Services (HHS) as well as at the state level, including Medicaid programs across the country, that are designed to decrease disparities in health care.

Medicare Prescription Drug Improvement and Modernization Act of 2003

On December 8, 2003, President Bush signed into law the Medicare Prescription Drug Improvement and Modernization Act of 2003 (Pub. L. 108-173) ("the Act"). This landmark legislation provides seniors and individuals with disabilities with a prescription drug benefit, more choices, and better benefits under Medicare. The Act was a system wide revamping of the Medicare system that targets all residents of the U.S. – not just minority groups. At the same time, as described in paragraph 257 of the periodic report, the Act has the potential to substantially reduce racial and ethnic

disparities among seniors. As a result of this legislation, Medicare now covers preventative medicine, including screenings for heart disease, cancer, depression, and diabetes – conditions that disproportionately affect racial and ethnic minorities – and also provides assistance to reduce the cost of prescription drugs, which assist the elderly, particularly the elderly poor, in meeting health-care expenses. Because of the system-wide reform provided under the Act, it is difficult to succinctly describe implementation measures. In order to provide the public and other interested parties with up-to-date information on implementation of the Act, HHS's Centers for Medicare & Medicaid Services (CMS) created a website and monthly email updates. These contain information on what CMS accomplished in the past month as well as major activities scheduled for the coming month, such as key implementation dates and regulations being published. This material is too vast to summarize here but can be located at <http://www.cms.hhs.gov/MMAUpdate>.

National Partnership for Action to End Health Disparities for Ethnic and Racial Minority Populations

The National Partnership for Action to End Health Disparities for Ethnic and Racial Minority Populations (NPA), also referred to in the Committee's question, is administered by HHS's Office of Minority Health (OMH). One of its objectives is to concentrate OMH's numerous programs to respond to research about health disparities for minorities under one roof. Research in this area has indicated that immediate attention was needed to engage minority communities through the faith community, improved research, and private business on eliminating health disparities among minorities. As part of this partnership, OMH/HHS has developed the following programs:

- OMH has partnered with nationally known preacher, Bishop T. D. Jakes Ministry, The Potter House, to provide outreach on preventative care and mental health to the minority community. Potter House also assists in treating minorities with certain specific conditions including HIV/AIDS, end-stage kidney failure, and cancer.
- The Federal Initiative to Increase Minority participation in Clinical Drug trials, launched in May 2007, focuses on cultural and linguistic barriers that prevent many underserved populations from participating in trials.
- The DEUCE program (Disparity Elimination Using Care and Exercise) is a partnership between the HHS, the U.S. Department of Agriculture (USDA) and the U.S. Tennis Association to encourage physical activity among minority children.

Other HHS Programs Aimed at Reducing these Disparities

In addition to the programs referred to by the Committee in its question and described above, the U.S. Department of Health and Human Services (HHS) engages in aggressive surveillance of minority health to try and identify system deficiencies and allow the government to address those inadequacies. In many minority communities, chronic diseases, like diabetes, stroke, liver disease and heart attacks are far more prevalent than in white communities (AHRQ, National Health Disparities Report,

p8). Many of these cases can be reduced by focusing on lifestyle changes. CMS has responded to the call for action by mobilizing resource and technical assistance regarding health prevention, safety, case review, and care coordination deployed through the Quality Improvement Organizations (QIOs), which is required by law in every state and territory. These programs, designed to reduce health disparities, are all evidence based and have the potential to make a huge impact on minority communities across the nation. For example, the CMS Every Diabetic Counts pilot program combines community educators, providers and the beneficiaries through HHS's partnership with quality improvement organizations (QIO) in Florida. The program is designed to empower community educators to go back into their neighborhoods and teach diabetic education to Medicare beneficiaries. This reduces barriers such as access to diabetic health education, increases health literacy and empowers the community to work together for positive inclusive healthy neighborhoods. The pilot program correlates diabetic self management interventions in clinical health outcomes.

Chronic Kidney Disease (CKD) is another example of a disease that disproportionately affects African Americans, Hispanics, and Native Americans. A CMS/QIO program aims to identify disparities in CKD care through activities and interventions that increase quality of care in underserved populations. The CKD program focuses on three clinical areas, each with a corresponding clinical measure. The clinical areas are increasing the detection of CKD in diabetic beneficiaries; appropriate medication treatment to slow the progression of CKD to kidney failure; and adequate counseling prior to initiation of dialysis as evidenced by placement of an arteriovenous fistula in advance of the need for hemodialysis. The second task directs QIOs to use collaboration as a means of achieving sustainable CKD system level changes. All QIOs must monitor the effect of their CKD interventions on disparities and must take immediate corrective action if disparities in care are increasing. The CKD measures will be calculated on a quarterly basis and race, ethnicity, gender, and zip code information will be included so that trending can be done.

CMS is also producing public service announcements (PSAs) focusing on simple lifestyle changes that can be used to reduce an individual's risk to disease. These campaigns include the Community Initiatives to Eliminate Stroke Program (CITIES), the National Hepatitis B Initiative for Asian Americans and Pacific Islanders, and the Obesity Abatement in the African American Community.

Additionally, CMS is working in collaboration with the Social Security Administration, Office of Minority Health and the Office of Civil Rights to improve data collection and analysis at local, regional and national levels. Data is used to monitor disease, examine the impact of new health technology, and analyze risk factor data and prevalence data for our underserved populations throughout the United States. As a result of efforts thus far, HHS is able to aggregate data to county levels. This allows us to identify African American and Hispanic populations with high prevalence of diabetes. CMS is able to calculate this information through the QIO in every state.

Finally, though not specifically oriented towards minority communities, HHS administers Community Healthcare Centers across the country. In December 2007,

U.S. Department of Health and Human Services Secretary, Michael O. Leavitt announced the opening of the 1200th Community Healthcare Center, a key goal set by President Bush in 2001. These centers provide clinical and preventative treatment to people regardless of their ability to pay for such services. Between 2001 and 2006, the number of patients treated at health centers has increased by over 4.7 million, representing a nearly 50 percent increase in just five years. In 2006 the number of patients served at those centers topped the 15 million mark for the first time. Over 15 million people are served by these centers annually.

Coordination with States

CMS runs many programs aimed at addressing the specific health conditions that affect minority groups in collaboration with states that administer these programs. State Medicaid and State Children's Health Insurance Program (SCHIP) are focusing their efforts on eliminating racial and ethnic health disparities in clinical areas such as asthma, cardiovascular disease, cancer screening, diabetes and infant mortality by ensuring access to insurance and medical services required by each beneficiary. The objective of Medicaid,¹⁸ a joint federal/state run program, is to ensure healthcare for low-income families. Medicaid has teamed up with local partners in communities to promote healthcare for minority groups, such as "Take a Loved One For a Checkup Day" which encourages people to take their family members get a basic checkup with a healthcare provider. The SCHIP program focuses specifically on providing healthcare to uninsured children, regardless of racial or ethnic background.

Studies conducted by both private and public sector organizations show that while there is more work to be done in reducing racial and ethnic disparities, effective access standards implemented by State Medicaid programs are showing some positive results. For instance, a sampling of several State Medicaid legislative mandates shows that they require participating managed care organizations (MCO) to develop and maintain access to care standards, which include developing provider networks that ensures enrollees have reasonable travel times to the sites at which they receive primary and specialty care physician services. Information technology is playing a critical role in reducing racial and ethnic disparities. Technology and software applications such as GEOACCESS, which allows people to find approved healthcare providers closest to their place of residence or work, have proven to be an effective tool in identifying gaps in healthcare provider coverage.

Additionally, in support of efforts by the 50 states, CMS has conducted the following activities:

Disseminated information about promising/best practices in health disparities in Medicaid and SCHIP:

- Established a Medicaid and SCHIP Health Disparities Page on the CMS Website.

¹⁸ Medicaid is jointly funded by the federal and state governments and administered by the States. Therefore, Medicaid benefits and policies are not uniform across the country, however they are governed by a set a Federal regulations.

- Developed a “promising practices” nomination form and disseminated to states during all presentations and conference calls, allowing effective methods of reaching low-income communities to be spread nationally.
- Worked with the National Committee for Quality Assurance to identify and reward promising practices in health care disparities in Medicaid Health Plans. First awards given in October 2006 with follow-up awards in October 2007. Provided staff members to serve as technical experts and the Health Disparities National Summit.

Collaborated with states and external organizations/resources to develop partnerships to reduce health disparities in Medicaid and SCHIP.

- Partnered with AHRQ (Agency for Healthcare Research and Quality) on a multi-year asthma learning partnership designed to reduce disparities in asthma care and outcomes for low-income racial and ethnic minority children.
- Partnered with the National Initiative for Children’s Healthcare Quality to implement the CMS Neonatal Care Outcomes improvement project that will help to reduce morbidity and mortality of low-birth weight/premature infants, which is twice that of the general population in the African American Community.
- CMS is a member of the Advisory Board for the Childhood Obesity Action Network, which has a particular focus on reduction of obesity in minorities.

Collaborated with States and external organizations/resources to develop partnerships to reduce health disparities in Medicare.

- CMS leads a health disparities forum that addresses four pillars to reduce health care disparities. These pillars are finding individuals, sensitizing providers, messaging, and models. The purpose is to ensure policy decision makers engage with community individuals to increase quality healthcare to people of color and residents of low-income communities.
- Member of National Healthcare Quality and Disparities Report workgroup with the Agency for Healthcare Research and Quality (AHRQ) to aide in the report publication.
- Partnered with Centers for Disease Control and Prevention (CDC) and the National Institute of Health (NIH) to reduce the disparities in African Americans, Hispanics and Native Americans for Chronic Kidney Disease through the National Kidney Disease Education program.
- Workgroup member of National Institute of Dental and Craniofacial Research (NIDCR) for oral health disparities research.
- Partner with HHS Hispanic Elders Learning Group, which aims to help build Hispanic community coalitions to assist in the analyses of national, state and local data for Hispanics related to prevalence of diabetes.
- CMS is a member of the United States Public Health Service Hispanic Officers Advisory Committee (HOAC) to the Office of the Surgeon General which aims to serve as a resource and advisory capacity to assist in the development, coordination and evaluation of activities related to ethnic minority officers it represent in the Public Health Service.

- CMS is a member of Public Health Service, Therapist Professional Advisory Committee, which aims to encourage advance training, policy development and research related to health disparities in underserved populations.
- CMS is a member of the HHS Council for health disparities lead by the Office of Minority Health to improve research and collaboration among federal agencies related to health care disparities.

HHS Enforcement Measures

The HHS Office for Civil Rights (OCR) enforces federal civil rights laws to help ensure that individuals have equal access to adequate health care and services, without regard to race, color, or national origin. A failure to provide persons with limited English proficiency (LEP) meaningful access to health care may constitute national origin discrimination in violation of the law. Following are some examples of OCR's success in helping to reduce racial disparities in health care:

- OCR succeeded in eliminating discriminatory policies and practices limiting access by LEP persons and others to state health services following investigation of a complaint alleging that caseworkers in Maryland were asking questions regarding immigration status and social security numbers in determining eligibility for Emergency Medical Assistance, Maryland Children's Health Insurance Program and the Maryland Pharmacy Program. As a result of OCR's intervention, the state modified its policies and application procedures to eliminate these questions. OCR also provided significant technical assistance to the State Health Department regarding improvements to their existing LEP policies and procedures, and implementation of the State's LEP Plan.
- OCR received a complaint filed by an advocate on behalf of LEP individuals against the Maine Department of Health and Human Services. The complaint alleged that the Department failed to provide meaningful access to its programs and services by LEP persons. OCR's investigation substantiated the allegations and the Maine Department of Health and Human Services agreed to make systemic changes to its policies, procedures and practices. In March 2006, OCR and the State of Maine entered into a Resolution Agreement to ensure LEP individuals have meaningful access to its programs and services. OCR will monitor the terms of the Agreement for a period of two years.
- OCR resolved a complaint regarding a medical practitioner that denied effective communication assistance to a patient of Sudanese descent who spoke Arabic as her primary language. The patient was told that the physician would be unable to see her for a scheduled appointment because the patient had failed to bring along an interpreter. Once OCR initiated an investigation of this matter, the medical provider agreed to take steps to address his obligations in this situation. The provider entered into a formal arrangement with CyraCom, Inc., a private firm that provides interpreter services via telephonic language lines in over 150 languages. OCR's involvement in this matter prompted the management group that provides administrative services to this medical provider, as well to five others, to enter into arrangements with CyraCom to provide language assistance to all of the practices involved. As a

result of OCR's intervention, these providers made the necessary changes to their policies and procedures to ensure the provision of effective language assistance to hundreds of LEP clientele in their immediate service area comprising Knoxville, Tennessee.

Additionally, OCR undertakes compliance reviews of all health care providers, such as hospitals, nursing homes, home health agencies, and rehabilitation facilities, that apply to participate in the Medicare Part A program established by Title XVIII of the Social Security Act. Those legal requirements include ensuring that health care providers receiving federal financial assistance from HHS do not deny benefits or services to qualified persons based on their race, color, national origin, disability, or age. Such reviews promote compliance because they both educate health care providers about their legal responsibilities to refrain from illegal discrimination and identify potential civil rights concerns prior to receipt of federal financial assistance. Through these reviews, HHS ensures that Medicare providers have established appropriate non-discrimination policies and procedures.

25. Please provide more information on the measures adopted by the State party to address existing racial disparities in the field of sexual and reproductive health, with particular regard to (i) reducing the high maternal and infant mortality rates among women and children belonging to racial, ethnic and national minorities, especially African Americans; (ii) improving access to family planning, pre-natal and post-partum care for economically disadvantaged women; and (iii) addressing the increasing feminisation of HIV/AIDS and the growing disparities in HIV infection rates for minority women. (CERD/C/USA/6, para. 258)

Answer:

As a preliminary matter, the United States notes that many of the concerns raised by the Committee in its question are not related to the discriminatory application of U.S. laws or to discrimination under the Convention. Improving access for women, including minority women, to adequate health care, including in the field of reproductive health, is an important priority for the United States.

In particular, the Department of Health and Human Services (HHS) is committed to addressing disparities in maternal and newborn health. This issue has been addressed at both the federal and state level. The HHS program, "A Healthy Baby Begins with You," which focuses on the African American Community, provides information about pre-natal health, free and low cost pre-natal and birthing healthcare (including the Community Healthcare Centers mentioned above in response to Question 24), HIV/AIDS screening for mothers and newborns, and post-natal care for infants. Many states, such as New York, mandate post-delivery HIV testing for all mothers to identify babies who should be given anti-retroviral treatment post-delivery to prevent HIV infection. There is also substantial effort to provide information on pre and post-natal care to many communities in a culturally and linguistically appropriate manner.

In partnership with national experts on neonatal care, HHS's Centers for Medicare and Medicaid Services (CMS) developed a National Neonatal Outcomes

Improvement Project and began to pilot the project in the State of Ohio which received a \$2 million Medicaid Transformation Grant. Additional states are joining the efforts designed to improve the morbidity and mortality of low birth weight infants. The Neonatal Outcomes Project has the potential to reduce deaths and morbidity associated with the leading cause of infant mortality in the USA, which is premature birth. Infant mortality is a significant disparity of care issue, with African American mothers having a rate of about 13.5 deaths per thousand live births as opposed to an overall U.S. rate of about 6.9 deaths per thousand live births. Of the overall roughly 28,000 U.S. infant mortality deaths, about 9,000 are attributable to premature births. Preterm birth rates range from 11.5 percent for whites, to 12 percent for Hispanics, and 17.9 percent for African Americans. The objective of the CMS initiative is to help to address these disparities at the local level.

To reduce the factors that contribute to the Nation's high infant mortality rate, particularly among African American and other disparate racial and ethnic groups, HHS runs the "Healthy Start" (HS) program which provides intensive services tailored to the needs of high risk pregnant women, infants and mothers in geographically, racially, ethnically, and linguistically diverse communities with exceptionally high rates of infant mortality. Each of the Healthy Start projects is committed to reducing disparities by transforming communities, strengthening community-based systems to enhance perinatal care and improving the health of women and infants from pregnancy through interconception. In order to promote a longer interconception period and prevent relapses of risk behaviors, the woman and infant are followed for two years following delivery. The 99 Healthy Start projects implement in a culturally and linguistically sensitive manner the core service interventions of direct outreach, case management, health education, interconceptional care, and screening for depression. While only a few projects provide family planning services, all projects work through their case management and other enabling services to ensure that a woman has a medical home and receives family planning services as needed through partnerships with other providers. Individual cities and states also engage in complementary family planning initiatives depending on the specific needs of their populations. HHS supports these by providing an online directory of all available family planning providers in a geographic region.

In 2005, women represented 26 percent of new AIDS diagnoses, compared to only 11 percent of new AIDS cases reported in 1990. Most women are infected with HIV through heterosexual contact and injection drug use. Women of color are disproportionately affected by HIV/AIDS. AIDS is now the leading cause of death for Black women ages 25 to 34. As part of HHS's efforts to combat this, the Office of Women's Health at HHS sponsors National Women and Girls HIV/AIDS Awareness Day every March 10th, which includes many events around the country to inform women of their risks and measures they can take to protect themselves. CDC director, Dr. Julia Gerberding, has participated in interviews and podcasts informing women of ways to protect themselves for HIV/AIDS.

26. Please provide further information on the implementation of the "No Child Left Behind Act" of 2001, with particular regard to measures adopted by the State party to reduce high drop-out rates of students belonging to racial, ethnic or

national minorities and the significant disparities in educational outcomes between them and white students. Please also provide information on the measures the State party has undertaken to address the phenomenon of the “school-to-prison pipeline”, which seems to have an unjustifiable disparate impact on minority students. (CERD/C/USA/6, paras. 96 and 269-272)

Answer:

No Child Left Behind Act of 2001

The *No Child Left Behind Act of 2001 (NCLB)* seeks to close the achievement gap by ensuring that all students receive a quality education. This in turn will give every child an opportunity to achieve the level of preparation necessary for success in college and beyond. In its report, *Achieving Diversity: Race-Neutral Alternatives In American Education* (2004), pages 15-16, OCR highlighted some important provisions of NCLB that support this goal:

- *Accountability and High Standards:* States, school districts and schools are now being held accountable for ensuring that all students, including minority, disadvantaged, disabled and limited English proficient students, meet high academic standards. They are required to implement academic standards that reflect what all children are expected to know and be able to do.
- *Annual Academic Assessments:* Annual data are a vital diagnostic tool for schools to achieve continuous improvement. Annual reading and mathematics assessments provide parents with the information they need to know about how well their child is doing in school and how well the school is educating their child. Under NCLB, each state will annually test its students in grades three through eight (and its high school students at one grade level) in at least reading or language arts and in mathematics. A sample of students in fourth and eighth grade in each state will be assessed annually with the National Assessment of Educational Progress in reading and mathematics.
- *Highly Qualified Teachers:* Being taught by highly qualified teachers is a critical aspect of a high-quality education program, yet all too often students with the greatest needs do not have access to highly qualified teachers.
- *Scientifically Based Research Practices:* Title I school-wide and targeted assistance programs, as well as activities carried out under the new Reading First program, are required to use effective methods and instructional strategies that are grounded in scientifically based research. School improvement plans, professional development and technical assistance that districts provide to low-performing schools must be based on strategies that have a proven record of effectiveness.
- *Consequences for Schools that Fail to Educate Disadvantaged Students:* Schools that fail to make adequate yearly progress for disadvantaged and other students will first receive assistance. If a school fails to make adequate yearly progress (AYP) for two consecutive years, students in that school may transfer to a higher-performing public or private school. If the school does not

make AYP for a third year, disadvantaged students in that school may receive supplemental educational services from a provider of choice.

In sum, NCLB focuses on the essential elements school districts must address in closing achievement gaps at elementary and secondary schools around the nation. As mentioned in paragraph 269 of the United States' April 2007 report, the Department administers the National Assessment of Educational Progress – an external indicator of student progress. The latest report on data collected under NCLB indicates that the “achievement gap” in the United States has continued to narrow, even as student populations grow more diverse. See U.S. Dep't of Ed., *Nation's Report Card Shows Record Gains*, (2007), available at <http://www.ed.gov/nclb/accountability/achieve/report-card2007.html>.

“School-to-Prison Pipeline”

Regarding the Committee's concern about the “school-to-prison pipeline,” it may be helpful to explain how discipline issues in U.S. schools are typically addressed. In the United States, school boards elected by local citizens oversee local schools. A school principal working under the policies set by the local school board is responsible for the discipline and order in the school. Generally, schools may refer some, all, or none of their serious behavioral problems to law enforcement. Best practices generally support a graduated approach with most infractions being addressed within the school setting. Because school discipline and the environment of each school are individual to each school, a broad brush characterization such as the “school-to-prison” pipeline cannot be made, and no data documents such a phenomenon.

Dropout Prevention

The United States is very concerned with and works to address the problem of youth dropping out of school. Based on research and experience, when youth are not in school, they are at higher risk of engaging in high-risk behaviors, including sexual activity, becoming delinquent, and being exploited. Within the Department of Justice, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) works to support programs and best practices that keep youth connected and interested in school through mentoring, providing education support in after school programs, and building protective factors into the lives of the youth and their families. The Department of Justice also supports education and training for schools or police officers to assist them in making effective interventions and maintaining a safe learning environment. The federal government additionally provides materials, funding, and technical assistance to schools or school districts to assist them in improving safety, keeping children in school, and preventing the types of acts that, if completed, would merit intervention by law enforcement.

The Department of Education provides support to states and local school districts engaged in a broad range of dropout prevention activities. For example, under the Safe and Drug Free Schools programs, local educational agencies and non-profit organizations can apply for discretionary funds to set up mentoring programs to help reduce the drop out rate and reduce juvenile delinquency of, and involvement in gangs by, at-risk children. Section 4130 of Title IV, Part A, Subpart 2 of the

Elementary and Secondary Education Act (ESEA), 20 U.S.C. 7140. Grants are also awarded to state governors' offices for a variety of drug and violence prevention activities focused primarily on school-age youths. Governors give priority to programs that serve youths and children not normally served by state and local educational agencies or that reach populations that need special or additional resources, such as youths in juvenile detention facilities, and school dropouts. Section 4112(a) of Title IV, Part A, Subpart 1 of the ESEA, 20 U.S.C. 7112(a).

Under the Department of Education's Prevention and Intervention Programs for Children and Youths Who Are Neglected, Delinquent, or At Risk, state educational agencies receive grants for supplementary education services to help provide education continuity for children and youths in state-run institutions for juveniles and in adult correctional institutions so that these youths can make successful transitions to school or employment once they are released. In FY 2007, Congress appropriated over 49 million for this program; it is funded at over 48 million for FY 2008.

States also reserve funds they receive under Title 1, Part A of the ESEA, to award to local educational agencies with high proportions of youths in local correctional facilities to support dropout prevention programs for at risk youths. Title 1, Part D, Subparts 1 and 2, ESEA; 20 U.S.C. 6421-6472.

In the area of career and technical education, states that receive basic career and technical education grants have to adopt procedures they deem necessary to coordinate with the state's programs under the Workforce Investment Act (WIA), and make available to the WIA service delivery system a list of all school dropout, postsecondary education, and adult programs assisted under the state's career and technical education grants. States also may use their state leadership set-aside under the career and technical education grants for "providing career and technical education programs for adults and school dropouts to complete their secondary school education, in coordination, to the extent practicable, with activities authorized under the Adult Education and Family Literacy Act."

The National Dropout Prevention Center for Students with Disabilities, supported by an award from the Department's Office of Special Education Programs, provides technical assistance to states about dropout prevention research, practices that work, and policies that assist states and local school districts stakeholders in achieving their goals and plans to reduce dropout rates and improve school completion rates for students with disabilities.

The Department of Education's School Dropout Prevention Program (Title I, Part H of the ESEA) supports effective, sustainable and coordinated dropout prevention and reentry programs in high schools with annual dropout rates that exceed their state average annual dropout rate. In 2005, the Department awarded two 3-year grants, one to the Minnesota Department of Education and one to the New Hampshire Department of Education under the Dropout Prevention Program; and in 2006, the Department awarded grants to the Arizona Department of Education and the Texas Education Agency under this program.

Funded by the Department of Education, the National High School Center serves

the Regional Comprehensive Centers in their work to build the capacity of states across the nation to effectively implement the goals of No Child Left Behind relating to high schools. The National High School Center held a “webinar” last year on dropout prevention that highlighted the work of the Minnesota Department of Education. The “webinar” can be found at <http://www.betterhighschools.org/webinar/default.aspx>> The High School Center has published technical assistance guidance to states on dropout prevention for students with disabilities, and an issue brief that described the work of a School Dropout Prevention grantee, the New Hampshire Department of Education. These and other publications can be found at <http://www.betterhighschools.org/pubs/>> Dropout prevention also was one of the areas of focus for the High School Center's 2007 national meeting. This meeting brought together state education agency staff and the technical assistance providers from the Department's regional comprehensive centers to develop state plans and strategies to address high school improvement issues.

27. Pursuant to the concerns raised by the Committee in paragraph 400 of its previous concluding observations, please provide further information as to whether treaties signed by the Government and Indian tribes can be abrogated unilaterally by Congress. Furthermore, please explain whether there exists a general doctrine of ‘encroachment’ in the law of the State party as a justification for diminishing or extinguishing indigenous claims to land, including the legal basis for its application to Western Shoshone lands. (CERD/C/USA/6, para. 343 and Annex II, para. 11)

Answer:

The interpretation and recognition of treaty rights arising from treaties between the United States and tribes are important components of U.S. domestic law. Certain open and transparent processes are in place that provide for the abrogation of such treaty-based rights, where deemed appropriate, by Congress and in conjunction with just compensation for a tribe whose rights under a treaty have been amended. For example, there may be a treaty between the United States and a tribe that provides for the tribe’s right to hunt a certain animal. That animal could later be identified as an endangered species and Congress could pass a law limiting all hunting of that animal, including by tribal members. Under such a scenario, the tribe’s due process rights under the U.S. Constitution require the United States to justly compensate the tribe for the abrogation of that particular treaty right.

The United States and tribes entered into treaties from 1778 until 1871. Disputes regarding treaty rights arising from conflicting interpretations of the specific language of provisions in treaties between tribes and the United States 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. The canons of construction first provide that unclear language in treaties with Native Americans should be resolved in favor of Native Americans. Second, treaties with tribes should be interpreted as the Native Americans signing the treaty would have understood them at the time of signing. Third, treaties with tribes are to be liberally construed in favor of the Native Americans involved. These guiding rules for interpreting treaties greatly

favor Native Americans, and help to address any inequality in the parties' original bargaining positions.

With respect to the inquiry regarding whether there exists a “general doctrine of encroachment,” there is not currently such a generally applied legal doctrine used to deprive Native Americans of their existing land rights by the government or non-Indians in the United States. The United States recognizes, as a historical matter, that indigenous people throughout the world have been unfairly deprived of the lands they once habitually occupied or roamed. Such ancestral lands once constituted most of the Western Hemisphere. In 1946, recognizing that many tribes in the United States had been unfairly deprived of such lands, 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 Native American claimants greater access and more flexible rules under which to pursue their claims than would otherwise have been available to the general public.

In 1951, the Western Shoshone, represented by the Te-Moak Bands, brought a claim seeking financial compensation for lands that they argued had been “encroached upon,” that is, taken unfairly. The tribal claim of the Western Shoshone was successful, resulting in a decision (over objections of the U.S. Government) that Western Shoshone aboriginal title had been extinguished. The Western Shoshone and the United States then stipulated that the lands were taken in 1872. A valuation trial was held and the ICC awarded the Western Shoshone compensation for the value of the taken lands and sub-surface rights. The case essentially involved a collective tribal claim to land, not an aggregation of related individual claims. Hence, individual descendants of the Western Shoshone were not entitled to be individually represented in the ICC proceedings.

To conduct vital aspects of tribal self-government, tribal authorities must be able to speak and act on behalf of their group and, recognizing the tribes’ powers of tribal self-government, national governments must be able to deal with tribal representatives. Just as particular decisions of the U.S. Government do not reflect the consent or participation of each and every citizen, so the decision of a tribal government may not reflect the participation or consent of each and every member of the tribe. All members of the Western Shoshone were represented by the Te-Moak Bands, an entity that was found by the Court, after scrutiny, to legitimately represent the collective interests at issue.

Certain descendants of the Western Shoshone objected to the litigation strategy pursued by the Western Shoshone. Despite the fact that they were aware of the positions being taken, they failed to bring their objections to the attention of the ICC or courts in time to have them dealt with during the litigation or even to present an excuse for their 23-year delay in seeking to intervene in the proceedings. For additional information relating to the chronology of events and legal analysis relating to the matter raised by certain descendants of the Western Shoshone, please see Annex II to the periodic report.

28. Please provide updated information on the measures adopted by the State party to ensure that activities - such as nuclear testing, toxic and dangerous waste storage or mining - carried out on areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment by indigenous peoples of their rights under the Convention.

Answer:

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. The tribes regulation of those spiritual and cultural areas are, of course, not subject to the consultation process discussed below but are controlled by the tribes' laws and internal government processes.

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. In fact, in 1996 President Bill Clinton issued Executive Order 13007 requiring that federal land managers strive to accommodate access to and ceremonial use of Native American sacred sites by Native American religious practitioners. Furthermore, Executive Order 13007 requires executive agencies to avoid adversely affecting the physical integrity of such sacred sites, and, where appropriate, to maintain the confidentiality of sacred sites. Soon thereafter, in 2000, President Bill Clinton issued Executive Order 13175 instructing all executive agencies, including the Department of Defense, to engage in consultation and coordination with tribal governments prior to developing federal policies, proposing legislation, or promulgating regulations that affect the rights of Native Americans. President Bush's 2004 Memorandum for the Heads of Executive Departments and Agencies further underscores that federal agencies are to continue to ensure that their working relationships with the over 560 federally recognized tribes fully respect the right of tribal self-government under U.S. law. These executive mandates complement other national laws and policies that serve to protect Native American sacred sites, such as the National Historic Preservation Act, Archaeological Resources Protection Act, Native American Graves Protection and Repatriation Act, and American Indian Religious Freedom Act.

First, protections of tribal sacred sites are provided for in the National Historic Preservation Act (NHPA). This Act provides that if a proposed undertaking by a federal agency will have an effect on historic properties to which Native American tribes attach religious and cultural significance, the federal agency must consult with the affected tribes before proceeding. Under NHPA regulations, consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them. The NHPA provides express protection for "traditional cultural properties" and allows tribes to assume any or all of the functions of a historic preservation officer with respect to tribal land. The decision to participate or not participate in the program rests with the tribe. As a formal participant in the national historic preservation program, a tribe may assume official responsibility for a number of functions aimed at the preservation of significant historic properties. Those functions include identifying and maintaining

inventories of culturally significant properties, and nominating properties to national and tribal registers of historic places.

Second, the Archaeological Resources Protection Act (ARPA) also provides considerable protection for Native American sacred and cultural sites located on Native American and public lands. ARPA criminalized the interstate trafficking of archaeological resources removed from these lands without a permit. Notably, both NHPA and ARPA require Federal agencies, where appropriate, to protect the confidentiality of the location of Native American sacred sites and traditional cultural properties.

Third, the Native American Grave Protection and Repatriation Act (NAGPRA) is a Federal law passed in 1990. NAGPRA provides a process for museums and Federal agencies to return certain Native American cultural items – human remains, funerary objects, sacred objects, or objects of cultural patrimony – to lineal descendants, and culturally affiliated Native American tribes and Native Hawaiian organizations. NAGPRA includes provisions for unclaimed and culturally unidentifiable Native American cultural items, intentional and inadvertent discovery of Native American cultural items on Federal and tribal lands, and penalties for noncompliance and illegal trafficking. In addition, NAGPRA authorizes Federal grants to Native American tribes, Native Hawaiian organizations, and museums to assist with the documentation and repatriation of Native American cultural items, and establishes the Native American Graves Protection and Repatriation Review Committee to monitor the NAGPRA process and facilitate the resolution of disputes that may arise concerning repatriation under NAGPRA. Under the law, the following items have been determined eligible for repatriation under the Act thus far: 33,256 individual human remains, 816,047 funerary objects, 3741 sacred objects, 364 objects of cultural patrimony, and 779 sacred object/objects of cultural patrimony.

Finally, the American Indian Religious Freedom Act (AIRFA) provides that, “it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.”

The United States also notes that the mission of the Environmental Protection Agency (EPA) is specifically to protect human health and to safeguard the natural environment for all citizens of the United States, including tribal members. EPA has an Indian Program that involves significant intra-agency and multimedia activities designed to ensure protection of human health and the tribal environment, in a manner consistent with the federal government’s trust responsibility to federally-recognized tribes, the government-to-government relationship between tribal governments and the federal government under U.S. law, and the conservation of cultural uses of natural resources in tribal areas including areas of spiritual and cultural significance. Part of that effort established the American Indian Environmental Office and the Tribal Operations Committee to help EPA identify Native American environmental priorities and issues for discussion and resolution on how EPA can improve its program delivery and implementation. Through this ongoing dialogue, key objectives for program implementation have evolved.

EPA recently, for example, denied an application to store and treat hazardous and non-hazardous materials on the Gila River Indian reservation. A company requested a ten year permit to continue treating and storing hazardous waste on the reservation. EPA, as part of its obligation to receive and review these types of Indian Country permits, consulted extensively with the tribal government. As part of its consultation, EPA learned the tribal government opposed the operation of this facility on its lands. Because the facility did not meet applicable federal requirements, EPA denied this facility's right to continue processing and storing hazardous materials on the tribe's reservation.

Article 6

29. According to information received, the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006 deprive foreign detainees held as "enemy combatants" of their right to judicial review of the lawfulness and conditions of detention, as well as their right to remedy for human rights violation. Please comment on the compatibility of these Acts with the Convention, and in particular with article 5 (a) and 6.

Answer:

As the United States has explained at length to the Human Rights Committee and the Committee Against Torture, the treatment of foreign enemy combatants is governed under the law of armed conflict as *lex specialis*. In any event, by its own terms the Convention would be inapplicable to allegations of unequal treatment of foreign detainees, as Article 1(2) of the Convention clearly provides that "[t]his Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."

As a courtesy to the Committee, we note further that in fact the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006 create a substantial judicial review mechanism for detainees held at Guantanamo Bay, which applies to all foreign combatants subject to the reach of those statutes without any distinctions in treatment among them on the basis of race, color, descent, or national or ethnic origin. Under these statutes, all detainees held at Guantanamo Bay are entitled to review in the U.S. federal courts of the legal basis for their detention, including whether the detention is consistent with the laws and Constitution of the United States, to the extent applicable. The federal courts are also empowered to review whether the determination that a detainee is an enemy combatant is supported by a preponderance of the evidence. Detainees can appeal adverse decisions by the lower federal courts to the U.S. Supreme Court. As far as we are aware, these are the most extensive procedural protections provided combatant detainees captured in armed conflict in history.

30. Taking into account the decision of the Supreme Court in the case *Hoffman Plastic Compounds, Inc. v. NLRB*, please provide detailed information on the extent to which undocumented migrant workers may have access to court and be entitled to back pay or other legal remedies under labour or employment-related

statutes, including Title VII of the Civil Rights Act, the Fair Labour Standards Act and common-law tort law.

Answer:

Because the Supreme Court’s decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), involved the interpretation and application of the Immigration and Nationality’s Act prohibition on the employment of undocumented migrant workers, the United States would again note that Article 1 of the Convention, which defines “racial discrimination,” specifically states, in paragraph 2 that, “This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this convention between citizens and non-citizens.” In this regard, we refer the Committee to our response to Question 2.

Nonetheless, all workers in the United States – including undocumented aliens, who are in violation of U.S. immigration law – are entitled to the protections of U.S. labor law. These laws are summarized below. Although state and local governments often establish even higher levels of protection for the workers within their jurisdiction, the U.S. Department of Labor administers the federal labor laws that establish minimum acceptable standards for employment in the United States.

Department of Labor:

When the U.S. Department of Labor (DOL) investigates whether an employer is in compliance with the laws it administers, it does *not* inquire into the immigration status of the workers involved. DOL holds employers accountable and enforces labor laws without regard to the legal status of workers.

Labor Law Protections

Several agencies within the Labor Department protect different types of worker rights. Through compliance assistance and investigations, the Occupational Safety and Health Administration (OSHA) works to ensure that every working man and woman in the United States has a safe and healthful workplace. Individual states may administer their own OSHA programs only if they are at least as effective as the federal program.

The Wage and Hour Division (WHD) of the Employment Standards Administration is responsible for administering and enforcing some of our nation’s most important labor laws. These laws cover, for instance:

- minimum wage, overtime and child labor protections in covered industries;
- for migrant and seasonal workers in the agricultural industry – wages, housing, transportation, recordkeeping and disclosure standards, and the mandatory registration of farm labor contractors with DOL; and
- job-protection for eligible workers who take family or medical leave.

In addition, several employment-based immigration programs have unique worker protection provisions that the Labor Department enforces.

Enforcement

For those employers that ignore or refuse to comply with the laws administered by the Department of Labor, the Department stands ready to take enforcement action. Since the Department does not ask workers about their immigration status during its investigations, the Department does not possess statistics about the overall number of foreign workers who have benefited from our enforcement actions. During Fiscal Year 2007, WHD recovered more than \$220 million in back wages owed to over 341,000 workers – a number that includes both U.S. and foreign workers.

WHD places special emphasis on efforts to ensure compliance in low-wage industries that employ vulnerable, often immigrant, workers, and those industries with a history of chronic violations. Over a third of WHD enforcement resources are attributed to investigations in nine low-wage industries, which include agriculture, hospitality and food services, garment manufacturing, health care, janitorial services, and temporary employment. In Fiscal Year 2007, the agency collected over \$52.7 million in back wages for almost 86,500 workers in low-wage industries.

In some instances, these back wages are owed to foreign workers who have already left the United States. WHD works with U.S. consulates to locate these workers abroad so that they may receive the unpaid wages collected on their behalf.

In the case referred to by the Committee, *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), the Supreme Court held that an undocumented worker was barred from a backpay award under the National Labor Relations Act (NLRA) for hours *not* worked where he had never legally been authorized to work in the United States. The decision did not hold that an undocumented employee was barred from recovering unpaid wages for work actually performed or from other traditional remedies available under the NLRA. The scope of the Hoffman decision is not wide-ranging – the Supreme Court placed a very narrow limitation on a single remedy under U.S. labor law on the ground that undocumented workers may be awarded backpay for work not performed if such employment was secured through fraud and in violation of U.S. immigration law.

Regarding OSHA's enforcement efforts, in Fiscal Year 2006, Federal OSHA and the State OSHA programs conducted about 97,000 investigations and levied fines against violators of about \$156 million.

Equal Employment Opportunity Commission (EEOC):

The Equal Employment Opportunity Commission (EEOC) vigorously pursues charges filed by undocumented workers, seeks appropriate relief consistent with the Supreme Court's ruling in *Hoffman* and pursues litigation in court where appropriate. Moreover, in enforcing Title VII and other laws, the EEOC does not inquire into a worker's immigration status nor consider an individual's immigration status when examining the underlying merits of a charge. See U.S. Equal Employment Opportunity Commission, *Rescission of Enforcement Guidance on Remedies Available to Undocumented Workers Under Federal Employment Discrimination Laws* (2002), available at <http://www.eeoc.gov/policy/docs/undoc-rescind.html>. The Commission also objects to employer efforts to obtain such information during the

discovery phase of civil litigation. *See, e.g., EEOC v. Restaurant Co.*, 448 F. Supp. 2d 1085 (D. Minn. 2006); *EEOC v. Bice of Chicago*, 229 F.R.D. 581 (N.D. Ill. 2005).

The Commission also engages in outreach to migrant workers and advocacy groups, in order to educate migrant workers about their rights under the federal anti-discrimination laws, including their right to file a charge with the Commission.

As discussed above, under *Hoffman*, undocumented workers are not entitled to backpay for hours not worked. Therefore, if the Commission is aware that a particular victim of discrimination is undocumented, the Commission will not seek backpay for that person with respect to work not already performed, *e.g.*, the Commission will not seek backpay for an undocumented worker in a failure-to-hire case. However, undocumented workers remain entitled to back pay for hours worked, as well as compensatory and punitive damages. Enforcing the law to protect immigrant workers remains a priority for EEOC.

31. Please provide information on whether the legislation of the State party provide for the sharing in the burden of proof in civil proceedings involving discrimination based on race, colour, descent, and national or ethnic origin, so that once a person has established a prima facie case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective and reasonable justification for the differential treatment.

Answer:

Plaintiffs in civil law suits typically bear the burden of proving their cases by a preponderance of the evidence, and a plaintiff in an employment discrimination suit always retains the burden of persuading the court or jury that discrimination has occurred. *See St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993). Title VII of the Civil Rights Act of 1964, as amended, 42 USC 2000e *et seq.*, and the decisions of Courts interpreting that federal law, provide for shifting burdens of production and proof in civil lawsuits filed under Title VII. When direct evidence of intentional discrimination exists, the plaintiff's presentation of that direct evidence establishes a presumption of discrimination, and the employer must then demonstrate that it had other, non-discriminatory reasons for its actions. *See Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 511 (2002). When there is only circumstantial evidence of discrimination, a plaintiff must first establish a prima facie case of discrimination by presenting facts particular to his or her legal claim that would tend to eliminate the most common non-discriminatory reasons for the employer's action. For example, a plaintiff who applied for a job but was not selected might have to demonstrate his or her objective qualifications for the job in question, that the employer was seeking applicants for the job, and that the plaintiff was not selected for the job but another individual without the same protected characteristic was selected instead. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). This demonstration of a prima facie case creates a presumption of discrimination and shifts the burden to the employer to articulate a legitimate, non-discriminatory reason for its action. *See id.* If the employer does not produce such evidence, the plaintiff may prevail. However, if the employer produces evidence of a legitimate, non-discriminatory reason for its action, the burden then shifts back to the plaintiff to prove that the employer's proffered reason is a pretext for unlawful discrimination.

Title VII also permits lawsuits based on employer practices that do not intentionally discriminate based on race or national origin but nevertheless have a discriminatory impact and cannot be demonstrated to be job-related or consistent with business necessity. These are called “disparate impact” suits, and proof of a discriminatory intent is not required. In those cases, a plaintiff must establish a *prima facie* case of disparate impact discrimination through the use of statistics and/or anecdotal evidence that reflects the discriminatory impact of an employer’s facially neutral policy or practice. If the *prima facie* case is established, the burden shifts to the employer to demonstrate that the employer’s practice is job related and consistent with business necessity. See Sec. 703(k) of Title VII as amended, 42 U.S.C. 2000e-2(k). If the employer can prove that the practice is job related and a business necessity, the burden shifts back to the plaintiff to prove that the employer has refused to adopt an alternate practice that also serves the employer’s legitimate business needs but does not have the disparate impact.

In cases alleging a violation of the anti-discrimination provisions of the Immigration and Nationality Act, the party charging discrimination has the burden to establish a *prima facie* case for discrimination. Once the charging party meets that burden, the burden shifts to the employer to articulate some legitimate and nondiscriminatory reasons for the personnel action in question. If the employer is able to do so, the burden then shifts back to the charging party to demonstrate that the evidence the employer has provided is pretextual and that the personnel action indeed was taken with discriminatory intent.

Article 7

32. Please provide information on specific training programmes and courses, if any, for members of the judiciary, law enforcement officials, teachers, social workers and other public officials on the provisions of the Convention and their application. (CERD/C/USA/6, paras. 295 and 304)

Answer:

This comment requests information on specific training programs and courses, if any, for members of the judiciary, law enforcement officials, teachers, social workers and other public officials on the provisions of the Convention and their application. Article 7 calls on States parties to “undertake to adopt measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices that lead to racial discrimination and to promote understanding, tolerance and friendship.” Based on the Article, the United States implements its obligations by providing training on legal provisions directed more specifically at eliminating discrimination and promoting tolerance and understanding, rather than providing training on the provisions of the Convention as such.

Department of Education:

The Department of Education’s Office for Civil Rights (OCR) regularly conducts training programs for OCR staff regarding the statutes, regulations, caselaw, and

OCR policy relevant to the anti-discrimination statutes enforced by OCR. These trainings have included multi-day training programs for all OCR managers and supervisors (at least annually), as well as training programs for all new OCR attorneys and other investigative staff. In addition, OCR annually provides training or technical assistance, in how to comply with the anti-discrimination statutes enforced by OCR, to hundreds of schools districts, universities, and other recipients of Federal financial assistance.

Additionally, the Department of Education funds 10 Equity Assistance Centers across the country that provide technical assistance to schools, districts and other governmental agencies in the preparation, adoption and implementation of plans for the desegregation of public schools, and in the development of effective methods to address the special educational problems occasioned by desegregation. Please see the response to Question 5 for more information on training and technical assistance programs administered by the Department of Education.

Department of Homeland Security:

Training for Department of Homeland Security (DHS) personnel includes, but is not limited to, courses on cultural awareness and equal employment opportunity (EEO) in both stand-alone courses and embedded in broader training programs. Some training is offered in common form across all components in the Department while other training is specific to particular agencies and particular missions. One example of specific training is a 1 ½ hour course early in U.S. Customs and Border Protection Officer Basic Training that stresses the responsibility of Law Enforcement officers not to discriminate based upon race. Another is post-Academy training for all new Border Patrol Agents which includes the course “Cultural Awareness,” which covers cultural differences, barriers to effective communication, and understanding the differences (for example – proximity, touch, cultural components, cultural sensitivity and religious icons, families and cultural differences, cultural misunderstanding). Basic cultural competence training, which relates to a specific ethnic and religious community within the United States, is provided to all DHS employees, including 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.” Additionally, Immigration and Customs Enforcement provides extensive training through the ICE Virtual University, which includes courses developed by the DHS Office for Civil Rights and Civil Liberties such as, the “An Introduction to Arab American and Muslim American Cultures” and “Guidance Regarding the Use of Race for Law Enforcement Officers.” ICE also requires civil rights training and an overview of the Guidelines for state and local law enforcement with 287(g) agreements. The DHS Office for Civil Rights and Civil Liberties has also worked with the Federal Law Enforcement Training Center (FLETC) on developing and implementing curriculum that addresses federal civil rights laws and anti-discrimination statutes. Further DHS training materials related to these particular communities are also described in response to Question 17 above. A wide range of EEO courses are also offered to all employees, which includes courses training employees and managers not only on civil rights in employment, but also about federal prohibitions on retaliation against those who file discrimination complaints.

Department of Health and Human Services:

The Department of Health and Human Services (HHS) has engaged in a number of training programs and courses to teach law enforcement officials, educators, health care professionals, and public officials about their legal responsibilities under Title VI of the Civil Rights Act of 1964 to ensure non-discrimination on the basis of race, color, and national origin in programs and services that receive HHS funding. In particular, during the past two years, HHS has trained the following personnel on their Title VI legal obligations and provided practical information about how to meet these responsibilities:

- HHS's Office for Civil Rights (OCR) routinely trains its nationwide law enforcement staff on their Title VI non-discrimination complaint investigation and resolution responsibilities;
- OCR regularly trains all new investigatory and oversight staff in HHS's Centers for Medicare and Medicaid about the Title VI obligations of health care providers to provide non-discriminatory treatment on the basis of race, color, and national origin;
- OCR, in conjunction with the Department of Justice and other federal agencies, sponsored the March 2007 Federal Interagency Conference on Limited English Proficiency (LEP) held at the HHS National Institutes of Health. This conference brought together several hundred federal, state, and local officials to train them on their legal responsibilities under Title VI to provide services to all persons regardless of their national origin, and best practices to communicate effectively with non-English speaking persons;
- OCR is working with state hospitals in thirteen states to train them about their legal responsibilities under Title VI to provide services to all persons regardless of their national origin, and best practices to communicate effectively with non-English-speaking persons in the hospital setting;
- HHS, with OCR, the Office of Minority Health, and other HHS agencies, sponsored a week-long National Leadership Summit on Eliminating Racial and Ethnic Disparities in Health in Washington, D.C. in January 2006. This Summit attracted more than 1,000 local and state policy makers, health care professionals, and community organizations. OCR staff led panels on Title VI and OCR guidance on services for non-English-speaking persons;
- OCR has provided training to public officials in all 50 states on their Title VI non-discrimination obligations in providing Temporary Assistance for Needy Families;
- OCR has provided a self-assessment tool to all 50 states to ensure non-discrimination on the basis of race, color, and national origin in their adoption and foster care practices. In addition, as part of its resolution of statewide Title VI civil rights complaints, OCR has developed training modules for more than 100 offices serving over 10,000 children in foster care in Ohio and South Carolina to ensure that they do not delay or deny the placement of

children into foster or adoptive homes, or deny parents the opportunity to foster or adopt children, due to race, color or national origin.

- OCR has trained educators and policy leaders at more than a dozen partnership conferences with historically black colleges and universities and state and local leaders throughout the United States on their Title VI legal responsibilities.

HHS has developed the following curriculum and guides for health care professionals, which focus on providing culturally competent care, including Title VI legal responsibilities:

- OCR has developed a Title VI module for medical colleges to incorporate in their medical education to teach physicians about their legal responsibilities to ensure non-discrimination on the basis of race, color, and national origin. This interactive, case study module was piloted at the American Association of Medical Colleges' annual conference in November 27, 2007 in partnership with the HHS National Institute of Health's five year Cultural Competence and Health Disparities Education Program Collaborative.
- OCR has posted on its website a streaming video, developed in partnership with the Department of Justice and the USDA Food and Nutrition Service, to teach health care providers and others about their Title VI responsibilities and provide real life scenarios about how to meet these responsibilities in health care and other programs.
- HHS's Office of Minority Health (OMH) has developed and posted on its website the following course curricula and guides for teaching health care professionals about providing culturally competent care to individuals of varied ethnicity and national origin, including legal responsibilities to provide services to all persons without regard to their race, color, or national origin:

—*Culturally Competent Nursing Care: A Cornerstone of Caring*, which is an on-line educational course for nurses.

—*A Physician's Practical Guide to Culturally Competent Care*, which is a continuing medical education curriculum for physicians.

—*A Patient Centered Guide to Implement Language Access Services in Health Care Organizations*, which is a practical guide for health care professionals.

- HHS's Health Services and Resources Administration has published on line the following curriculum guide for health care professionals: "Transforming the Face of Health Professions Through Cultural and Linguistic Competent Education."

Department of Housing and Urban Development:

In order to increase the likelihood that individuals will report housing discrimination, the Department of Housing and Urban Development (HUD) is working to inform the public of what constitutes unlawful housing discrimination and the recourse individuals have if they experience it. HUD is also trying to prevent housing discrimination by informing housing providers of the requirements of fair housing and civil rights laws and by demonstrating that HUD will take enforcement action against those found to have discriminated unlawfully.

Beginning in 2003, HUD launched a number of media campaigns to help educate the public on how to recognize and report housing discrimination. In August 2003, HUD, in conjunction with the Advertising Council, launched a series of fair housing public service announcements in English and Spanish. In FY 2005, the campaign created three new advertisements in English; two of these advertisements were also produced in Spanish. In addition, the campaign produced two advertisements in Vietnamese, Cantonese, Hmong, and Korean. In FY 2005, HUD also worked with the Hispanic Radio Network to develop an advertising campaign designed to reach the Spanish-speaking Hispanic population.

Most recently, in January 2006, HUD launched an advertising campaign to inform individuals who were displaced by Hurricanes Katrina and Rita of their fair housing rights and how to file housing discrimination complaints. These advertisements were part of a larger outreach effort to hurricane survivors. Immediately following the hurricanes, HUD distributed fair housing information at Disaster Recovery Centers, at shelters, and to organizations throughout the Gulf Coast. HUD staff and its partners in the Gulf Coast also appeared on television and radio programs to provide information on fair housing.

Furthermore, in FY 2006, HUD continued to fund public and private groups through its Fair Housing Initiatives Program (FHIP), which seeks to educate the public on practices prohibited under the Fair Housing Act as well as where to file complaints. FHIP recipients accomplished this by conducting activities such as printing and distributing fair housing materials in English and other languages; speaking about fair housing at public events and workshops; and conducting fair housing media campaigns. In addition, FHIP recipients educated housing providers on their responsibilities under the Fair Housing Act. HUD also encouraged FHIP recipients to reach out to populations that HUD studies suggest are more likely to experience discrimination. For example, in FY 2006, HUD allocated \$900,000 for outreach to people with disabilities. In total, FHIP education and outreach activities provided more than 250,000 individuals with fair housing information.

Department of Justice:

In the spring of 2005, DOJ's Civil Rights Division launched "The Multi-Family Housing Access Forum," a nationwide program bringing together developers and building professionals, government officials, and advocates for individuals with disabilities. The purpose is to raise awareness about the federal Fair Housing Act's accessibility requirements and to celebrate partnerships that have successfully produced accessible multi-family housing. Access Forum programs have been held in Miami, Florida; Minneapolis, Minnesota; Phoenix, Arizona; Atlanta, Georgia; Dallas, Texas; and the Washington, D.C. metropolitan area.

One of DOJ's Civil Rights Division Coordination and Review Section's ("COR") primary functions is to provide training and technical assistance to federal government agencies and recipient organizations regarding Title VI, including LEP, anti-discrimination requirements. Most state and local law enforcement agencies, and many state and local prison systems, courts, and other governmental organizations, are recipients of federal financial assistance and, therefore, are obligated to comply with Title VI and LEP requirements. Given the extent of Title VI's reach over state and local entities, COR places a priority emphasis on designing and providing training and technical assistance materials to such organizations. For example, during FY 2007, COR gave 26 presentations related to Title VI race and/or LEP compliance and three presentations on related matters such as federal agency civil rights reporting requirements. Training was provided to a wide variety of entities, including federal agencies, state or local agencies, and community or advocacy groups. Audiences receiving training include state troopers in North Carolina attending the Governor's Advisory Council on Hispanic Affairs roundtable; police officers, social workers, and parole and probation officials at the Delaware Criminal Justice Services and Statewide Crime Victims Service Providers Conference; and judges, attorneys, advocates, and clerks at an LEP and Courts training session in Washington state.

COR's largest training and technical assistance effort of 2007 was a two-day Conference in the Washington, D.C. area co-organized with COR's partners from the Federal Interagency Working Group on LEP. Approximately 400 people from all over the country attended, including individuals with responsibility for implementing language access programs across state or local agencies, language service providers, federal officials, and community and advocacy groups. Various federal, state, and local agencies both presented and received training throughout the two-day period on delivery of services, cross-cutting approaches, and potential for sharing resources to better serve LEP individuals.

The 2007 conference was just the latest of several extremely successful national LEP conferences spearheaded by COR, one of which was a well-attended national "LEP Law Enforcement Summit" in 2005. That summit was geared specifically towards ensuring that law enforcement and correctional organizations receiving federal financial assistance do not unintentionally discriminate against LEP individuals. Police and correctional officials, as well as federal agencies, presented information to their peers on novel and successful approaches to serving LEP populations. A similar LEP conference was held in 2004; that conference was attended by about 200 people and was geared towards all types of Department of Justice recipients, not just those involved in law enforcement.

Other recent training activities include designing an LEP training curricula for the State of Maine's Judicial Branch in 2006, in connection with an investigation of the LEP services provided by the state's courts; working with Maryland state judicial officials to provide technical assistance on LEP access; and presentations at DOJ's annual COPS conference in 2006, Columbus, Ohio's police academy in 2006, and the Department of Homeland Security's Transportation Security Administration in 2005.

As of January 1, 2008, COR has conducted five technical assistance sessions on Title VI and/or LEP requirements for the 2008 Fiscal Year. In addition to a number of

upcoming training sessions to be conducted before audiences nationwide, COR also plans to tape a civil rights training session on LEP for broadcast over the Justice Television Network and to host another national LEP conference in the Washington, D.C. area.

In addition to its numerous trainings, COR has produced and distributed a variety of technical assistance materials to educate both public officials and community members on Title VI and LEP requirements. COR's technical assistance efforts include co-producing an LEP instructional video, translating this video into five languages, designing a "Know Your Rights" brochure for LEP individuals in 10 languages, creating an instructive brochure on complying with LEP requirements for federal agencies and recipients, and producing separate LEP planning tools for law enforcement agencies and departments of corrections currently being distributed to police departments and departments of corrections nationwide. COR also authored an in-depth Tips and Tools resource document with specific chapters for law enforcement, courts, 911 call centers, federally conducted programs, and domestic violence service providers. The LEP instructional materials produced by COR, as well as a number of other LEP resources, can be accessed at <http://www.lep.gov>, a newly-revamped intergovernmental website that COR is responsible for maintaining. The site receives approximately 10,000 hits per week.

In addition, though DOJ's Civil Rights Division does not have the statutory authority to mandate training programs for state law enforcement agencies, in conducting pattern or practice investigations of alleged constitutional violations, the Division provides ongoing technical assistance to advise law enforcement agencies of best practices and how to conform their policies and practices to constitutional standards. The Division provides technical assistance in the areas of uses of force, searches and seizures, non-discriminatory policing, misconduct investigations, early warning systems, citizen complaint intake and follow-up, supervisory review of line officer actions, and in several other areas of police practices. Next, if the Division determines constitutional violations exist, it works collaboratively with the agency to address needed constitutional reform via a settlement agreement. Finally, the Division works with the agency, and if designated, a jointly selected monitor, to ensure reform. Additionally, the Division makes the technical assistance reports, as well as negotiated settlement agreements detailing necessary reform, publicly available so that other departments may take a proactive approach to ensure constitutional policing.

DOJ's Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), conducts an outreach and education program aimed at educating 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). Each year, OSC awards grants to organizations across the country to conduct local public education campaigns. Additionally, OSC's staff directly participates in many public education and outreach activities. This includes making presentations at conferences, seminars, and meetings held by interested groups regarding employee and employer rights and obligations under the INA. Other components of the outreach program include a national public awareness campaign, which includes wide distribution of educational materials, and at times, public service announcements. OSC also

operates employer and employee hotlines to quickly address questions and resolve problems. OSC's early intervention program has proved a successful and cost-effective means of resolving workplace problems before charges are filed. Under this program, OSC's staff resolves questions concerning proper employment eligibility verification procedures and ensures that workers are not refused hire, or fired, based upon misunderstanding of the law.

DOJ's Civil Rights Division also provides a comprehensive orientation program to incoming attorneys to assist them in starting off with the necessary knowledge of substantive and administrative issues to effectively perform their jobs. The program is aimed in part at ensuring that new lawyers gain an appreciation of the scope of the Division's jurisdiction to enforce statutes prohibiting discrimination in many aspects of society.

In conjunction with the DOJ's training academy (the National Advocacy Center in Columbia, South Carolina), the Civil Rights Division organizes intensive training programs for federal prosecutors both from the Division as well as from U.S. Attorneys' Offices throughout the United States. The Division has organized both civil and criminal training programs, which provide detailed instruction both on relevant legal issues as well as on strategies to effectively identify, investigate, and litigate cases.

The Division has also organized several human trafficking training programs, including seminars at the National Advocacy Center for both prosecutors and investigators; televised training programs broadcast over the Department's television network to U.S. Attorney's Offices throughout the country; and the 2007 National Human Trafficking Conference attended by approximately 400 participants, which was aimed at members of local human trafficking task forces including federal and local, prosecutors, state and federal investigators, and NGOs.

The Division also provided training on civil rights issues at the National Academy program operated by the Federal Bureau of Investigation at the FBI's training academy in Quantico, Virginia. The National Academy is a three-month training program for local law enforcement officials from agencies throughout the country. The Civil Rights Division provided a block of training on civil rights issues, including criminal enforcement of federal hate crimes statutes, as well as the Division's enforcement of federal civil anti-discrimination provisions. In addition, the Division's Special Litigation Section has spoken at International Association of Chiefs of Police meetings.

On March 5-6, 2008, DOJ's Community Capacity Development Office (CCDO) the U.S. Attorney's Office for the District of Colorado, and the Bureau of Indian Affairs's Indian Police Academy will host a "Federal Cross-Deputization Training for Law Enforcement Officers." The training is designed to increase "boots-on-ground" policing by federally deputizing law enforcement officers to enforce federal law in Indian Country. In 2005, the CCDO staff participated in the Working Effectively with Indian Nations training session. This 4-day training session was designed to prepare federal staff to better understand and develop appropriate responses with Indian tribes in the Weed and Seed and Community Capacity Development Office activities. Through a series of lectures and case studies, participants learned about the

jurisdictional nature of tribal lands, law enforcement authorities operating in Indian Country, and the social and economic challenges for Indian tribes. From an understanding of these issues, staff became aware of the importance of involving the appropriate tribal leadership, community member and other tribal agencies to implement a comprehensive enforcement, prevention and/or community development program in a tribal setting. Training was provided by American Indian Development Associates.

Department of Labor:

The Civil Rights Center (CRC) of the Department of Labor sponsors an annual National Equal Opportunity Professional Development Forum attended by more than 250 state and local workforce professionals from 53 States and U.S. territories, and Job Corps Centers staff from across the country. This workshop is designed to educate DOL professionals on applicable civil rights laws and regulations, to provide solutions to help in implementation of effective equal opportunity programs and to heighten awareness of current-day civil rights issues. Within the Department, the CRC also provides in-person classroom training year around, both in the national office and in regional offices across the country. CRC also offers training to outside persons and businesses within the regulated community, by providing workshops at conferences and training sessions presented by those recipients, as well as at training sessions convened by CRC itself. Although much of this training is presented by CRC staff on-site, CRC has also used videoconferencing and audio conferencing for conferences and training sessions outside of Washington.

DOL's Office of Federal Contracts Compliance Programs 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. Federal non-discrimination law applies to private contractors carrying out contracts with the government.

Department of the Interior:

The Department of the Interior (DOI) has an extensive anti-discrimination program, conducted by the Office of Civil Rights (OCR). OCR's mission is to develop and enforce civil rights and equal opportunity programs pursuant to existing laws, Executive Orders and regulations and to ensure equal opportunity for all Departmental employees and federally assisted programs by the Department. The office stresses that no person in the United States shall, on the grounds of, *inter alia*, race, color, or national origin be subjected to unlawful discrimination under any program or activity conducted by or which receives federal financial assistance from the Department of the Interior. Discrimination includes: denial of services, aids, or benefits; provision of different service or in a different manner; and segregation or separate treatment. The office oversees a mandatory annual diversity training requirement for managers and supervisors. The office maintains a list of more than fifty recommended training subjects particularly including training on race discrimination.

Equal Employment Opportunity Commission (EEOC):

The EEOC devotes significant resources to outreach and training on the issues that the Convention addresses, specifically the eradication of racial and other forms of workplace discrimination. During FY 2007, field and headquarters staff participated in 5,658 educational, training, and outreach events, reaching 278,803 persons. Many of these sessions addressed race and national discrimination in the workplace issues, and some were before organizations representing various public officials and public service occupations.

Of particular relevance to the Committee, in 2007, the Commission launched the “E-RACE Initiative.”¹⁹ This program combines the Commission’s outreach, education, and enforcement efforts in order to bring greater awareness to the continuing problem of workplace race discrimination. As a part of the E-RACE process, the Commission seeks to partner with employers and to encourage them to be proactive about maintaining workplaces free of discrimination and harassment. The Commission encourages employers to implement measures that prevent illegal discrimination and harassment, take corrective action to address inappropriate conduct once they become aware of it, and handle race and color-related incidents and complaints promptly and effectively.

The Commission also has worked to ensure that those entering the workforce for the first time, including students and young adults, receive information about their workplace rights and responsibilities, including specific discussions on how to seek assistance to address or report incidents of discrimination that occur in the workplace. Through the Youth@Work Initiative, the Commission reaches out to schools and educators to share training materials and develop and present training to teenagers about their workplace rights and responsibilities and assist these young workers as they enter and navigate through the workplace. The EEOC also provides training and information to businesses that employ young workers to encourage them to pro-actively address discrimination issues confronting young workers.

Finally, the EEOC is particularly cognizant that small businesses in the U.S. employ many workers but often lack the resources to maintain full-time professional human resources staff. The Commission seeks to reach out to these employers and provide them with information about and assistance with compliance with their non-discrimination obligations. The Commission also seeks to assist stakeholders in under-served communities across the nation, including those with limited English proficiency, such as recently arrived immigrants.

¹⁹E-RACE is an acronym, formed from “Eradicating Racism and Colorism from Employment.”