



UNITED STATES OF AMERICA: ROLLING BACK OF HUMAN RIGHTS OBLIGATIONS

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
REVIEW, 36TH SESSION OF THE UPR WORKING GROUP, NOVEMBER 2020

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of the United States of America (USA) in November 2020. In it, Amnesty International evaluates the implementation of recommendations made to the USA in its previous UPR and on the situation of human rights on the ground, together with recommendations to the government of the USA on how to address some of the major human rights challenges with which it is faced.

Amnesty International draws attention to shortcomings in the engagement by the USA with the UPR to date, in particular its rejection or partial acceptance of recommendations concerning ratification of international human rights treaties or withdrawal of reservations to such treaties, as well as its disengagement with human rights mechanisms.

Amnesty International is concerned about policies impacting refugees and asylum seekers, specifically at the US-Mexico border where asylum seekers are placed at grave risk and subjected to ill-treatment and prolonged and indefinite detention while the government unlawfully targets migrant human rights defenders.

Persistently high levels of gun violence undermine the human rights of entire communities while gunshot survivors are unable to access specific programs to provide for their specific health and rehabilitation needs. Criminal justice issues, such as allegations of excessive use of force and ill-treatment by police officials, also continue to be of concern, as does the pattern of impunity which persists in relation to such abuses. The US capital justice system is marked by arbitrariness, discrimination and error, and people with serious mental illness and intellectual disabilities continue to be subjected to the death penalty.

In addition, Amnesty International raises concerns on the persistent human rights violations associated with the US government's national security and counter-terrorism programs, such as the ongoing violations at the Guantánamo Bay Detention Center and attendant military tribunals, lack of accountability for torture and other human rights violations, and the weakened policies related to the protection of civilians in counter-terror operations.

Amnesty International also highlights the attacks on sexual and reproductive rights and the lack of protection for the LGBTI community, while the country suffers from persistently high maternal mortality rates and levels of violence against indigenous women and girls.

Lastly, the submission was first published in November 2019. Following the postponement of the UN Human Rights Council's review of the USA from May to November 2020, Amnesty International has since updated this document to include human rights violations associated with the US government's response to the COVID-19 pandemic in key areas such as immigration and refugees, prisons and gun violence. It also includes concerns on the policing of the nationwide protests that took place following the torture and extrajudicial execution of George Floyd by Minneapolis police officers on 25 May 2020, as well as on key death penalty developments from 2020.

FOLLOW UP TO THE PREVIOUS REVIEW

During the USA's second Universal Periodic Review in 2015, 343 recommendations were made to it by other states.¹ The USA supported 155 of the recommendations and rejected 83. It gave qualified or partial support to the remainder.² Given the number of recommendations, and the uneven implementation of accepted recommendations, Amnesty International draws attention to the lack of action by the USA on recommendations regarding ratification since the previous UPR.

TREATIES AND INTERNATIONAL HUMAN RIGHTS MECHANISMS

Some 72 recommendations concerned ratifications or withdrawal of reservations to previous ratifications. The USA rejected those calling for the ratification of the International Covenant on Economic, Social and Cultural Rights, the Rome Statute of the International Criminal Court, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention for the Protection of All Persons from Enforced Disappearance.³ The USA supported calls to ratify the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child.⁴ However, the USA did not support doing so "without reservation".⁵ It has still not ratified any of these treaties.

While the USA committed to engagement with the UN Special Procedures⁶ and international mechanisms⁷ during the previous review, since 2017, the USA has moved in the opposite direction. For instance, in June 2018, the USA withdrew from the UN Human Rights Council.⁸ In 2019, the USA revoked the visa of the International Criminal Court Prosecutor who was investigating possible war crimes by US forces and their allies in Afghanistan.⁹ Furthermore, the USA has not responded to numerous communications from Special Procedures, nor accepted their requests for invitations for official visits since January 2018.¹⁰ Lastly, in July 2020, the US Department of State released the report of its advisory panel called the "Commission on Unalienable Rights". The report appeared to unilaterally redefine what "human rights" mean, rejecting the interpretive authority of UN and other

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review of the United States of America*, A/HRC/30/12, para 176.

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review of the United States of America (Addendum)*, A/HRC/30/12/Add.1., paras 5 – 23.

³ A/HRC/30/12/Add.1., para 22.

⁴ A/HRC/30/12/Add.1., paras 20–21.

⁵ A/HRC/30/12/Add.1., para 20.

⁶ A/HRC/30/12/Add.1., para 20.

⁷ Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, A/HRC/WG.6/22/USA/1, paras 6, 7.

⁸ *US quits 'biased' UN human rights council*, BBC, 20 July 2018, available at www.bbc.com/news/44537372.

⁹ *US revokes visa of International Criminal Court prosecutor*, BBC, 5 April 2019, available at www.bbc.com/news/world-us-canada-47822839

¹⁰ A list of all communications can be found at spcommreports.ohchr.org/TmSearch/Results?page=6

international human rights bodies, and specifically undermining the human rights framework by re-evaluating protections from discrimination for women, LGBTI individuals and others.¹¹

HUMAN RIGHTS SITUATION ON THE GROUND

COUNTER-TERRORISM AND NATIONAL SECURITY

Guantánamo Bay Detention Center

This offshore prison continues to operate in violation of international law, unlawfully locking people up in arbitrary and indefinite detention, after more than 17 years in existence. There are 40 individuals still held at the detention facility at the US Naval Base in Guantánamo Bay. Following the transfer of 18 individuals to countries willing to accept them in January 2017, only one person has been transferred out since. Five prisoners cleared for transfer from Guantánamo since at least 2016 remain detained, while the Trump administration eliminated the system that was previously created to arrange for their transfer. In 2010, 26 men were designated as “forever prisoners”,¹² held without charge or trial in violation of Article 9 of the International Covenant on Civil and Political Rights. None of the 40 men have access to adequate medical treatment, and those who survived torture by US agents have not been given adequate rehabilitative services.¹³

Trials by military commission

The trial of civilians by military tribunals at Guantánamo is inconsistent with international law and standards. Furthermore, applying inferior trial protections on the basis of nationality – US nationals cannot be tried by the military commissions – violates the right to equality before the law. Seven detainees face trials by military commission where they are eligible for the death penalty if convicted. Execution following unfair trial violates the right to life under international law. The trial for those accused of crimes related to the 11 September 2001 attacks is currently scheduled to begin on 11 January 2021.¹⁴

Accountability and remedy

Dozens of detainees were held in the CIA-operated secret detention program authorized from 2001–2009. Systematic human rights violations were committed in this program, including the crimes under international law of enforced disappearance and torture. No person suspected of criminal responsibility has been brought to justice

¹¹ See, Amnesty International statement and submission, “USA: State Department’s flawed ‘unalienable rights’ report undermines international law” (July 2020), available at: www.amnesty.org/en/latest/news/2020/07/usa-state-department-report-undermines-international-law/.

¹² The term was coined by report Carol Rosenberg of the Miami Herald, the leading reporter on detentions at the Guantánamo detention facility and the military commissions for those held there, to describe those who were determined to be held in indefinite detention without charge or trial.

¹³ For further reading, see: Amnesty International, *USA: Legacy Clock Ticking – Impunity, Guantanamo and Double Standards*, 8 January 2016, AI Index: AMR 51/3162/2016, www.amnesty.org/en/documents/amr51/3162/2016/en/; Amnesty International, *USA: President Trump Signs Order on Guantanamo and Sets Stage for First New Detainee Arrivals Since 2008*, 2 February 2018, AI Index: AMR 51/7822/2018, www.amnesty.org/en/documents/amr51/7822/2018/en/; Amnesty International, *USA: Guantanamo, Impunity, and Global Anti-Torture Day*, 25 June 2017, AI Index: AMR 51/6574/2017, www.amnesty.org/en/documents/amr51/6574/2017/en/.

¹⁴ Amnesty International, *USA: Legacy Clock Ticking – impunity, Guantanamo, and double standards*, 8 January 2016, AI Index: AMR 51/3162/2016, www.amnesty.org/en/documents/amr51/3162/2016/en/; Amnesty International, *USA: After 16 years, close Guantánamo’s detention center once and for all*, 11 January 2018, www.amnesty.org/en/latest/news/2018/01/usa-after-16-years-close-guantanamos-detention-center-once-and-for-all/.

for these crimes and the limited investigations conducted were closed, with no charges brought against anyone. For instance, the US Senate Select Committee on Intelligence's summary, released in December 2014, provides details of how the Central Intelligence Agency resorted to "waterboarding", mock execution, sexual threats and other forms of torture or other cruel, inhuman or degrading treatment against detainees who had been forcibly disappeared. The acts were carried out during the rendition and secret detention programmes that followed the attacks committed on 11 September 2001. The full report, which runs to some 6,600 pages, remains classified Top Secret. Amnesty International has called for release of the full report with as few redactions as possible, and none that obscure evidence of human rights violations, to ensure justice, truth and reparation for those who endured abuses.¹⁵

Civilian casualties and potentially unlawful killings

Under its flawed "global war" doctrine, the USA has repeatedly resorted to lethal force in countries around the world, including using armed drones, in violation of its obligations under international human rights law and, where applicable, international humanitarian law. Successive US administrations have justified such strikes either as part of a flawed "global war" doctrine, which essentially treats the whole world as a battlefield, or on the basis of a purported right of self-defense to use lethal force across borders against individuals and groups of people who they claim pose a threat. Since 2015, NGOs, UN experts and the media have documented how such strikes inside and outside of zones of active armed conflict have arbitrarily deprived protected individuals, including civilians, of their right to life and may have resulted in unlawful killings and injuries and, where applicable, war crimes.¹⁶ Despite UN Special Procedures and others calling for clarification of the legal and policy standards and criteria which the USA applies for the use of lethal force outside of the USA, the government continues to be neither transparent nor forthcoming.¹⁷ Since 2015, the administration reportedly has weakened protections for civilians in some areas where it is carrying out lethal operations. In addition to increasing the likelihood of unlawful killings, this has impeded an assessment of the strikes, including their legality, and prevented accountability and access to justice and effective remedies for victims of unlawful killings and civilian harm and their families. For instance, despite the tripling of airstrikes in Somalia in 2018, the US Administration claimed that no civilians had been killed or injured, only admitting to having caused such casualties in April 2019 after the publication of Amnesty International's report *The Hidden US War in Somalia* (see footnote). Likewise, more than 1,600 civilian lives were lost as a direct result of thousands of US, UK and French air strikes and tens of thousands of US artillery strikes in the military campaign in Raqqa, Syria from June to October 2017.¹⁸

¹⁵ For further reading, see: Amnesty International, *USA: Senate summary report on CIA detention programme must not be end of story*, 9 December 2014, www.amnesty.org/en/latest/news/2014/12/usa-senate-summary-report-cia-detention-programme-must-not-be-end-story/; ACLU, Press Release, *ACLU, Amnesty International and Human Rights Watch urge DOJ to appoint special prosecutor for CIA torture*, 23 June 2015, www.aclu.org/press-releases/aclu-amnesty-international-human-rights-watch-urge-doj-appoint-special-prosecutor-cia; Amnesty International, *Letter to US Attorney General Lynch regarding Senate Select Committee on Intelligence Review of CIA detention programme*, AI Index: TG AMR 51/2015.010, big.assets.huffingtonpost.com/AmnestyLetter.pdf; Amnesty International, *USA: Crimes and Impunity: Full Senate Committee Report on CIA Secret Detentions must be released, and accountability for crimes under international law ensured*, 21 April 2015, AI Index AMR 51/1432/2015, www.amnesty.org/en/documents/amr51/1432/2015/en/.

¹⁶ N. Crawford, *Costs of War: Human Cost of the Post-9/11 Wars: Lethality and the Need for Transparency*, The Watson Institute for International & Public Affairs, Brown University, November 2018, watson.brown.edu/costsofwar/files/cow/imce/papers/2018/Human%20Costs%2C%20Nov%208%202018%20CoW.pdf; Amnesty International, *USA/Somalia: Shroud of secrecy around civilian deaths masks possible war crimes*, 20 March 2019, www.amnesty.org/en/latest/news/2019/03/usa-somalia-shroud-of-secrecy-around-civilian-deaths-masks-possible-war-crimes/; N. Turse, *Pentagon document shows US knew of "credible" reports of civilian casualties after its attacks in Somalia*, *The Intercept*, 10 July 2019, theintercept.com/2019/07/10/pentagon-airstrikes-civilian-casualties-somalia/.

¹⁷ Amnesty International, *Syria: Rhetoric versus Reality: How the 'most precise air campaign in history' left Raqqa the most destroyed city in modern times*, 2019, raqqa.amnesty.org/; Amnesty International, *Somalia: The US Hidden War in Somalia, Civilian Casualties from Airstrikes in Lower Shabelle*, 20 March 2019, AI Index: AFR 52/9952/2019, www.amnesty.org/en/documents/afr52/9952/2019/en/.

¹⁸ For further reading, see: Amnesty International, *Somalia: The Hidden US War in Somalia, Civilian Casualties from Airstrikes in Lower Shabelle*, 20 March 2019, AI Index: AFR 52/9952/2019, www.amnesty.org/en/documents/afr52/9952/2019/en/; Amnesty International, *Syria: Rhetoric versus Reality: How the 'most precise air campaign in history' left Raqqa the most destroyed city in modern times*, 2019, raqqa.amnesty.org/; Amnesty International, *Trump threat puts European role in lethal US drone strikes under new*

GUN VIOLENCE

The US government's failure to protect individuals from persistent gun violence is denying people their civil and political rights, including the rights to life, to security of person and to be free from discrimination. In 2017, the most recent year where data is available, some 39,773 individuals died from gunshot injuries.¹⁹ Firearm homicides disproportionately impact communities of colour, particularly young black men. For instance, African Americans accounted for 58.5% of gun homicides nationwide in 2017, despite making up just 13% of the US population.²⁰ Furthermore, firearm homicide was the leading cause of death for black men and boys ages 15-34 in 2017, making them more than 10 times more likely to die from firearm homicide than white men and boys of the same age group.²¹

The USA has both the highest absolute and highest per capita rates of gun ownership in the world.²² Unfettered access to firearms and a lack of comprehensive gun safety laws and effective regulation of firearm acquisition, possession and use perpetuate this relentless and potentially avoidable violence.²³ Additionally, nearly 134,000 people were shot and injured in 2017.²⁴ The USA lacks special programs to provide for the specific health and rehabilitation needs of gunshot survivors. Survivors face numerous challenges in accessing ongoing health care, particularly mental health support and rehabilitation, due to both high cost and lack of availability, and have limited recourse to compensation. For instance, stringent eligibility requirements, limits on compensation amounts, a lack of information and awareness about these programs, and a cumbersome application process mean that they often fail to provide survivors of gun violence with full and effective compensation.²⁵

scrutiny, 19 April 2018, www.amnesty.org/en/latest/news/2018/04/trump-threat-puts-european-role-in-lethal-us-drone-strikes-under-new-scrutiny/; Amnesty International, *USA: Joint Letter on Public Acknowledgement and Investigations of U.S. "Targeted Killings" and Drone Strikes*, 13 May 2015, AI Index: AMR 51/1655/2015, www.amnesty.org/en/documents/amr51/1655/2015/en/.

- ¹⁹ National Center for Injury Prevention & Control, US Centers for Disease Control and Prevention, *Web-based Injury Statistics Query & Reporting System (WISQARS) Injury Mortality Reports, 1999-2013, for National, Regional, and States*, January 2015, www.webappa.cdc.gov/sasweb/ncipc/dataRestriction_inj.html. (Of these deaths, 22,938 were suicides and 14,415 were homicides (an added 495 deaths were accidental, 300 were of an undetermined intent and 510 were legal interventions)).
- ²⁰ See, Analysis of Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Injury prevention & control; Data statistics (WISQARS), Fatal Injury Reports, www.webappa.cdc.gov/sasweb/ncipc/mortrate.html; Firearm Deaths in 2017 (all races, all ages): 38,949; Whites: 27,810, Black: 10,117; For firearm homicides in 2017: Total: 14,542; African American: 8,504, African American males 7661.
- ²¹ See, Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting Systems: Fatal Injury Data & Nonfatal Injury Reports, www.cdc.gov/injury/wisqars/fatal.html; Analysis of Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Injury prevention & control; Data statistics (WISQARS), Fatal Injury Reports, www.webappa.cdc.gov/sasweb/ncipc/mortrate.html.
- ²² *Gun Homicides and Gun Ownership by Country*, Washington Post, 17 December 2012, www.washingtonpost.com/wp-srv/special/nation/gun-homicides-ownership/table/.
- ²³ For more information about gun violence and its impact on human rights in the USA, see Amnesty International's 2018 report: *In the Line of Fire: Human Rights and the US Gun Violence Crisis* (September 2018), www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf.
- ²⁴ Centers for Disease Control WISQARS (Web-based Injury Statistics Query and Reporting System) gives a total estimated figure of 133,895 for 2017 but cautions that the figure is unstable due to small sample size. The figure includes all shooting injuries, including intentional, accidental, and suicide. Centers for Disease Control WISQARS, *Injury Prevention and Control*, www.cdc.gov/injury/wisqars/index.html.
- ²⁵ For further reading, see: Amnesty International, *USA: In the Line of Fire: Human Rights and the U.S. Gun Violence Crisis* (Full Report), 2018, Index number: AMR 51/9546/2018 www.amnesty.org/en/documents/amr51/9546/2018/en/; Amnesty International, USA: Scars of Survival: Gun violence and barriers to reparations in the USA, 11 July 2011, AI Index AMR 51/0566/2019, www.amnesty.org/en/documents/amr51/0566/2019/en/.

REFUGEES AND ASYLUM SEEKERS

Dismantling refugee resettlement

The Trump administration's policies, and those specifically targeting refugees from Muslim-majority countries, have hindered the USA's refugee resettlement program. Starting with the discriminatory "Muslim ban",²⁶ and followed by successive policies, such as a temporary refugee ban, implementation of enhanced vetting procedures, and cuts to resettlement goals, resettlement of refugees to the USA has plummeted.²⁷ Prior to 2018, the yearly refugee admissions goal since 1980 averaged 95,000 persons per year. The USA will resettle approximately 30,000 refugees in 2019, the lowest refugee admissions goal in the program's history. There are reports that the administration considered lowering the number of refugees to be admitted through the US Refugee Admissions Program to zero for 2020.²⁸ However, the Trump administration announced on 26 September that it would set the number for admissions for Fiscal year 2020 to a historically low 18,000 admissions.²⁹

Externalization of asylum process at the southern border

Since 2017, the USA has implemented increasingly draconian immigration policies to drastically limit access to asylum at the US–Mexico border, resulting in irreparable harm to thousands of individuals and families. Those policies include ongoing unlawful mass pushbacks of tens of thousands of asylum seekers at the US–Mexico border (constituting *refoulement*), and the forced return to Mexico of tens of thousands of asylum seekers after they seek protection. US authorities are executing these forced returns under its policy called "Migrant Protection Protocols", better known as the "Remain in Mexico" policy, requiring asylum seekers at the US–Mexico border to return to and stay in Mexico during the adjudication of their asylum claims, which can take months or years to complete. These policies place asylum seekers at unnecessary risk of potentially lethal violence and "chain *refoulement*" by US and Mexican authorities and are aimed to deter asylum seekers from seeking protection in the USA, violating their right to seek asylum.³⁰

²⁶ Amnesty International USA Press Release, *Amnesty International USA Reaction to Supreme Court Ruling on Muslim Ban*, 26 June 2018, www.amnestyusa.org/press-releases/amnesty-international-usa-reaction-to-supreme-court-ruling-on-muslim-ban/.

²⁷ For further reading, see, Amnesty International, *Middle East: 'The Mountain is in Front of Us and the Sea is Behind Us': The impact of US policies on refugees in Lebanon and Jordan*, 17 June 2019, AI Index: MDE 02/0538/2019, www.amnesty.org/en/documents/mde02/0538/2019/en/

²⁸ See, J. Hirschfeld Davis and M.D. Shear, *Trump Administration Considers a Drastic Cut in Refugees Allowed to Enter U.S.*, New York Times, 6 September 2019, www.nytimes.com/2019/09/06/us/politics/trump-refugees-united-states.html?action=click&module=Top%20Stories&pgtype=Homepage; Amnesty International USA Press Release, *Refugee Admissions Numbers are a new and shameful low*, 18 July 2019, www.amnestyusa.org/press-releases/refugee-admissions-numbers-are-a-new-and-shameful-low/.

²⁹ See, Amnesty International USA statement, *new admissions refugee cap by the President is an attempt to further hate and divisions*, 26 September 2019, www.amnestyusa.org/press-releases/new-admissions-refugee-cap-by-the-president-is-an-attempt-to-further-hate-and-division/.

³⁰ For further reading, see: Amnesty International amicus brief in *Innovation Law Lab. V. McAleenan*, NO. 3:19-CV-807-RS, Ninth Circuit Court of Appeals, 2019, www.amnestyusa.org/wp-content/uploads/2019/06/2019.06.26-Amnesty-International-Amicus-Brief-in-Innovation-Law-Lab-v.-McAleenan-1.pdf; Amnesty International, Press Release, *USA: Government must stop illegal pushbacks of asylum seekers to Mexico*, 11 April 2019, www.amnesty.org/en/latest/news/2019/04/usa-government-must-stop-illegal-pushbacks-of-asylum-seekers-to-mexico/; Amnesty International, *Americas: US government endangers asylum seekers with unlawful policies*, 26 November 2018, www.amnesty.org/en/latest/news/2018/11/americas-us-government-endangers-asylum-seekers-with-unlawful-policies; Amnesty International, *Americas: Stuck at the Door: The urgent need for protection of Central American refugees, asylum seekers and migrants in the caravans*, 26 November 2018, AI index: AMR 01/9447/2018, www.amnesty.org/en/documents/amr01/9447/2018/en/; Amnesty International, *USA: 'You Don't Have Any Rights Here': Illegal Pushbacks, Arbitrary Detention, and Ill-treatment of Asylum-Seekers in the United States*, 11 October 2018, AI Index: AMR 51/9101/2018, www.amnesty.org/en/documents/amr51/9101/2018/en/; Facts & Figures two-pager, accompanying the report, *'You Don't Have Any Rights Here'*, 11 October 2018, www.amnesty.org/en/latest/news/2018/10/usa-facts-and-figures-of-illegal-pushbacks-arbitrary-detention-and-ill-treatment; Open letter from Amnesty International to the US Department of Homeland Security, in relation to findings on family separations detailed in the report, *'You Don't Have Any Rights Here'*, 19 October 2018, AI Index: AMR 51/9280/2018, www.amnesty.org/download/Documents/AMR5192802018ENGLISH.pdf; Amnesty International,

Arbitrary detention and ill-treatment of asylum seekers

In 2018 and 2019, US authorities have forcibly separated thousands of asylum-seeking families, deliberately and purposefully inflicting extreme suffering on families, ill-treatment which constituted torture in some cases. Additionally, authorities have increasingly imposed arbitrary and indefinite detention of asylum-seekers as a means of deterring them from seeking protection and/or compelling them to give up their asylum claims, thereby inflicting cruel, inhuman or degrading treatment or punishment. Children, women, older people, LGBTI people, and persons with disabilities or acute medical conditions are at particular risk of such ill-treatment. Some asylum seekers have been detained for periods lasting up to several years without actual opportunities to request or receive parole, a practice which has been subject to blanket denials by US immigration authorities.³¹

Prolonged and indefinite detention of children asylum seekers

Children detained at the Homestead temporary influx care facility in Florida have been held in prolonged and indefinite detention. On average, children were held at Homestead for 52 days in March 2019. This number does not include the amount of time children may have also spent in the custody of immigration enforcement prior to being transferred to Homestead, or in a permanent shelter if transferred onward from Homestead, as opposed to being released to a sponsor. In many cases, children were held far beyond the 20 days permitted under US court mandate. One child was detained at Homestead for eight months prior to his transfer to another permanent shelter. In other cases, children were held for over 100 or even 200 days. In July 2019, just prior to the temporary closure of the facility one month later, the Department of Health and Human Services and Comprehensive Health Services, the private company that is contracted to run the facility, reported the average length of detention in June 2019 to be 25 days, which still violates the human rights obligation to detain children for the least amount of time in the least restrictive setting.³² On 23 August 2019, a new regulation was issued by the Trump administration that will lead to the indefinite detention of children and families for immigration enforcement purposes. The “Flores Settlement Agreement” is a court monitored agreement from 1997 that mandates that children cannot be held in immigration detention for more than 20 days, as well as other standards and requirements for the treatment of children subject to immigration enforcement. The proposed rule would effectively terminate the agreement.³³

Unlawful targeting of migrant human rights defenders

Since 2018, the US government has executed an unlawful and politically motivated campaign of intimidation, threats, harassment, and criminal investigations against people who defend the human rights of migrants, refugees and asylum seekers on the US–Mexico border, violating *inter alia* their right to freedom from discrimination based on political or other opinion. The US Department of Homeland Security and the US Department of Justice have increasingly misused and leveraged the criminal justice system to deter and punish those individuals for challenging – or even simply documenting – the systematic human rights violations by US

Facing Walls: USA and Mexico Violations of the Rights of Asylum-seekers, 15 June 2017, AI Index: AMR 01/6426/2017, www.amnesty.org/en/documents/amr01/6426/2017/en/.

³¹ For further reading, see: Amnesty International, *Americas: Stuck at the Door: The urgent need for protection of Central American refugees, asylum seekers and migrants in the caravans*, 26 November 2018, AI index: AMR 01/9447/2018, www.amnesty.org/en/documents/amr01/9447/2018/en/; Amnesty International, *USA: ‘You Don’t Have Any Rights Here’: Illegal Pushbacks, Arbitrary Detention, and Ill-treatment of Asylum-Seekers in the United States*, 11 October 2018, AI Index: AMR 51/9101/2018, www.amnesty.org/en/documents/amr51/9101/2018/en/; Facts & Figures two-pager, accompanying the report, ‘*You Don’t Have Any Rights Here*’, 11 October 2018, www.amnesty.org/en/latest/news/2018/10/usa-facts-and-fugures-of-illegal-pushbacks-arbitrary-detention-and-ill-treatment/; Open letter from Amnesty International to the US Department of Homeland Security, in relation to findings on family separations detailed in the report, ‘*You Don’t Have Any Rights Here*’, 19 October 2018, AI Index: AMR 51/9280/2018, www.amnesty.org/download/Documents/AMR5192802018ENGLISH.pdf; Amnesty International, *Facing Walls: USA and Mexico Violations of the Rights of Asylum-seekers*, 15 June 2017, AI Index: AMR 01/6426/2017, www.amnesty.org/en/documents/amr01/6426/2017/en/.

³² For further reading, see: Amnesty International, *USA: No Home for Children: The Homestead ‘Temporary Emergency’ Facility*, 17 July 2019, AI Index: AMR 51/0714/2019, www.amnesty.org/en/documents/amr51/0714/2019/en/.

³³ For further reading, see: *Flores v. Barr*, No. CV 85-4544-DMG(AGRx), US District Court, Central District of California, Western Division, Brief of Amici Curiae Human Rights Watch and Amnesty International USA in support of Plaintiffs, www.amnestyusa.org/wp-content/uploads/2019/09/09.05.2019-Brief-in-Support-of-Challenge-to-Flores-Regulations.pdf

authorities against migrants and asylum seekers. Take, for instance, the case of Scott Warren. On 17 January 2018, US Border Patrol officers arrested Dr. Scott Warren, a geography lecturer and humanitarian volunteer with the group, No More Deaths, on three felony criminal charges of “human smuggling.” Dr. Warren was specifically accused of providing people with humanitarian aid in the form of food, water, clean clothing and bedding in the desert town of Ajo, Arizona, where he lived. If convicted on all three criminal charges against him, Dr. Warren would have faced up to 20 years in prison. His felony trial ran from 29 May to 7 June 2019. On 11 June, the trial of Dr. Warren resulted in a hung jury and mistrial. The jury of 12 could not reach a unanimous decision as required to acquit or convict Dr. Warren under the law, with a majority of eight jurors finding him innocent of the charges against him. The prosecutors could have dropped the charges at any time following the mistrial, but chose to retry Warren in November 2019. Following a second trial on two felony migrant harboring charges, threatening up to 10 years in prison, a new jury found Dr. Warren “not guilty” on all charges against him.³⁴

Developments during the COVID-19 pandemic

In 2020, the USA became one of the epicentres of the COVID-19 pandemic, with well over 4 million confirmed cases and 150,000 deaths (as of July 2020). Despite a serious outbreak of COVID-19 in civil immigration detention facilities, US Immigration and Customs Enforcement (ICE) refused to release tens of thousands of migrants and asylum seekers – over 4,000 of whom contracted the virus in civil detention. Contrary to guidance from the US Centers for Disease Control and Prevention, ICE failed to adequately provide soap and sanitizer or introduce social distancing, and continued unnecessarily to transfer thousands of people between immigration detention facilities.³⁵ This included approximately one hundred families held in detention centres a US federal judge deemed “on fire” with confirmed COVID-19 cases and inadequate protection. Instead of releasing families together, ICE asked parents in May 2020 if they would agree to release their children without them, while the parents remained detained.³⁶

Simultaneously, the US government exploited the COVID-19 crisis to halt all processing of asylum seekers on the US–Mexico border, instead unlawfully detaining and “expelling” tens of thousands of migrants and asylum seekers since March 2020 – including thousands of unaccompanied children – without consideration of their protection needs or the risks of persecution, death, torture or other ill-treatment that they faced upon refoulement to their countries of origin.³⁷ Approximately 60 percent of those migrants and asylum seekers whom the US government deported or “expelled” to their countries of origin were from the Northern Triangle of Central America; in hundreds of documented cases, those returnees had contracted COVID-19 in US custody and contributed to the regional outbreak of the pandemic throughout the Americas.³⁸

CRIMINAL JUSTICE AND POLICING

The death penalty

³⁴ See, Amnesty International statement, “USA: Exoneration of Scott Warren is a triumph for humanity”, 20 November 2019, <https://www.amnesty.org/en/latest/news/2019/11/usa-exoneration-scott-warren-triumph-for-humanity/>. For further reading, see, Amnesty International, *USA: ‘Savings Lives is Not a Crime’: Politically motivated legal harassment against migrant human rights defenders by the USA*, 2 July 2019, AI Index: AMR 51/0583/2019, www.amnesty.org/en/documents/amr51/0583/2019/en/.

³⁵ See, Amnesty International report, *‘We are adrift, about to sink’: The looming COVID-19 disaster in US immigration detention facilities*, April 2020, www.amnesty.org/en/latest/news/2020/04/usa-covid19-pandemic-authorities-must-release-immigration-detainees/. For updated statistics, which likely represent an undercounting of actual cases and deaths, see also DHS-ICE, “ICE Guidance on COVID-19”, www.ice.gov/coronavirus.

³⁶ See, Amnesty International report, *Family Separation 2.0: ‘You aren’t going to separate me from my only child’* May 2020, www.amnestyusa.org/wp-content/uploads/2020/04/Amnesty-International-USA-Family-Separation-2.0_May-21-2020-.pdf.

³⁷ See, Amnesty International, et al., “Explainer on U.S. Deportations and Expulsions During the COVID-19 Pandemic”, May 2020, www.amnestyusa.org/wp-content/uploads/2020/05/Explainer-on-Deportations-and-Expulsions-During-the-COVID-19-Pandemic-1.pdf.

³⁸ See, The New York Times and The Marshall Project, “How ICE Exported the Coronavirus”, July 2020, www.themarshallproject.org/2020/07/10/how-ice-exported-the-coronavirus.

There have been more than 1,500 executions in the USA since judicial killing resumed under revised statutes in 1977;³⁹ and more than 120 since 2015. At the end of 2019, 2,581 prisoners were known to remain on death row in 31 jurisdictions.⁴⁰ Studies demonstrate that race, particularly of the murder victim, plays a role in who is sentenced to death. As of August 2020, 170 prisoners who were sentenced to death have been exonerated since 1977. In numerous cases, prisoners have gone to their deaths despite serious doubts about the proceedings that led to their convictions, including without adequate legal representation. People with serious mental and intellectual disabilities have been subjected to the death penalty in violation of international law. Individual states continue to move towards abolition. Since the end of 2013, four states have abolished the death penalty in law, bringing the total to 22. The four US states that most recently abolished the death penalty were: Delaware in 2016; Washington in 2018 when the State Supreme Court ruled the current death penalty statute unconstitutional on the ground that its application resulted in racial bias; New Hampshire when the state legislature overrode its governor's veto of a bill to abolish the death penalty in 2019; and, most recently, Colorado in 2020. In addition, the Governor of California, the state with the largest death row in the country, issued a moratorium on executions on 13 March 2019. Two other states have official moratoriums in place: Oregon and Pennsylvania. However, in 2019, the US Attorney General set the first executions in more than 16 years of people convicted under federal law. In July 2020, the US Supreme Court lifted a temporary injunction on the executions set by lower courts, allowing for the resumption of federal executions for the first time since 2003, following which the Trump administration promptly executed three prisoners over a four-day period.⁴¹ The Attorney General set four other executions for August and September 2020. If all were to take place, in just over two months the Trump administration will have tripled the number of federal executions recorded since 1977.⁴²

Police use of lethal force

Nearly 1,000 individuals were killed by law enforcement personnel using firearms in 2018.⁴³ The limited data available suggests that African Americans are disproportionately impacted by police use of lethal force. For instance, The Washington Post documented 992 people shot and killed by police in 2018. According to that data – 229 individuals, or 23 percent, were identified as black, however African Americans comprise 13.4 percent of

³⁹ *Gregg v. Georgia* (428 U.S. 153), *Jurek v. Texas* (428 U.S. 262), and *Proffitt v. Florida* (428 U.S. 242), collectively referred to as the “Gregg decision” by the US Supreme Court in 1976. This landmark decision held that the new death penalty statutes in Georgia, Texas and Florida respectively were constitutional, thus reinstating the death penalty in those states after the US Supreme Court suspended death penalty statutes across the country in 1972. The Court also held that the death penalty itself was constitutional under the Eighth Amendment.

⁴⁰ Amnesty International, *Death Sentences and Executions in 2019*, AI Index ACT 50/1847/2020, April 2020, <https://www.amnesty.org/en/documents/act50/1847/2020/en/>.

⁴¹ US Department of Justice, Press Release, *Federal Government to Resume Capital Punishment After Nearly Two Decade Lapse*, 25 July 2019, www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse; *The Marshall Project*, “Witnesses to the Execution” (24 July 2020), available at: <https://www.themarshallproject.org/2020/07/24/witnesses-to-the-execution>. For further reading, see: Amnesty International, *Death Sentences and Executions in 2018*, 11 April 2019, AI Index ACT 50/9870/2019, <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>; Amnesty International, *USA: Darkness Visible in the Sunshine State, the death penalty in Florida*, 23 August 2018, AI Index AMR 51/8959/2018, <https://www.amnesty.org/en/documents/amr51/8959/2018/en/>; Amnesty International USA, “Colorado’s abolition of death penalty brings country one step closer towards eliminating this cruel, inhuman and degrading punishment” (23 March 2020), available at: <https://www.amnestyusa.org/press-releases/colorados-abolition-of-death-penalty/>; Amnesty International, *Death sentences and executions in 2014*, 1 April 2015, AI Index: ACT 50/0001/2015, <https://www.amnesty.org/en/documents/act50/0001/2015/en/>; Amnesty International, *Death sentences and executions in 2015*, 6 April 2016, AI Index: ACT 50/3487/2016, <https://www.amnesty.org/en/documents/act50/3487/2016/en/>; Amnesty International, *Death sentences and executions in 2016*, 11 April 2017, AI Index: ACT 50/5740/2017, <https://www.amnesty.org/en/documents/act50/5740/2017/en/>; Amnesty International, *Death sentences and executions in 2017*, 12 April 2018, AI Index: ACT 50/7955/2018, <https://www.amnesty.org/en/documents/act50/7955/2018/en/>; Death Penalty Information Center, *The Death Penalty in 2018: Year end report, 2018*, <https://deathpenaltyinfo.org/documents/2018YrEnd.pdf>.

⁴² Amnesty International, *USA: Three men executed, four others at risk* (Urgent Action, AMR 51/2815/2020), 6 August 2020, <https://www.amnesty.org/en/documents/amr51/2815/2020/en/>

⁴³ See: The Washington Post, *Fatal Force* (2018), www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?utm_term=.e825fe88b601.

the US population.⁴⁴ The US government does not effectively track how many such deaths occur annually. The Death in Custody Reporting Act, or “DiCRA”, (Public Law No: 113-242), requires the creation of a national system to document and annually report each death due to interaction with law enforcement personnel. However, DiCRA has not been fully implemented since enacted in 2014. In 2015, Amnesty International reviewed state laws – where they exist – governing the use of lethal force by law enforcement officials and found that none comply with international law and standards regarding the use of lethal force, which require that lethal force be used only as a last resort against an imminent threat of death or serious injury.⁴⁵

Policing of protests

Following the videotaped torture and extra-judicial execution of George Floyd by police in Minneapolis, Minnesota on 25 May 2020, law enforcement across the USA committed widespread and egregious human rights violations against people protesting the unlawful killings of Black people and calling for police reform, violating protesters’ rights to freedom of expression and peaceful assembly. Amnesty International documented 125 separate incidents of police violence against protesters in 40 states and the District of Columbia between 26 May and 5 June 2020 in an interactive mapping project, “Amnesty International Documents Widespread Police Violence Against Black Lives Matter Protesters”.⁴⁶ These acts of excessive force were committed by members of state and local police departments, as well as by National Guard troops and security force personnel from several federal agencies. Rather than being a necessary and proportional response to any specific threat, the use of force became a matter of first resort against any form of resistance, to enforce a curfew, to end an ongoing demonstration or to clear a park for a photo opportunity for the President. Among the abuses against protesters documented were beatings with batons or other devices, the misuse of tear gas and pepper spray, and the inappropriate and at times indiscriminate firing of “less lethal” projectiles, such as sponge rounds and rubber bullets – the latter resulting in serious head and eye injuries in several occasions. In numerous incidents across the USA, law enforcement personnel specifically targeted media representatives, legal observers and street medics with chemical irritants, kinetic impact projectiles and arrest and detention.⁴⁷ Law enforcement agencies across the country consistently failed in fulfilling their obligations to respect and facilitate the right of people to peacefully protest.

GENDER, SEXUALITY AND IDENTITY

Criminalization of pregnancy and abortion; maternal mortality

Amnesty International is gravely concerned about the curtailment of sexual and reproductive rights in the USA, specifically, increasing efforts to criminalize pregnancy and abortion,⁴⁸ limiting access to reproductive health

⁴⁴ See, Washington Post, Fatal Force (2018), www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?utm_term=.e825fe88b601, and US Census Bureau, Quickfacts, Population Estimates (July 2017), www.census.gov/quickfacts/fact/table/US/PST045217.

⁴⁵ For further reading, see: Amnesty International USA, *Deadly Force: Police use of lethal force in the USA*, 2015, www.amnestyusa.org/files/aiusa_deadlyforcereportjune2015.pdf; Amnesty International USA, *On the Streets of America: Human rights abuses in Ferguson*, 2014, www.amnestyusa.org/wp-content/uploads/2017/04/onthestreetsofamericaamnestyinternational.pdf.

⁴⁶ See, Amnesty International, *Amnesty International Documents Widespread Police Violence Against Protesters for Black Lives*, June 2020, www.amnestyusa.org/protest-map/.

⁴⁷ Amnesty International, *USA: The World is Watching: Mass Violations by U.S. Police of Black Lives Matter Protestors’ Rights*, August 2020, AI Index: AMR 51/2807/2020, www.amnestyusa.org/worldiswatching/.

⁴⁸ For further reading, see: Amnesty International, *USA: Criminalizing Pregnancy: Policing Pregnant Women Who Use Drugs in the USA*, 23 May 2017, AI Index: AMR 51/6203/2017, www.amnesty.org/en/documents/amr51/6203/2017/en/; Amnesty International, *Body Politics: A Primer on Criminalization of Sexuality and Reproduction*, 2018, AI Index: POL 40/7763/2018, www.amnesty.org/en/documents/pol40/7763/2018/en/.

services,⁴⁹ and increasing maternal mortality rates.⁵⁰ For further information and recommendations on these issues, Amnesty International would like to draw attention to the following UPR submissions it has joined: *Reproductive Health, Rights and Justice*,⁵¹ and, *Criminalization and Civil Punishment of Pregnancy and Pregnancy Outcomes*.⁵²

Gender-based violence against Indigenous women

Indigenous women suffer disproportionately high levels of rape and sexual violence; Native American and Alaska Native women are more than 2.5 times more likely to be raped or sexually assaulted than women in the USA in general.⁵³ More than one in three will be raped during their lifetimes, compared to one in five in the USA overall; 86% of reported perpetrators are non-Native men.⁵⁴ Additionally, a recent study documented more than 500 missing and murdered Indigenous women and girls in 71 cities throughout the USA,⁵⁵ though these numbers are likely undercounted due to deficiencies in data of both law enforcement and the media on this issue.⁵⁶

Sexual orientation and gender identity

Incidents of hate crimes based on sexual orientation or gender identity increased for a third consecutive year between 2015 to 2017. Many states do not include sexual orientation and gender identity in their laws providing enhanced penalties for bias-motivated crimes. There are no federal protections against discrimination in hiring and employment on the basis of sexual orientation or gender identity. The Trump administration has sought to dismantle protections against discrimination based on sexual orientation in education, the military, employment, and other areas of the federal government.⁵⁷

⁴⁹ For further reading, see: Center for Reproductive Rights, *Protect, Defend, Extend: 2018 State of States*, <https://reproductiverights.org/State-of-the-States-2018? ga=2.15321782.1249559332.1566423521-914253948.1566423521>; Amnesty International Statement by E. Guevara-Rosas, *Trump's Global Gag Rule a Blow for Women's Rights and Lives*, 25 January 2017, www.amnestyusa.org/74153-2/; Amnesty International, Press Release, *Planned Parenthood Withdrawal from Title X Demonstrates Cruel Policies*, 19 August 2019, www.amnestyusa.org/press-releases/planned-parenthood-withdrawal-from-title-x-demonstrates-cruel-policies/.

⁵⁰ For further reading, see: Amnesty International, *USA: Deadly Delivery: The maternal health care crisis in the USA: One year update*, 7 May 2011, AI Index: AMR 51/108/2011, www.amnesty.org/en/library/info/AMR51/108/2011/en/; Amnesty International, *USA: Deadly Delivery: The maternal health care crisis in the USA*, 12 March 2010, AI Index: AMR 51/019/2010, www.amnesty.org/en/documents/AMR51/019/2010/en/; N. Martin and R. Montagne, *U.S. has worst rate of maternal deaths in the developed world*, NPR, 12 May 2017, www.npr.org/2017/05/12/528098789/u-s-has-the-worst-rate-of-maternal-deaths-in-the-developed-world.

⁵¹ See, *Reproductive Health, Rights and Justice*, Submission to the Universal Periodic Review of the United States of America, Third Cycle, 36th Session of the UPR, May 2020, available at advocatesforpregnantwomen.org/blog/Repro%20rights%20and%20justice%20stakeholder%20report%20%281%29.pdf.

⁵² See, *Criminalization & Civil Punishment of Pregnancy and Pregnancy Outcomes*, Submission to the Universal Periodic Review of the United States of America, Third Cycle, 36th Session of the UPR, May 2020, available at: advocatesforpregnantwomen.org/blog/UPR%20Crim%20report.pdf.

⁵³ Bureau of Justice Statistics, *A BJS Statistical Profile, 1992-2002, American Indians and Crime*, 7, U.S. Dept. of Justice, December 2004, available at <http://www.bjs.gov/content/pub/pdf/aic02.pdf>.

⁵⁴ National Institute of Justice, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey*, U.S. Dept. of Justice, 22, November 2000, available at www.ncjrs.gov/pdffiles1/nij/183781.pdf.

⁵⁵ See: A. Lucchesi and A. Echo-Hawk, *Missing and Murdered Indigenous Women and Girls: A snapshot of data from 71 urban cities in the United States*, Urban Indian Health Institute, 2018, www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf.

⁵⁶ For further reading, see: A. Lucchesi and A. Echo-Hawk, *Missing and Murdered Indigenous Women and Girls: A snapshot of data from 71 urban cities in the United States*, Urban Indian Health Institute, 2018, www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf; Amnesty International, *Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA*, 24 April 2007, AI Index: AMR 51/057/2007, www.amnesty.org/en/documents/AMR51/057/2007/en/; A. Rosay, U.S. Department of Justice National Institute of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, www.ncjrs.gov/pdffiles1/nij/249736.pdf.

⁵⁷ For further reading, see: T. Demant, *Mike Pence is covertly weaponizing language against LGBTQ people*, The Advocate, 14 December 2018, www.advocate.com/commentary/2018/12/14/mike-pence-covertly-weaponizing-language-against-lgbtq-people; National Center for Transgender Equality, *Trump's record of Action Against*

COVID-19 PANDEMIC

Disparate impact of US government response to COVID-19

In the USA, all segments of society are impacted and many communities are experiencing hardship, sacrifice, illness or devastating loss as a result of the COVID-19 pandemic. Due to the USA's long-standing inequalities—including by gender, by race and by class however—certain individuals are being disproportionately impacted. Systematic disparities which dictate much of the fabric of everyday life- from who serves as front line workers to who has access to employment, housing, resources and health care, are magnified during this crisis. The crisis has exposed and magnified these underlying and systemic issues and the government failure at the federal, state and local levels to adequately address the pandemic have only exacerbated these disparities.⁵⁸

Incarcerated people are particularly at risk due to being held in in unsanitary conditions and without an ability to adequately socially distance and with inadequate access to hygienic supplies⁵⁹, as facilities have become hot spots for infection throughout the country.⁶⁰ Some states and localities have taken steps to reduce the risk and spread inside facilities, such as reducing low-level arrests, setting bail to US\$0, and releasing certain incarcerated individuals who are medically vulnerable or had served most of their term.⁶¹ However, more is needed. As cases continue to increase in the USA, immediate action must be taken to decrease jail and prison populations to reduce the threat Covid-19 poses to those in carceral facilities and their surrounding communities.

The pandemic also intersects with gun violence issues in the USA as purchases of firearms have increased exponentially since the start at the pandemic, 1.5 times the rate over a similar period from 2019 for all background checks completed between January and June with approximately 40% of those being for new gun owners.⁶² This places children and domestic violence survivors at particularly increased risk as more unsecured firearms are located in homes while children are forced to remain at home and domestic violence survivors are forced to quarantine with their abusers. According to at least one study, social isolation, economic uncertainty and generally heightened anxiety as a result of the current crisis, combined with easy access to guns, may increase the already rising rate of suicides by firearm in the USA.⁶³ Likewise, an increased wave of bigotry tied to the

Transgender People, transequality.org/the-discrimination-administration; Human Rights Watch, *All We Want Is Equality: Religious exemptions and discrimination against LGBT people in the United States*, February 2018, www.hrw.org/sites/default/files/report_pdf/lgbt0218_web_1.pdf; E. Waters, et al, *A Crisis of Hate: A report on Lesbian, Gay, Bisexual, Transgender and Queer hate violence homicides in 2017*, National Coalition of Anti-Violence Programs, 2018, avp.org/wp-content/uploads/2018/01/a-crisis-of-hate-january-release-12218.pdf; Human Rights Campaign and Trans People of Color Coalition, *Addressing Anti-Transgender Violence*, November 2015, www.hrc.org/resources/addressing-anti-transgender-violence-exploring-realities-challenges-and-sol.

⁵⁸ *Amnesty International USA letter to Governors calling for the implementation of Equity Task Forces*, Amnesty International USA, 6 May 2020, rightsnow.amnestyusa.org/wp-content/uploads/2020/05/COVID-19-Equity-Task-Forces-May-62020.JSidhu.pdf; Amnesty International USA, *End disproportionate impact of COVID-19*, rightsnow.amnestyusa.org/end-disproportionate-impact-of-covid-19/.

⁵⁹ *Amnesty International USA letter to Governors regarding COVID mitigation in prisons and jails*, Amnesty International USA, 29 April 2020, available at: www.amnestyusa.org/wp-content/uploads/2020/04/Amnesty-International-USA-TG-Letter-to-Governors-COVID-19-Criminal-Justice-Recs.-FOR-WEB_including-contact.pdf.

⁶⁰ The Marshall Project, *A State by State Look at Coronavirus in Prisons*, last updated 23 July 2020, www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons; B. Saloner, et al, *COVID-19 Cases and Deaths in Federal and State Prisons*, *The Journal of the American Medical Association*, Research Letter, 8 July 2020, jamanetwork.com/journals/jama/fullarticle/2768249.

⁶¹ ACLU, *Decarceration and crime during COVID-19*, July 2020, www.aclu.org/news/smart-justice/decarceration-and-crime-during-covid-19/.

⁶² NPR, *Pandemic and protests spark record gun sales*, 16 July 2020, www.npr.org/2020/07/16/891608244/protests-and-pandemic-spark-record-gun-sales#:~:text=Pandemic%20And%20Protests%20Spark%20Record%20Gun%20Sales%20%3A%20NPR&text=Pandemic%20And%20Protests%20Spark%20Record%20Gun%20Sales%20About%203%20million.guns%20for%20the%20first%20time.

⁶³ Everytown for Gun Safety, *Thousands of preventable gun suicides: A collateral COVID 19 public health crisis*, Everytown Research and Policy Fact Sheet, June 2020, everytownresearch.org/report/thousands-of-preventable-gun-suicides-a-collateral-covid-19-public-health-crisis/; see also, M. Reger, et al, *Suicide mortality and coronavirus*

origins of the virus—especially combined with the rush to purchase guns—may increase hate violence and must be closely monitored.⁶⁴ The lack of a people-centered response to COVID-19 that protects all individuals, and at the same time, also explicitly addresses long-standing injustice and discrimination, has placed all segments of society at risk. The U.S. government must fully account for the needs of adversely impacted and marginalized groups and people in its plans and strategies to respond to COVID-19.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF THE UNITED STATES TO:

INTERNATIONAL LAW AND STANDARDS

- Promptly ratify or adhere to and implement into domestic law the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention for the Protection of All Persons from Enforced Disappearance; the Rome Statute of the International Criminal Court; the American Convention on Human Rights; and the Vienna Convention on the Law of Treaties;
- Withdraw all reservations, understandings and declarations previously promulgated upon past ratifications of human rights treaties which are considered by treaty bodies to defeat the object and purpose of the respective treaty;
- Review all outstanding recommendations from the UPR process, UN treaty bodies and experts, with a view to implementing them;
- Review and respond to all outstanding visit requests from UN Special Procedures;
- Re-engage with the UN Human Rights Council, including through constructive responses to all communications sent to the USA by Special Procedures of the Human Rights Council.
- Renew the US government's dedication to, and participation in, the development of international human rights law, including by taking on new human rights treaty commitments.
- Reverse the decision to withdraw from the Paris Agreement.

COUNTER-TERRORISM AND NATIONAL SECURITY

- Release all detainees held at Guantánamo, unless they are to be charged with a recognizable offence and tried without further delay in civilian federal courts, applying fair trial standards fully consistent with international law. If repatriation is not possible then release into the USA or any safe alternative, without

disease 2019—A perfect storm?, Journal of the American Medical Association, April 2020, jamanetwork.com/journals/jamapsychiatry/fullarticle/2764584; C. Sathya, *Pandemic-related gun purchases raises suicide risks*, Scientific American, June 2020, www.scientificamerican.com/article/pandemic-related-gun-purchases-raise-suicide-risks/; H. Druzin, *Experts concerned about heightened suicide risk during pandemic*, WAMU, March 2020, wamu.org/story/20/03/20/suicide-social-isolation-firearms-coronavirus/.

⁶⁴ Amnesty International USA, *COVID-19 And Gun Violence: Top ten ways the pandemic intersects with the crisis of gun violence in the U.S.*, May 2020, www.amnestyusa.org/wp-content/uploads/2020/03/200327-COVIDEGV-Final.pdf#page=1.

placing conditions on the transfers of detainees that would violate international human rights law and standards;

- Initiate effective independent criminal investigations, including into crimes under international law, such as torture and enforced disappearance, committed by individuals acting for or on behalf of the USA, including in the programmes of rendition, interrogation and detention operated by the CIA between 2001 and 2009. Towards this end, declassify, with redactions only where strictly necessary, the full report of the Senate Select Committee on Intelligence on the CIA detention and interrogation programme, as well as other relevant information relating to the CIA programmes of rendition, detention and interrogation between 2001 and 2009;
- Bring US lethal force operations and policies into conformity with international human rights law and, where applicable, international humanitarian law and investigate and acknowledge all civilian casualties and potentially unlawful killings due to US operations around the world.

GUN VIOLENCE

- Implement a system of laws to restrict access to firearms by those most at risk of abusing them and take effective steps to put in place and implement violence-reduction or protection measures where gun violence persists;
- Ensure that survivors of firearm violence have access to rehabilitation, including affordable and quality medical and psychological care, and sufficient victim compensation programs.

REFUGEES AND ASYLUM SEEKERS

- Rescind the “Muslim Ban” and the enhanced vetting procedures put in place for refugees in need of resettlement;
- Immediately halt illegal pushbacks of asylum seekers at the US-Mexico border and facilitate their prompt reception and the processing of their cases under US law;
- Discontinue all plans and actions that would require asylum seekers at the US–Mexico border to wait in Mexico during consideration of their asylum claims;
- Halt family separations in all circumstances, except following a rigorous determination of the best interests of the child;
- Ensure that liberty is the default position, and that authorities detain asylum seekers only as a last resort, when it is determined to be necessary and proportionate to a legitimate purpose, based on an assessment of the individual’s particular circumstances;
- Ensure that immigrant children are not detained, and release children to appropriate sponsors as soon as possible in all cases;
- Adopt and implement exemptions from criminal investigation, or referral for prosecution, for the provision of humanitarian assistance and other voluntary support to people in need;
- Halt any intimidation, harassment or stigmatization of humanitarian aid volunteers and others who are providing lifesaving assistance to people in need.
- Immediately release as many as possible of the over 20,000 civil immigration detainees in US custody, for the duration of the COVID-19 global pandemic. In particular, provide humanitarian parole and alternatives to detention to all those detainees in its unsafe and unsanitary detention facilities, prioritizing those who are older or have underlying health conditions placing them at higher risk of contracting COVID-19.
- Immediately impose a temporary moratorium on all deportations, “expulsions” and other forced returns of immigration detainees, which are needlessly endangering the people being transported and public health, both in their countries of origin and the United States.

CRIMINAL JUSTICE AND POLICING

- Ensure that state and federal authorities impose a moratorium on executions with a view to abolishing the

death penalty, and that prosecutors in all jurisdictions cease pursuing death sentences;

- Ensure that state legislatures introduce, or review and amend, statutes that authorize the use of lethal force to ensure they are in line with international law and standards.
- Federal, state and local authorities must ensure that everyone under their jurisdiction can enjoy their human rights to freedom of peaceful assembly and freedom of expression without discrimination or other undue interference. All law enforcement agencies must revise their policies and practices for the policing of protests. Law enforcement agencies must comply at all times with international human rights standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which must be the guiding principles underpinning all operations before, during and after demonstrations.

GENDER, SEXUALITY AND IDENTITY

- Ensure that all reports of rape and sexual violence against Indigenous women are promptly and thoroughly investigated, and that perpetrators are prosecuted and appropriately punished, in accordance with national and international norms on due process and without recourse to the death penalty;
- Pass legislation, after full and effective consultations with tribes, that requires data collection on missing and murdered Indigenous women and girls, including standardized guidelines for tribes and federal, state, and local law enforcement for responding to cases of missing and murdered Indigenous women and girls;
- Pass legislation that prohibits discrimination based on sexual orientation or gender identity and ensures bias crimes definitions include sexual orientation and gender identity as a motivating factor.

COVID-19 PANDEMIC

- Respect, protect and fulfill the human rights of people facing discrimination, marginalization, exclusion, poverty and inadequate medical care, including people of color, Indigenous People, people who are undocumented, people who are experiencing homelessness and people with disabilities. The government must also take concrete, deliberate and targeted actions to end discrimination and stigma, and to protect all individuals from mistreatment.
- Unless a substantial risk of flight, harm to others or interference with the evidence or investigation exists, release people in pretrial detention, those who have already served a portion of their sentence, and those who pose no threat, are elderly, or have underlying medical conditions. Decisions about who to release should take into account the disproportionate impact of mass incarceration on people of color. Alternatives for incarceration should be used whenever possible and full healthcare and protection against COVID-19 must be provided for those who remain in detention.
- Undertake a range of urgent measures, including delisting gun stores as essential businesses, passing universal background check legislation, ensuring an end to default gun sales and committing funding for gun violence prevention research as a public health issue and deploying sustained and adequate resources directly to communities disproportionately affected by the intersection of gun violence with COVID-19, including already marginalized communities of color grappling with higher rates of gun homicide and COVID-19 infections and deaths and domestic violence survivors who are at increased risk for gun violence in their homes due to quarantine measures across the country.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE⁶⁵

COUNTER-TERRORISM AND NATIONAL SECURITY

USA: *Legacy Clock Ticking – Impunity, Guantanamo and Double Standards*, 8 January 2016, AMR 51/3162/2016

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USA: *Crimes and Impunity: Full Senate Committee Report on CIA Secret Detentions must be released, and accountability for crimes under international law ensured*, 21 April 2015, AMR 51/1432/2015

Somalia: *The Hidden US War in Somalia, Civilian Casualties from Airstrikes in Lower Shabelle*, 20 March 2019, AFR 52/9952/2019, www.amnesty.org/en/documents/afr52/9952/2019/en/

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Middle East: *‘The Mountain is in Front of Us and the Sea is Behind Us’: The impact of US policies on refugees in Lebanon and Jordan*, 17 June 2019, MDE 02/0538/2019

Amnesty International amicus brief in *Innovation Law Lab. V. McAleenan*, NO. 3:19-CV-807-RS, Ninth Circuit Court of Appeals, 2019, www.amnestyusa.org/wp-content/uploads/2019/06/2019.06.26-Amnesty-International-Amicus-Brief-in-Innovation-Law-Lab-v.-McAleenan-1.pdf

Americas: *Stuck at the Door: The urgent need for protection of Central American refugees, asylum seekers and migrants in the caravans*, 26 November 2018, AMR 01/9447/2018

USA: *‘You Don’t Have Any Rights Here’: Illegal Pushbacks, Arbitrary Detention, and Ill-treatment of Asylum-Seekers in the United States*, 11 October 2018, AMR 51/9101/2018

Facts & Figures two-pager, accompanying the report, *‘You Don’t Have Any Rights Here’*, 11 October 2018

Open letter from Amnesty International to the US Department of Homeland Security, in relation to findings on family separations detailed in the report, *‘You Don’t Have Any Rights Here’*, 19 October 2018, AMR 51/9280/2018

Facing Walls: USA and Mexico Violations of the Rights of Asylum-seekers, 15 June 2017, AMR 01/6426/2017

USA: *No Home for Children: The Homestead ‘Temporary Emergency’ Facility*, 17 July 2019, AMR 51/0714/2019

⁶⁵ Unless otherwise noted with a link, all of these documents are available on Amnesty International’s website: www.amnesty.org/en/countries/americas/united-states-of-america/

Flores v. Barr, No. CV 85-4544-DMG(AGRx), US District Court, Central District of California, Western Division, Brief of Amici Curiae Human Rights Watch and Amnesty International USA in support of Plaintiffs, www.amnestyusa.org/wp-content/uploads/2019/09/09.05.2019-Brief-in-Support-of-Challenge-to-Flores-Regulations.pdf

USA: 'Savings Lives is Not a Crime': Politically motivated legal harassment against migrant human rights defenders by the USA, 2 July 2019, AMR 51/0583/2019

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Death Sentences and Executions in 2018, 11 April 2019, ACT 50/9870/2019

USA: Darkness Visible in the Sunshine State, the death penalty in Florida, 23 August 2018, AMR 51/8959/2018

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Body Politics: A Primer on Criminalization of Sexuality and Reproduction, 2018, POL 40/7763/2018

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