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Secretariat  
Working Group of Experts on People of African Descent  
Office of the High Commissioner for Human Rights  
United Nations  
Geneva

Via email: [ohchr-africandescent@un.org](mailto:ohchr-africandescent@un.org)

Dear Members of the Working Group:

On behalf of the Southern Poverty Law Center, one the largest civil and human rights organizations in the US, I write in response to your recent call for input on the human rights situation of children of African descent.

SPLC was founded in 1971. Since that time, it has been SPLC's mission to stamp out racism, to act as a catalyst for racial justice in the southern United States, and to stand up for the rights of the powerless and exploited. This submission addresses several areas in which SPLC works to protect the rights of children of African descent. It is organized around thematic discussion topics indicated in the programme of work for your upcoming session.

#### Topic 1: Safeguarding the Health and Well-Being of Children of African Descent.

- *Children of Incarcerated or Formerly Incarcerated Parents.*

As the crisis of mass incarceration in the US escalated over the past several decades, it brought with it a companion crisis – hundreds of thousands of children whose parents are currently incarcerated, and millions more with a parent who was formerly incarcerated and labors under the immense, often lifelong burdens placed on people who have served their criminal sentences. These crises disproportionately impact people of African descent.

The number of children with a father in prison increased 500% from 1980 to 2000.<sup>1</sup> As of 2016, more than 5 million children had experienced parental incarceration. While 1 in 28 children across

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<sup>1</sup> [A Shared Sentence](#), Annie E. Casey Foundation, 2016, at 1.

the country now experiences parental incarceration (compared with just 1 in 125 in 1985), there is a stark racial disparity. 11.4% of Black children have had at least one incarcerated parent, while 1.4% of their white peers have experienced this.<sup>2</sup> In Louisiana, one of the five states in SPLC's core region, at least 94,000 children have a parent behind bars.<sup>3</sup> More than half of Louisiana's prison population is Black, although Black people represent only about 1/3 of the state's population.<sup>4</sup> Black people make up about 17% of Florida's population, but are 47% of those incarcerated in Florida's prisons.<sup>5</sup> Similarly, Black people are just 6% of the population of California but make up 28% of the prison population.<sup>6</sup>

According to a federal government analysis, nearly half of those incarcerated in state prisons, and more than half of those in federal prisons, were parents of minor children as of 2016. The average age of the children of federal prisoners was 10 years.<sup>7</sup> At the time the survey was conducted, the Black federal prison population outnumbered both the white and the Latinx populations.<sup>8</sup> Parents are often incarcerated in facilities far away from their children, preventing meaningful opportunities for visitation.<sup>9</sup> Children are at high risk for being placed into foster care, where their relationship with the parent may be permanently severed and parental rights terminated.<sup>10</sup> Even if the parent is released from prison with parental rights intact, it may be difficult or impossible to reclaim the relationship – the burdens of court debt, unemployment, and housing instability, combined with the years of having missed both everyday interactions and milestones in the child's life, often lead to a failure to meaningfully reconnect.

The mental, emotional and financial strains of parental incarceration place children at higher risk of cognitive delays and behavioral problems that can result in difficulties in school. Children whose fathers have been incarcerated are six times more likely to be expelled or suspended from school. Again, these problems are exacerbated by their intersection with structural racism – Black children are far more likely overall to be suspended or expelled.

In addition to the devastating financial consequences visited upon the incarcerated and their children for generations (discussed in connection with Topic 6 below), parental incarceration causes serious damage to both mental and physical health. Unsurprisingly, numerous studies have shown that parental incarceration can lead to developmental and behavioral consequences and causes social and emotional impacts that can last into adulthood. These include elevated risk for depression, anxiety, substance abuse and suicidality, as well as difficulty in forming secure

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<sup>2</sup> [\*Cut Off From Caregivers: The Children of Incarcerated Parents in Louisiana\*](#), Southern Poverty Law Center, 2021, at 2.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> [\*Incarceration Trends in Louisiana\*](#), Vera Institute of Justice, December 2019.

<sup>5</sup> [\*Incarceration Trends in Florida\*](#), Vera Institute of Justice, December 2019.

<sup>6</sup> [\*Incarceration Trends in California\*](#), Vera Institute of Justice, December 2019.

<sup>7</sup> [\*Parents in Prison and Their Minor Children: Survey of Prison Inmates\*](#), 2016, Bureau of Justice Statistics, March 2021.

<sup>8</sup> *Id.* See data tables.

<sup>9</sup> [\*Cut Off From Caregivers\*](#), *supra*, note 1, at 5-6.

<sup>10</sup> *Id.* at 6.

relationships.<sup>11</sup> Dominique Jones, a founder of the nonprofit Daughters Beyond Incarceration, explained how growing up without her father impacted her childhood:

I didn't have anyone to help me dealing with the trauma that I realize I was dealing with now, as a child. So, the way that I dealt with it was I physically fought: everywhere I went I was always known as being the most belligerent person on the team or in my area or wherever, I was always known to be violent .... People don't understand how traumatic it is for a child to have an incarcerated parent. You have kids who wait all year to see their parent, only to arrive on a visitation day and find out that their father has been placed in solitary confinement and can't have visitors anymore, or that their father was in a fight and is now in the infirmary. You have kids who are ashamed of their last name, because their parent is locked up. I know these experiences firsthand, for myself.<sup>12</sup>

Children of African descent are especially vulnerable to all of these harms because of the intersecting harms of structural racism including poverty, segregated neighborhoods that lack resources and are often violent and unsafe, unequal access to quality education and adequate health care (both addressed below), and food and housing insecurity.

Perhaps more surprising is the damage that can be done to the physical health of children who experience parental incarceration. Studies show that the risk of adverse childhood experiences (ACES) is elevated for children with incarcerated parents, and these contributed to poor physical health outcomes such as lung and heart diseases. One federal government study showed a link between parental incarceration and a range of medical problems later in life, such as asthma, migraines, high cholesterol, and HIV/AIDS.<sup>13</sup>

- *Failure to Provide Adequate Access to Health Care.*

The US does not have a universal health care system or universal health insurance coverage. Employer provided private health insurance is the primary way individuals pay for health care costs, while the federal government funds health care programs for adults over age 65, some people with disabilities, veterans, and some low income people. The Medicaid and related Children's Health Insurance Program (CHIP) programs for low income Americans are largely administered by state governments, which set their own eligibility rules based on income and other criteria.<sup>14</sup> More than half of children of color in the US – including Native American, Latinx, and multi-racial as well as children of African descent – rely on Medicaid or CHIP for access to health care.<sup>15</sup>

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<sup>11</sup> *Cut Off from Caregivers*, *supra*, at 5.

<sup>12</sup> *Id.* at 8.

<sup>13</sup> [The Impact of Parental Incarceration on the Physical and Mental Health of Young Adults](#), National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, April 2013.

<sup>14</sup> [International Health Care System Profiles: United States](#), The Commonwealth Fund, 5 June 2020.

<sup>15</sup> [The State of America's Children 2021 – Child Health](#), Children's Defense Fund.

Under the Affordable Care Act, passed during the Obama administration to make health care more accessible to lower and middle income Americans, states were given the ability to expand coverage under the federal Medicaid program to include incomes up to 138% of the federal poverty level (currently \$17,774 per year for an individual). This expansion was accompanied by a large increase in federal matching funds. 39 US states have opted to expand Medicaid, but five of SPLC's core states in the Deep South – among the poorest states in the nation, and with the highest concentration of people of African descent in their populations – have not done so.<sup>16</sup> In the 12 states across the nation that have refused to expand Medicaid, about 4 million people lack access to adequate health care.<sup>17</sup> Between 2016 and 2019, the childhood uninsured rate in these states grew at nearly three times that of states with Medicaid expansion.<sup>18</sup>

In states that failed to expand Medicaid, families with incomes that are above their state's Medicaid eligibility level but still below poverty level continue to lack access to health care. The median eligibility level in those states is 41% of the federal poverty level, an annual income of \$8,905 for a family of three. In Alabama, it is just \$3,910.<sup>19</sup> Childless adults also remained ineligible.<sup>20</sup>

In Louisiana – the only Deep South state that has expanded Medicaid – the share of poor children who had at least one annual well-child checkup increased, while those receiving preventative health care in Mississippi and Texas declined. Medicaid expansion states saw lower high school dropout rates, and Medicaid expansion also significantly decreased child neglect cases.<sup>21</sup> Overall, states with expanded Medicaid reported 422 fewer cases of neglect per 100,000 children younger than age 6.<sup>22</sup>

Studies show that when parents have health care coverage, their children are more likely to have coverage too. When coverage was expanded to include parents, coverage of children also rose, even though the children might have already been eligible.<sup>23</sup> When the entire family is covered, children are also more likely to be taken to doctor visits.<sup>24</sup> While children living in extreme poverty are themselves often covered by Medicaid, a lack of health care coverage for adult family members can still have a devastating impact. Meager resources that might have paid for essential living expenses, including rent, food, transportation, and childcare, can wind up being paid for medical

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<sup>16</sup> [Status of State Medicaid Expansion Decisions](#), Kaiser Family Foundation, 26 April 2022.

<sup>17</sup> [Medicaid Expansion is Urgently Needed in 12 States to Support Millions of Our Community Members](#), Fair Fight.

<sup>18</sup> [Children's Uninsured Rate Rises by Largest Annual Jump in More Than a Decade](#), Georgetown University Health Policy Institute, 8 October 2020.

<sup>19</sup> [Children Are Left Behind When States Fail to Expand Medicaid](#), Georgetown University Health Policy Institute, February 2021, at 6.

<sup>20</sup> [The Coverage Gap: Uninsured Poor Adults in State that Do Not Expand Medicaid](#), Kaiser Family Foundation, 21 January 2021.

<sup>21</sup> [Children Are Left Behind](#), *supra*, at 4.

<sup>22</sup> [Poverty and Neglect Are Not The Same – It's Time to Realign Our Response](#), American Public Human Services Association, 21 May 2021.

<sup>23</sup> [Expanding Medicaid for Parents Improves Coverage and Health for Both Parents and Children](#), Center for Budget and Policy Priorities, 14 June 2021.

<sup>24</sup> [Children Are Left Behind](#), *supra*, at 2.

care. Even more often, people who cannot afford to pay for needed medical care forgo it, resulting in unnecessary serious illness or death.

Even in some states that opted for Medicaid expansion, other steps were taken to limit coverage eligibility for some of the poorest families in ways that disproportionately impact Black families.<sup>25</sup> For example, soon after the Trump administration took office, his administration announced it would grant “waivers” allowing states to condition Medicaid eligibility on an unprecedented requirement: a monthly work quota. The state of Kentucky received a waiver allowing it require recipients to work at least 80 hours per month and to pay more in premiums. SPLC filed a lawsuit on behalf of 15 Kentucky residents – including employed and retired people, many of whom had significant medical issues requiring care – to challenge the new obstacles to Medicaid coverage.<sup>26</sup> In June 2018 (and again in March 2019), a federal court blocked the waiver from taking effect.<sup>27</sup> In 2019, the newly elected Governor rescinded the new rules.<sup>28</sup> SPLC also successfully challenged Arkansas’s work requirements.<sup>29</sup> While that case was on appeal to the US Supreme Court, the Biden administration withdrew approval for the work requirements and the Court dismissed the case as moot. While those requirements were in effect, more than 18,000 people in Arkansas – nearly 1 in 4 of those subjected to the requirements – lost coverage over a seven month period.<sup>30</sup>

Other states, including those that failed to expand Medicaid, have obtained similar waivers to impose onerous eligibility rules. Georgia, a state with among the most uninsured children in the nation, received a waiver to condition Medicaid expansion on harsh work requirements that provided no exemption for those who are unable to meet them due to child care obligations, even for very young children.<sup>31</sup> Georgia’s population is 32.6% Black, and 14% of its overall population lives below the federal poverty line.<sup>32</sup> When the Biden administration canceled approval of Georgia’s work requirement waiver, Georgia sued the federal government and asserted that it would not expand Medicaid unless the requirements remained intact.<sup>33</sup>

Universal expansion of Medicaid would bring many health and other related benefits to children, disproportionately of African descent, living in low income families in states that have not currently opted for expansion.

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<sup>25</sup> [Racial Health Inequities and Medicaid Work Requirements](#), Georgetown University Health Policy Institute, 2 June 2020.

<sup>26</sup> [Ronnie Maurice Stewart v. Alex M. Azar II](#), Southern Poverty Law Center.

<sup>27</sup> [Memorandum Opinion, Stewart v. Azar](#), 29 June 2018.

<sup>28</sup> *Status of State Medicaid Expansion Decisions*, *supra*.

<sup>29</sup> [Gresham v. Azar](#), Southern Poverty Law Center.

<sup>30</sup> [States’ Experiences Confirm Harmful Effects of Medicaid Work Requirements](#), Center for Budget and Policy Priorities, 18 November 2020.

<sup>31</sup> [Georgia’s Medicaid Waiver is Fiscally Foolish and Anti-Family](#), Georgetown University Health Policy Institute, 28 October 2020.

<sup>32</sup> [Georgia Quick Facts](#), U.S. Census Bureau.

<sup>33</sup> [Planned Medicaid Work Rules’ Impact at Heart of Georgia Lawsuit](#), Bloomberg Law, 11 February 2022.

Topic 2: The Imperative of Multiple Literacies for Children of African Descent to Survive and Thrive.

- *Gross Funding Disparities in Public Education.*

It is well recognized that in addition to the traditional, textual notion of literacy, success in academics and beyond increasingly requires other types of literacy – including, in a digital world, technological and digital literacy. But schools that struggle to even provide basic textual literacy due to lack of resources are often not able to go further. School funding disparities in the US are stark, both between states and between school districts within a state. States with a higher level of poor students spend less per student on education, widening the gap between income levels.<sup>34</sup>

In many US states, including some with higher poverty levels, school funding is based in large part on property taxes and other local funding, creating huge gaps in funding between wealthier districts that serve mostly white students and poorer districts where the student population is mostly Black or Brown.<sup>35</sup> There currently is a “\$23 billion gap between white and nonwhite school districts, even though they serve the same number of children.”<sup>36</sup> Southern states are particularly egregious examples. Compare, for example, two high schools in Alabama: the wealthy and nearly all-white Vestavia Hills school district spent a total of \$10,675 per student, while the high-poverty, majority Black high school in Perry County spent just \$8549.<sup>37</sup> Increased state funding for higher poverty districts is not sufficient to make up for disparities in local funding. Similar disparities can be found in Florida and Texas.<sup>38</sup> Nationally, “white school districts average revenue receipts of almost \$14,000 per student, but non-white districts receive only \$11,682. That’s a divide of over \$2,200, on average, per student.”<sup>39</sup> Meanwhile, the districts that serve predominantly non-white children have far less political power. “[T]here are more than six times as many predominantly white [school] districts as those that serve primarily non-white populations.”<sup>40</sup>

Adjacent to the funding disparities within the public education system is another insidious reality that enables white flight and poses a growing threat to equitable funding for the education of Black and Brown children. Following the *Brown v. Board of Education* and *Brown II* decisions, by 1969, more than 200 private segregation academies were set up in states across the South. Seven of those states—Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Louisiana—maintained tuition grant programs that gave vouchers to incentivize white students to

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<sup>34</sup> [The other school funding divide: States with more poor students tend to spend less, creating hard-to-fix disparities](#), Chalkbeat, 31 July 2019.

<sup>35</sup> [Inequality in Public School Funding: Key Issues & Solutions for Closing the Gap](#), American University School of Education, 10 September 2020.

<sup>36</sup> [\\$23 Billion](#), EdBuild, February 2019, at 2.

<sup>37</sup> [Per Pupil Expenditures: Alabama](#), US Department of Education (local and state expenditures reported on downloadable spreadsheet). The US Census Bureau reports that the [City of Vestavia Hills](#) is 85.8% white with 4.3% living in poverty, while [Perry County](#) is 67.9% Black with more than 30% below the federal poverty line.

<sup>38</sup> [Not Making The Grade: School funding policies in eight Southern states fail students of color and those living in poverty, new report says](#), Southern Poverty Law Center, 25 October 2021.

<sup>39</sup> [\\$23 Billion](#), *supra*.

<sup>40</sup> *Id.*



leave desegregated public school districts. The legacy of those segregation academies is still strong and growing.

Private schools are much more likely to serve white students than students of color, and current tuition voucher programs exacerbate school segregation. A UCLA Civil Rights Project report showed white students were “substantially overrepresented” in private schools, while Hispanic and Black students were underrepresented.<sup>41</sup> In five Southern states (Alabama, Florida, Georgia, Louisiana and Mississippi), one in five students live below the poverty line, more than half are considered low income and one in three is Black.<sup>42</sup> Private school voucher programs funnel public funding to this racially disparate and inequitable system.

Private schools in the South tend to have the largest overrepresentation of white students. In Mississippi, 83% of students attending private schools are white, but white students only make up 47% of the state’s student population, a difference of 35%. A Century Foundation study analyzing the Louisiana voucher program confirmed “that black students typically used vouchers to leave public schools where their race was overrepresented, but white students tended to leave public schools where their race was underrepresented.”<sup>43</sup> The study concluded that, “[o]n balance, voucher programs are more likely to increase school segregation than to promote integration or maintain the status quo.” Even where the disproportionality seems less pronounced, such as in Florida, the segregative effect of private schools is stark. The increase in Black and Latinx students attending private schools in Florida appears in many cases to be Black and Latinx students moving from segregated public schools to new, segregated private schools – with almost 1000 new private schools over eight years and the number of private schools serving 75% or more Black and Latinx population more than doubling. Florida, which leads the nation in private school voucher programs, now siphons away around \$1 Billion of public funds each year from public schools for these segregation schemes. Considering that Florida increased its spending for voucher programs by 310% from FY 2008 to FY 2018 and, during the same period, decreased per-pupil funding for public education by 13.4% (and now spends more than \$4000 less per pupil each year than the national average),<sup>44</sup> the growing trend towards privatization is particularly alarming.

- *Failure to Provide Inclusive Education.*

As the Working Group concluded after its 2016 US country visit, the “school curriculum in each state should reflect appropriately the history of the transatlantic trade in Africans, enslavement and segregation.”<sup>45</sup> Many US states are rapidly moving backward in this regard. While public opinion surveys show most US adults agree racism is a systemic issue that continues to harm members of

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<sup>41</sup> Jongyeon Ee et al., *Private Schools in American Education: A Small Sector Still Lagging in Diversity*, UCLA Civil Rights Project, Working Paper, 2018.

<sup>42</sup> *Inequity in School Funding* (Southern Poverty Law Center and Education Law Center, Report, 2021), [https://www.splcenter.org/sites/default/files/leg\\_cr\\_school\\_funding\\_inequities\\_report\\_2021\\_final.pdf](https://www.splcenter.org/sites/default/files/leg_cr_school_funding_inequities_report_2021_final.pdf).

<sup>43</sup> *Do Private School Vouchers Pose a Threat to Integration?*, Halley Potter, Century Found., 12 March 2017, <https://tcf.org/content/report/private-school-vouchers-pose-threat-integration>.

<sup>44</sup> *Inequity in School Funding*, n.2.

<sup>45</sup> *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*, 18 August 2016, A/HRC/33/61/Add.2, at para. 118.

racial minority groups, and at least a plurality believe students should be exposed to the issue of systemic racism in schools,<sup>46</sup> conservative groups opposing this characterize such education as unpatriotic, and claim it serves to make white students feel ashamed or guilty about their racial identity. Conservative politicians at all levels of government oppose teaching about the existence and effects of racism and, under the guise of opposition to so-called “critical race theory,” are taking steps to prohibit the teaching of accurate historical accounts of the role of race and of Black Americans in US history, some even going so far as to ban books touching on matters of race or remove them from libraries.<sup>47</sup> In Florida, for example, “the majority of banned books touch on race (*How to Be an Antiracist* by Ibrahim Kendi, *The Bluest Eye* by Toni Morrison),” as well as sexuality, sexual orientation and gender identity.<sup>48</sup> According to PEN America, as of early April 2022, 1586 book bans and restrictions were in place in school districts across 26 states.<sup>49</sup> The list of banned books is filled with books by authors of color and books about race and racism.<sup>50</sup>

A number of new state laws or regulations prohibit instruction about unconscious bias, discrimination, privilege, and oppression. For example, Florida’s new law known as the “Stop WOKE Act” prohibits both schools and employers from engaging in instruction or training that includes concepts such as unconscious racial bias, oppression or privilege based on race, and the value of affirmative action in achieving diversity.<sup>51</sup> A recently adopted Florida Board of Education Rule prohibits teaching “the theory that racism is not merely the product of prejudice, but that racism is embedded in American society and its legal systems,” and provides that “instruction may not . . . define American history as something other than the creation of a new nation based largely on universal principles stated in the Declaration of Independence.”<sup>52</sup> The rule also expressly prohibits the use of any materials from the “1619 Project,” which seeks to place the African slave trade and its consequences accurately into the framework of US history. Yet elsewhere, Florida law *requires* the teaching of such concepts as “the ramifications of prejudice, racism and stereotyping, and what it means to be a responsible and respectful person” in the context of instruction about the Holocaust.<sup>53</sup>

A host of other states controlled by conservative governors and legislatures have adopted or are moving to adopt measures prohibiting instruction about racism, with authorities in at least thirteen states having already done so, including Alabama, Mississippi, Idaho, Iowa, North Dakota, South Dakota, Tennessee, Texas and Utah.<sup>54</sup>

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<sup>46</sup> [Poll: The real reason Republicans are so riled up about “critical race theory,”](#) Yahoo! News, 1 July 2021.

<sup>47</sup> *E.g.* [In Texas, a Battle Over What Can Be Taught, and What Books Can Be Read](#), The New York Times, 10 December 2021; [Calls to Ban Books by Black Authors Are Increasing Amid Critical Race Theory Debates](#), Education Week, 30 September 2021.

<sup>48</sup> [All 200+ Books Banned in Florida and What Miami Booksellers Have to Say About it](#), Miami New Times, 18 April 2022.

<sup>49</sup> [Report: 1,586 book bans and restrictions in 86 school districts across 26 states](#), PEN America, 7 April 2022.

<sup>50</sup> [PEN America’s Index of School Book Bans](#).

<sup>51</sup> [Gov. DeSantis signs ‘Stop WOKE Act’ into law](#), WFLA.com, 22 April 2022.

<sup>52</sup> Florida Board of Education, Rule 6A-1.094124, Required Instruction Planning and Reporting.

<sup>53</sup> [Florida’s Holocaust Mandate](#), Holocaust Education Resource Council.

<sup>54</sup> [K-12 culture wars: Republican-led states continue battle against critical race theory](#), District Administration, 12 April 2022.



Nikki Haley, former South Carolina Governor and US Ambassador to the United Nations during the Trump administration, claims that teaching students about these issues amounts to telling white children they are bad, and telling Black or Brown children that they are less capable and will always be victims. She urges state governors to reject federal funding related to classes that teach about race.<sup>55</sup> Far-right politicians in the US House of Representatives introduced legislation that would prohibit the Department of Education from funding proposed US history and civics education programs that reflect the diversity of the student body and create inclusive learning environments by, for example, “tak[ing] into account systemic marginalization, biases, inequities, and discriminatory policy and practice in American history.” A Republican member of Congress sponsoring the bill claimed that such a program would “teach our next generation to hate America . . . .”<sup>56</sup>

In June 2021, Nebraska Governor Pete Ricketts publicly opposed what he labeled “critical race theory” on his radio program.<sup>57</sup> He called for parents to engage, claiming it would divide Americans, called it “un-American,” and stated it contained a “lot of very socialist-type ideas.” Ricketts’ statements typify the politicization and defiant opposition that has been brought by people who misleadingly use the term CRT to push for changes in education, specifically limiting discourse about racial bias and hard American history. Following the election of conservative Republican Glenn Youngkin to the office of Virginia governor, Christopher Rufo, who publicly brought CRT opposition to the political fore, credited Youngkin’s CRT opposition for the win and hinted at further efforts to come: “Glenn Youngkin made critical race theory the closing argument to his campaign and dominated in blue Virginia,” he tweeted. “We are building the most sophisticated political movement in America — and we have just begun.”<sup>58</sup> Rufo also explained in a tweet how the right had carefully weaponized the phrase “critical race theory:”

Politics requires discipline, patience, and repetition. We've made the connection between signifier ("critical race theory") and signified (left-wing racist ideologies), and persuaded the general public to accept the relationship as valid. Now we wield it as a weapon.<sup>59</sup>

Political attacks on inclusive education are driven by an extremist far-right movement in the US that has a long history of opposing public education systems, racial integration, LGBTQ acceptance, and public health measures for children, such as vaccine requirements. Extreme far-right forces are both ideologically opposed to inclusive education and are using public mischaracterizations of it as an organizing tool in an effort to shift the US socio-political climate further to the right. In the last year, the US has experienced immense growth in this movement

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<sup>55</sup> [Former UN Ambassador Nikki Haley calls for “every governor in the United States” to BAN funding for critical race theory in schools](#), The Daily Mail, 13 July 2021.

<sup>56</sup> [Press Release: Cawthorn Introduces Bill to Prevent Biden Administration Funding of Critical Race Theory](#), Republican Committee on Education & Labor, 12 May 2021.

<sup>57</sup> [Gov. Ricketts says he is “opposed to critical race theory.”](#) Omaha World-Herald, 16 June 2021.

<sup>58</sup> [How did Republicans turn critical race theory into a winning electoral issue?.](#) The Guardian, 3 November 2021.

<sup>59</sup> [Tweet by @realchrisrufo](#), Twitter, 9 November 2021.

with new far-right organizations focused on schools, education, youth and public health, and leading to physical violence and threats to local democracy.

This concerted attack on educational instruction about issues of racism and discrimination, wrongfully but successfully labeled as “critical race theory,” has also increasingly led to intimidation, harassment, threats, and even violent assaults against students, teachers and school board members. Combined with similar problems related to COVID precautions, the threats to people associated with schools have become so extreme that the National School Boards Association asked the Department of Justice to intervene. The Association’s letter, since removed from its website after aggressive backlash, “detailed more than twenty examples of violence, harassment and intimidation.”<sup>60</sup> As a result, the Federal Bureau of Investigation is now tracking threats against educators.<sup>61</sup> A Texas school principal, the first Black principal at his mostly white school, recently resigned after being put on administrative leave over accusations that he was teaching “critical race theory.” The accusations arose after the principal wrote a letter to the community expressing grief over the police shootings of George Floyd, Breonna Taylor and Ahmaud Arbery.<sup>62</sup> Intimidation of educators also is not limited to K-12 schools. A University of Florida professor filed a grievance after university officials told faculty not to use words like “critical” or “race” in course materials.<sup>63</sup>

### Topic 3: Existential Threats to the Black Family – racialized interpretations of the best interest of the child.

- *The Broken US Child Protective System.*

In addition to juvenile and adult criminal justice systems, US states funnel a disproportionate number of Black children into foster care and other so-called child protective processes. These systems are woefully underfunded and often inflict nightmarish conditions on children. Under-resourced systems that fail to adequately screen and monitor foster parents result in children experiencing physical, sexual, and emotional abuse in foster homes. A study of foster children in Maryland, conducted by Johns Hopkins University, found children were four times more likely to be sexually abused in foster homes, and 28 times more likely to be abused in group homes. Another study in Oregon and Washington states found that almost 1/3 of foster children reported being abused in the foster home. Most alarmingly, foster children are prime targets for human trafficking. More than half of child sex trafficking victims recovered by the FBI in 2013 were from foster homes or group homes.<sup>64</sup>

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<sup>60</sup> [National School Board Association Letter to President Biden](#), 29 September 2021; [First look: Thousands of school board members urge Biden to protect them](#), Axios, 30 September 2021.

<sup>61</sup> [FBI tracking threats against educators after complaints from school boards, leaked email shows](#), District Administration, 17 November 2021; [Memo from US Attorney General Merrick Garland](#), October 4, 2021.

<sup>62</sup> [North Texas principal resigns to end fight over whether he was teaching “critical race theory.”](#) Texas Tribune, 10 November 2021.

<sup>63</sup> [Critical race theory becomes flashpoint for GOP, UF heading into legislative session](#), Miami Herald, 01 December 2021.

<sup>64</sup> [Sex abuse and the foster care system](#), Focus for Health Foundation.

In 2018, Black children were 14% of the overall US child population but represented 23% of those in foster care.<sup>65</sup> The trauma of family separation has many long-term impacts, including on physical and mental health, and increases the likelihood of involvement in the criminal legal system.<sup>66</sup> According to the National Association of State Legislatures, “children of color are more likely to experience multiple placements, less likely to be reunited with their birth families, more likely to experience group care, less likely to establish a permanent placement and more likely to experience poor social, behavioral and educational outcomes.”<sup>67</sup>

The inequality of poverty plays a role in the racial disparities in foster care placement. Despite a decline in poverty in the US, poverty remains racially disparate. While the overall poverty rate for 2019 was 10.5%, the rate for Black people was 18.8%.<sup>68</sup> Children are far too often removed from their homes based on “neglect” or “abandonment” that is, in reality, poverty – kids who are left at home without supervision because the family could not afford childcare, for example, or school truancy caused by lack of transportation or inability to acquire school necessities. While it is recognized that “poverty is a risk factor for neglect,” in part because families are experiencing the extreme stresses of poverty, “poverty does not equate to neglect.”<sup>69</sup> In many US states, authorities do little to address poverty issues that correlate to higher rates of foster care, and at times take punitive steps that exacerbate the problem. For example, states that revoked food assistance benefits as a sanction for unemployment saw a 13% increase in foster care placement, and those that limited such benefits to a five year period or increased rates of benefit denial saw elevated rates of child neglect cases and foster care placement.<sup>70</sup>

Even brief family separations and short stays in foster care have been shown to have lingering negative impacts. One study found that almost 17,000 children annually are removed from their homes, placed in foster care, and then returned to the home within 10 days.<sup>71</sup> Quick decisions to immediately remove a child from a home based on suspicion of an imminent danger of harm can be made by child welfare workers or by police, often on the basis of reports from teachers, neighbors, or relatives. But short-term removals “appear to happen most often in high-poverty areas where law enforcement officials are the only group authorized by state law to remove children without a court order.”<sup>72</sup> According to the nonprofit Children’s Rights, medical professionals are twice as likely to screen Black infants for signs of maternal drug use, and Black

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<sup>65</sup> [Black Children Continue to Be Disproportionately Represented in Foster Care](#), Annie E Casey Foundation, 13 April 2020.

<sup>66</sup> *Id.*

<sup>67</sup> [Disproportionality and Race Equity in Child Welfare](#), National Association of State Legislatures.

<sup>68</sup> [Inequalities Persist Despite Decline in Poverty For All Major Race and Hispanic Origin Groups](#), US Census Bureau, 15 September 2020.

<sup>69</sup> *Poverty and Neglect Are Not the Same*, *supra*.

<sup>70</sup> *Id.*

<sup>71</sup> [The Hidden Trauma of “Short Stays” in Foster Care](#), The Marshall Project, 11 February 2020.

<sup>72</sup> *Id.*

families are almost twice as likely to be investigated for abuse or neglect. School workers are more likely to report suspicions of abuse or neglect of Black students.<sup>73</sup>

Permanent family separation also happens on a racially disparate basis. The parental rights of Black parents overall are terminated at higher rates than for white parents.<sup>74</sup> Racial disparities in mass incarceration contribute to this problem – one study showed that about 1 in 8 parents who have a child placed in foster care because of incarceration lose their rights permanently, regardless of the nature and severity of their offense.<sup>75</sup> Many times, the incarcerated parent has no legal representation and isn't even allowed to attend the hearing at which parental rights are severed.<sup>76</sup> Whether or not legal counsel is provided in such cases varies from state to state,<sup>77</sup> sometimes from court to court within a state. Families who received representation are more likely to get their children back, and the amount of time in foster care is likely to be reduced, while the children were no more likely to experience later mistreatment.<sup>78</sup>

For many kids, disproportionately Black, the trauma of foster care is only the beginning. In Alabama, SPLC and other advocacy organizations have sued the state for discriminating against foster children and other youth with psychosocial impairments – disproportionately Black – by segregating them in restrictive residential psychiatric facilities, denying them the opportunity to grow up in loving homes and receive care in community-based settings.<sup>79</sup> The complaint shows that Black youth in the custody of the state face a higher risk of such confinement because the state places 41% of Black foster children who are diagnosed with an emotional disturbance in residential psychiatric facilities, but only 31% of their non-Black peers.<sup>80</sup> The complaint also details how these children languish in these facilities, in “dangerous, dirty, and violent conditions,”<sup>81</sup> far longer than medically necessary.

The state of Florida has gone even farther in systematizing the involuntary commitment of children to psychiatric facilities. Pursuant to the “Baker Act,” more than 37,000 children each year are involuntarily committed, often at the behest of schools, police and foster care facilities, and often for minor behavioral issues. A disproportionate number of these children are Black and Brown.<sup>82</sup> SPLC's report, *Costly and Cruel: How Misuse of the Baker Act Harms More Than 37,000 Florida Children Each Year*, relates the stories of kids from 10-12 years old who were handcuffed and

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<sup>73</sup> [Ending the Unjust, Unnecessary and Devastating Removal of Black Children From Their Families](#), Children's Rights, 2021.

<sup>74</sup> *Id.*

<sup>75</sup> [How Incarcerated Parents Are Losing Their Children Forever](#), The Marshall Project, 2 December 2018.

<sup>76</sup> *Id.*

<sup>77</sup> [How does high-quality legal representation for parents support better outcomes?](#), Casey Family Programs, 1 August 2019.

<sup>78</sup> *Id.*

<sup>79</sup> [A.A. v. Buckner](#), in the United States District Court for the Middle District of Alabama, 20 May 2021. An amended complaint was later filed in November 2021.

<sup>80</sup> *Id.* at para. 10.

<sup>81</sup> *Id.* at para. 18.

<sup>82</sup> [Costly and Cruel: How Misuse of the Baker Act Harms 37,000 Florida Children Each Year](#), Southern Poverty Law Center, 2021.

forcibly taken to psychiatric facilities after getting upset about losing a game, getting into a non-violent argument with another child, or making an off-handed joke. The law permits children taken to these facilities to be held for up to 72 hours without court review, but some unscrupulous facilities are known to prolong this period by filing a petition to hold the child longer but then dropping the petition shortly before a scheduled hearing. One facility held people of all ages for an average of more than 8 days and dropped 86% of petitions it filed before they could be heard.<sup>83</sup> Children reported being forced to sleep on a bare cot with no blanket, being housed with much older children who frightened and intimidated them, and not being allowed to communicate with family.

#### Topic 4: The Administration of Justice and Children of African Descent.

- *School Discipline and Policing.*

Black children in US schools are singled out for harsh discipline at much higher rates than their white peers. For example, a 2020 study of nationwide school data showed that Black middle and high school students lost 103 school days per 100 students to out of school suspensions, compared with just 21 days for white students.<sup>84</sup>

The impact of such school disciplinary experiences lead to children being more likely to become involved in the criminal justice system themselves, continuing a vicious cycle. 61% of children in juvenile justice placements report having been suspended or expelled from school in the year preceding the placement.<sup>85</sup> For those do who wind up in juvenile detention facilities, the educational deficit may grow to an insurmountable degree – even though classes are provided, students returning to their schools often find that they did not receive full, or any, academic credit toward graduation.<sup>86</sup>

According to the US Department of Education, about 70,000 public school students were subjected to corporal punishment – being physical struck – in schools in 19 states during the 2017-18 school year. Thousands of kids seek medical treatment for injuries inflicted by corporal punishment.<sup>87</sup> Nationally, about 5.6% of students overall experience corporal punishment in schools, but that figure is 9.7% for Black students. Most of these instances of corporal punishment take place in the South. A report prepared by SPLC and the Center for Civil Rights Remedies found that in five states, the rate at which corporal punishment was imposed on Black students was 10% or higher. In one state – Missouri – the rate was 17.5%. In one Alabama school district, the corporal punishment rate for Black students was 31.6%, compared with 10.1% for white students, a gap

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<sup>83</sup> *Id.* at 13.

<sup>84</sup> [School Suspension Data Shows Glaring Disparities in Discipline by Race](#), US News and World Report, 13 October 2020.

<sup>85</sup> [Credit Overdue](#), Southern Poverty Law Center, 2020, at 9.

<sup>86</sup> *Id.* at 4.

<sup>87</sup> [Spare the Kids: SPLC and other advocates push to end corporal punishment in schools](#), Southern Poverty Law Center, 29 April 2022.

that persisted over time.<sup>88</sup> The starkest concerns were found in Mississippi, with both the highest rates of corporal punishment overall, and the biggest racial disparities in its victims. One report found that almost half of all Black girls in the US who were subjected to corporal punishment in public schools lived in Mississippi.<sup>89</sup>

But the data do not show that Black students misbehave more often than their white peers, only that they are punished more harshly.<sup>90</sup> Other studies also indicate that Black students are given harsher punishments for the same behavior as white students, even accounting for factors such as prior discipline records.<sup>91</sup> The use of corporal punishment in schools contributes to poorer school performance, absenteeism and drop-out rates, which in turn contribute to a greater likelihood of becoming involved in the criminal justice system.<sup>92</sup> SPLC and many other advocacy organizations are supporting legislation that would ban corporal punishment in schools that receive federal funding.<sup>93</sup>

Despite research showing that school police presence does not reduce school violence and can actually increase behavioral incidents,<sup>94</sup> a massive presence of police in public schools exacerbates the problem of discriminatory and excessive punishment, and the criminalization of school children. In Florida, for example, by 2019 there were more police officers working in schools than school nurses.<sup>95</sup> Youth arrests in schools rose dramatically as a result. During the 2018-2019 school year, police arrested Florida elementary school students, including kids as young as 5 and 6 years, 345 times.<sup>96</sup> Black students were 4.5 times more likely overall to be arrested for disorderly conduct at school. For Black girls, the figure was 6 times.<sup>97</sup> Black youths are disproportionately targeted for arrest overall, and once in detention, are more likely to be placed in solitary confinement.<sup>98</sup>

Schools in other states have also involved school police officers in ordinary and relatively minor school discipline matters. For example, a Black Georgia mother sued her son's school district after he was arrested by an officer enforcing the school's dress code. An Alabama student faced criminal charges after getting into a fight at school.<sup>99</sup> These arrests are sometimes accompanied by a wildly disproportionate use of force. In New Mexico, for example, an 11-year old girl was pushed against a wall and wrestled to the ground over infractions including standing on the school bus and taking

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<sup>88</sup> [\*The Striking Outlier: The Persistent, Painful and Problematic Practice of Corporal Punishment in Schools\*](#), Southern Poverty Law Center, 2019, at 21-23.

<sup>89</sup> *Id.* at 23-24.

<sup>90</sup> *Id.* at 21.

<sup>91</sup> *Id.* at 21-22.

<sup>92</sup> *Id.* at 25.

<sup>93</sup> S. 2029, [\*Protecting our Students in Schools Act of 2021\*](#), 117<sup>th</sup> Congress.

<sup>94</sup> [\*Making schools safe and just\*](#), National Education Association, 28 April 2022.

<sup>95</sup> [\*The Cost of School Policing\*](#), American Civil Liberties Union of Florida, Equality Florida, Florida Social Justice in Schools Project, Southern Poverty Law Center, and The League of Women Voters of Florida, 2019, at 5.

<sup>96</sup> *Id.* at 6.

<sup>97</sup> *Id.* at 17.

<sup>98</sup> [\*G.H. v. Tamayo\*](#), Southern Poverty Law Center, 2019.

<sup>99</sup> [\*Envisioning School Safety Without Police\*](#), Learning for Justice, 2021.



too many milks in the cafeteria.<sup>100</sup> A school security officer breaking up a cafeteria fight between middle-schoolers was caught on video restraining a 12-year-old girl with his knee on her neck for at least 20 seconds.<sup>101</sup>

- *Children Prosecuted as Adults.*

Despite the US Supreme Court's recognition that children who commit crimes – owing to their physical and psychological immaturity and susceptibility to negative influences – are less culpable and more likely to change than their adult counterparts, many US states continue to frequently charge and prosecute children in the adult criminal justice system. Those convicted “as adults” are often incarcerated in adult jails, and are denied adequate educational, mental health, and rehabilitative services.

The state of Florida prosecutes more children on felony charges than any other – nearly 4,500 in the last five years. This figure actually represents a reduction in the sheer number of such charges from a decade earlier, when 10-12,000 children annually were being charged in adult courts, but as a percentage of overall juvenile arrests, the rate has increased.<sup>102</sup> Unlike most other states, Florida law allows prosecutors to make the decision to charge children as young as 14 in the adult system without any court oversight, a decision that is not appealable. Although juvenile courts can also transfer children to adult courts, 98% of adult charges brought against juveniles in Florida are the result of prosecutorial decisions.

Black children are arrested in Florida far more frequently, and those who are charged with crimes are more likely than their white peers to be subjected to adult courts and jails. In fiscal year 2020-21, 46% of juveniles arrested in Florida were Black, but they represented 61% of those prosecuted in the adult system.<sup>103</sup>

One particularly problematic issue is teenagers being charged with sex offenses for engaging in consensual sex acts with other teens. Once convicted, these teens are not only subjected to incarceration. They are also saddled with the burden of lifetime sex offender registry, which tremendously limits their opportunities for stable employment, housing, and social integration. In an Alabama lawsuit, *Pennington v. Taylor*, SPLC and other civil rights organizations represented three Alabama men who were victims of this outrageously unfair system.<sup>104</sup> Two of the men had been charged as teens after engaging in consensual sex with another teen. The complaint describes how the sex offender registry requirement has been an obstacle to housing, stable employment, and even their ability to have normal relationships with their children and grandchildren.

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<sup>100</sup> [Police officer resigns after video show him using excessive force on an 11-year-old girl](#), Vox, 24 October 2019.

<sup>101</sup> [School Video Shows Off-Duty Officer Putting His Knee on a Girl's Neck](#), New York Times, 19 March 2022.

<sup>102</sup> [Criminal Injustice: States unfairly prosecute children as adults](#), Southern Poverty Law Center, 21, January 2022.

<sup>103</sup> *Id.*

<sup>104</sup> [Complaint](#), *Pennington v. Taylor*, Middle District of Alabama, 2019.

Topic 6: Intergenerational Deprivation and Anti-Black Racism.

- *The Failure to Remedy Decades of Discrimination Against Black Farmers.*

Nothing could better exemplify intergenerational deprivation than the plight of Black farm families and the challenges they face in holding onto their land to pass down to their descendants. The US consistently fails to recognize and account for the legacy of systemic racial disparities resulting from its eras of slavery, Jim Crow, and mass incarceration. Emblematic of this failure is the intolerable situation of the nation's Black farmers. According to the US Department of Agriculture, almost 96% of the more than 2.2 million farms in the US are family owned and operated. Larger family farms produce more than 63% of domestic food and fiber produce.<sup>105</sup> Black families own and operate a vanishingly small share of these farms.

In the early 1900s, Black farmers made up about 14% of US agricultural producers. Largely as a result of discriminatory lending, land taking, and other practices, that figure was just 1.4% as of 2017. During the last century, especially from the 1950s forward, Black farmers have lost more than 90% of their property – 16 million acres valued at up to \$350 billion.<sup>106</sup> Black families have lost farms and other property through a range of causes including inadequate disaster relief, discriminatory financing practices, and land expropriation. For example, for decades white developers and speculators engaged in schemes such as prodding Black land owners into tax delinquency before seizing their land through a forced tax sale or obtaining a share in heirs property and forcing a partition sale. Only a tiny fraction of the more than 1 billion acres of arable land in the US is now Black-owned.<sup>107</sup>

Federal civil rights laws purported to protect Black farmers from discriminatory federal financing practices, during the so-called Civil Rights era of the 1960s. However, the people administering USDA programs that handed out loans to farmers – often working at state and county levels in some of the most stubbornly racist parts of the country – did everything they could to get around those laws and keep funding out of the hands of Black farmers.<sup>108</sup> In particular, they manipulated these programs to punish Black farmers who dared to advocate for civil rights, denying funding and obstructing efforts to even apply for it.<sup>109</sup> Other programs, such as those providing technical assistance to farmers, were segregated.<sup>110</sup> The vast majority of federal loans and subsidies provided to US farmers have continued to go to white farmers and have been withheld from their Black peers. Although the USDA has produced its own studies over the last several decades documenting continuing huge disparities in aid to Black farmers as compared to white, an independent analysis of USDA data in 2021 found that Black farmers are still far behind their white peers in obtaining grants and loans. One agency program had granted loans to just 37% of Black applicants in the

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<sup>105</sup> [Family Farms](#), USDA National Institute of Food and Agriculture.

<sup>106</sup> [Fighting to Grow: Black farmers continue to battle systemic discrimination](#), Southern Poverty Law Center, 18 February 2022.

<sup>107</sup> [Black People's Land Was Stolen](#), Andrew Kahrl, New York Times, 20 June 2019.

<sup>108</sup> [African American Farmers and Civil Rights](#), Pete Daniel, Journal of Southern History, Vol. 73, No. 1, February 2007, at 3.

<sup>109</sup> *Id.* at 8-9.

<sup>110</sup> *Id.* at 5.

preceding year, while 71% of white applicants received funding.<sup>111</sup> During debt relief deliberations for socially disadvantaged farmers, one report cited by Congress showed that 99% of funds for tariff relief and 97% of coronavirus relief funds had gone to non-minority farmers.<sup>112</sup>

Black farmers were driven into debt and then denied assistance that was available to white farmers. Local agency officials seized their land and assets and sold them off.<sup>113</sup> In 1997, Black farmers brought a class action lawsuit against the USDA over its longstanding discriminatory practices and failure to respond to complaints of discrimination. Despite two settlements in which the USDA promised to provide relief from foreclosures and additional access to loans and acreage allotments, USDA continued through the Bush and Obama administrations to seize Black farmland and fight the resulting claims in court.<sup>114</sup>

In March 2021, President Biden signed a sweeping package of coronavirus relief funds that included \$4 billion in debt relief for farmers deemed to be “socially disadvantaged.”<sup>115</sup> The definition of “socially disadvantaged” includes farmers or ranchers who are members of a socially disadvantaged group, further defined as a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.<sup>116</sup> In addition to Black farmers, the designation includes Native Americans, Pacific Islanders, Asian and Latinx farmers.

Based on this designation, Black farmers who have long been subjected to disparate treatment on account of their race expected to receive much-needed debt relief. Once again, however, access to these remedies has been blocked. At least 13 lawsuits were filed challenging the program as reverse race discrimination.<sup>117</sup> Despite the ample evidence that Black-owned farms have nearly been eliminated by decades of discrimination, and that those Black farmers who remain are still suffering from it, a US district court in Texas recently granted a nationwide injunction to white farmers claiming that the program to provide debt relief to historically socially disadvantaged farmers discriminates against white farmers. The white farmers group is represented by American First Legal, an organization established by former Trump advisor Stephen Miller, who has a well-documented history of promoting white nationalist ideology. Farming advocacy organizations for Black and Indigenous farmers have intervened in the case. While litigation is ongoing, debt relief for socially disadvantaged farmers and ranchers has been stymied. In issuing the injunction, the district court stated that because it did not find sufficient evidence of USDA discrimination *in the past decade*, the relief could not be supported.

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<sup>111</sup> [“Rampant issues”: Black farmers are still left out at USDA](#), Politico, 5 July 2021.

<sup>112</sup> [Congressional Record](#), Vol. 167, No. 42, 5 March 2021, at S1264-65.

<sup>113</sup> *Id.* at 14.

<sup>114</sup> [How Thousands of Black Farmers Were Forced Off Their Land](#), The Nation, 1 November 2021.

<sup>115</sup> [In Historic Move, USDA to Begin Loan Payments to Socially Disadvantaged Borrowers under American Rescue Plan Act Section 1005](#), USDA, 21 May 2021.

<sup>116</sup> *Id.*

<sup>117</sup> [Historic debt relief for minority farmers faces legal juggernaut](#), Politico, 3 August 2021.

Adding to the direct discrimination against Black farmers who have been denied financing or whose property has been taken from them through nefarious means is the continuing problem of heirs property. An estimated 60% of Black farmers are operating on land that has been passed down through generations of family members without legal documentation. In the absence of clear title to the property, these families have often been locked out of loan and debt relief programs.<sup>118</sup> This includes federal disaster relief funding in the aftermath of home and crop-destroying events such as tornadoes and hurricanes, which are prevalent in the Deep South.<sup>119</sup> Although FEMA later ended the policy that required proof of title to obtain disaster assistance (a change that came too late for many thousands of Black landowners).<sup>120</sup> Nevertheless, the lack of clear title continues as an impediment to many other potential uses for land. In addition to being unable to continue farming, Black farm families have been deprived of massive amounts of wealth tied up in land that was either taken from them, or that they are unable to sell, lease, or turn to another purpose because of clouded title issues.

- *The Terrible Financial Burdens of Mass Incarceration.*

As discussed earlier in this submission, US mass incarceration is disproportionately a burden of Black Americans, who are incarcerated almost five times as often as white Americans.<sup>121</sup> The incarceration of a parent is likely to be an economically devastating factor in the life of a child. Almost half of incarcerated parents were the breadwinners for their families,<sup>122</sup> and nearly half lived with their children prior to incarceration, leaving children much more likely to become impoverished and even homeless. Black children of incarcerated fathers are especially at risk of homelessness.<sup>123</sup> The non-incarcerated parent frequently experiences problems obtaining childcare, which inhibits their ability to work, and they often report being unable to pay for basic needs such as food, rent, utilities, and medical care.<sup>124</sup>

Beyond the loss of income provided by a parent who becomes incarcerated, the expenses associated with incarceration are a tremendous burden. Traveling long distances to visit an incarcerated parent means costs for transportation and lodging. Charges for telephone communications, which must be paid by the family, are exorbitant. The correctional telecommunications industry collects \$1.5 billion annually from prisoner phone calls, with the average cost of a 15 minute call at \$5.74.<sup>125</sup> In 2017, the Prison Policy Initiative estimated that

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<sup>118</sup> [Black Farm Families Face a Struggle for a Share of COVID-19 Aid](#), Spotlight on Poverty, 5 May 2020.

<sup>119</sup> [‘The real damage:’ Why FEMA is denying disaster aid to Black families that have lived for generations in the Deep South](#), Washington Post, 11 July 2021.

<sup>120</sup> [FEMA changes policy that kept thousands of Black families from receiving disaster aid](#), Washington Post, 2 September 2021.

<sup>121</sup> [The Color of Justice: Racial and Ethnic Disparities in State Prisons](#), The Sentencing Project, 13 October 2021.

<sup>122</sup> *A Shared Sentence*, *supra*, at 2.

<sup>123</sup> *Cut Off From Caregivers*, *supra*, at 6.

<sup>124</sup> *A Shared Sentence*, *supra*, at 3.

<sup>125</sup> [The staggeringly high price of a prison phone call](#), Katrina vanden Heuvel, Washington Post, 30 November 2021.

families spent \$2.9 billion per year on prison phone accounts and commissary charges for purchases such as hygiene items, pens and paper, and food.<sup>126</sup>

Many essential services, such as medical care, also come at a price for people in prison. The vast majority of states have traditionally charged fees ranging from \$2-\$8 per visit for medical care.<sup>127</sup> It may not sound like much, but incarcerated people are paid just pennies per hour for prison labor – for example, the hourly pay scale in Oklahoma begins at just 5 cents – so the average fee of around \$4 is equivalent to nearly \$600 at minimum wage outside of prison.<sup>128</sup> Unless their families can help to foot the bill, some will simply not get needed care, contributing to poor health that will continue to increase their financial burden over a shortened lifetime, or will be saddled with additional debt after release. Some prison systems have waived some medical care fees temporarily during the pandemic, but medical co-pays have been a fact of US prison life for decades.

The financial burdens of incarceration on children and families continue long after the incarcerated parent is released. Barriers to finding employment and housing are numerous. Unpaid medical charges wind up as accumulated debt, leading to collection lawsuits and bad credit after release.<sup>129</sup> Bad credit, in turn, makes it more difficult to open a bank account, get a job, or obtain an apartment lease or a car loan.

More than half of formerly incarcerated people are unable to find stable employment within the first year after release.<sup>130</sup> Those that are employed earned a median income of just \$10,000 per year.<sup>131</sup> The use of criminal background checks by employers frequently means that formerly incarcerated people are unable to even get a job interview. Although the US Equal Employment Opportunity Commission has long recognized that criminal background checks have a disparately discriminatory impact based on race and national origin, their use is lawful so long as people who have criminal backgrounds are not treated differently based on their race compared to others who also have a similar criminal record.<sup>132</sup>

A severe shortage of low-income housing units, combined with the use of criminal background checks for prospective tenants, makes finding affordable housing extremely difficult for people released from prison.<sup>133</sup> Recognizing that public housing programs often bar people with criminal records, the Secretary of the US Department of Housing and Urban Development recently directed the agency to undertake a review of all policies and programs to identify barriers to housing for those with criminal records and, to the extent legally possible, to make such policies and programs

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<sup>126</sup> [Following the Money of Mass Incarceration](#), Prison Policy Initiative, 25 January 2017.

<sup>127</sup> [Should Prisoners Have to Pay for Medical Care During a Pandemic?](#), The Marshall Project, 20 November 2020.

<sup>128</sup> [The \\$580 co-pay](#), The Marshall Project, 30 May 2018.

<sup>129</sup> [Examining the Intersection Between Criminal Justice and Financial Services in the Deep South](#), Hope Policy Institute, 13 January 2021, at 9.

<sup>130</sup> [A better path forward for criminal justice: Prisoner reentry](#), Brookings Institute, April 2021.

<sup>131</sup> [Examining the Intersection](#), *supra*.

<sup>132</sup> [Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act](#), Equal Employment Opportunity Commission, 25 April 2012.

<sup>133</sup> [Barriers to Housing](#), Reentry and Housing Coalition, 2017.

more inclusive for this group.<sup>134</sup> A 2016 HUD memo detailed the discriminatory effects of justifying a housing decision based on an individual's criminal history that disproportionately impact African Americans.<sup>135</sup>

Lingering court debt also places a huge financial strain on the formerly incarcerated parent. One report found that the average family paid \$13,000 in fines and fees.<sup>136</sup> In 2019, people in SPLC's Deep South region (where incarceration rates are highest) owed more than \$4 billion in federal criminal justice debt alone,<sup>137</sup> with billions more owed in state criminal justice systems. Fees continue to be charged for required post-release supervision.<sup>138</sup> Unpaid court debt can lead to driver license suspension, leaving people who live in areas that lack reliable public transit without the ability to get to a job, even if they've been able to find one.<sup>139</sup> People who are able to make only small payments toward their court debt often find that the amount owed is going up instead of down because of added fees.<sup>140</sup>

Louisiana, like many Southern states, currently funds its criminal legal system through fines, fees, and court costs that are disproportionately imposed on Black families and people experiencing poverty. In 2017, for example, Black families paid nearly 88% of bail bond fees and nearly 70% of conviction fees in New Orleans.<sup>141</sup> In New Orleans, for example, Black families earn 63% less than what white families earn. And in 2016, the median household income for New Orleans Black households was \$25,324 and \$67,884 for white households.<sup>142</sup>

All of these financial burdens, typically imposed on people who were already poor, often doom the families of incarcerated people to an inexorable cycle of poverty for generations. That cycle, in turn, leads to less access to adequate education, housing, and health care, more problems in school, higher rates of foster care placement, and a higher likelihood of future involvement with the criminal justice system.

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<sup>134</sup> [Memorandum](#), "Eliminating Barriers That May Unnecessarily Prevent Individuals with Criminal Histories from Participating in HUD Programs," Housing and Urban Development Secretary Marcia Fudge, 12 April 2022.

<sup>135</sup> [Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions](#), Office of General Counsel, Department of Housing and Urban Development, 4 April 2016.

<sup>136</sup> [Who Pays? The True Cost of Incarceration on Families](#), Ella Baker Center for Human Rights, *et al.*, September 2015.

<sup>137</sup> *Examining the Intersection*, *supra*, at 3.

<sup>138</sup> *Id.* at 4.

<sup>139</sup> *Examining the Intersection*, *supra*, at 9.

<sup>140</sup> [After a hard-won sentence reduction, Huntsville man's court debt is another obstacle to freedom](#), Southern Poverty Law Center, 12 November 2019.

<sup>141</sup> [Panel reviewing how Louisiana courts are funded needs more time for recommendations](#), News From The States, 1 February 2022.

<sup>142</sup> [The New Orleans Prosperity Index: Tricentennial Edition](#), Data Center Research, 11 April 2018.



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I hope that the foregoing information proves helpful to you as you consider the situation of children of African descent in the US as part of your upcoming session, and I look forward to participating.

With best regards,

A handwritten signature in black ink, appearing to read "Lisa Borden". The signature is fluid and cursive, with the first name "Lisa" written in a larger, more prominent script than the last name "Borden".

LISA W. BORDEN

Senior Policy Counsel, International Advocacy