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VIOLATING HUMAN RIGHTS:

CHICAGO LAW ENFORCEMENT'S EXCESSIVE FORCE AGAINST BLACK LIVES MATTER ACTIVISTS AND HUMAN RIGHTS DEFENDERS

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UIC Law School International Human Rights Clinic

The UIC Law School International Human Rights Clinic (IHRC) is a non-profit, nonpartisan, law school legal clinic dedicated to promoting and protecting human rights in the United States and around the world. The IHRC offers students a background in human rights advocacy through the practical experience of working on international human rights cases and projects.

National Lawyers Guild of Chicago

The National Lawyers Guild of Chicago (NLG) is a non-profit federation of lawyers, legal workers, and law students dedicated to actively eliminating racism, maintaining, and protecting our civil rights and liberties, and using the law as an instrument for the protection of the people.

GoodKids MadCity

GoodKidsMadCity has the mission to prevent gun violence in underserved communities, by creating safe spaces for healing, changing behaviors and organizing young people to advocate and lobby for progressive legislation that contributes to community revitalization, restorative justice and reducing youth recidivism and incarceration. It does so, while simultaneously giving direct support to teens in neighborhoods that have suffered from gun violence by hosting healing circles, peace walks, honoring victims, block parties and peer mediated conflict resolution.

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I. Introduction.

“We’ve been given this narrative that came out of the civil rights movement, and somewhat the abolitionist movement, about nonviolence and nonviolent tactics, but we seem to forget all of the violence [B]lack activists are facing.”¹

In the two-year anniversary of the protests against racial injustice and police brutality, advocates continue to work towards holding the United States accountable for engaging in the systematic violation of human rights. The United States has a long and complex history of committing violence against protestors, regardless of the peaceful nature of the protest.² United States law enforcement has violated the human rights of activists, protestors, and organizers (also known as “human rights defenders”)³ by historically and persistently engaging in a systemic practice of silencing and suppressing human rights defenders in relation to their involvement with the Black Lives Matter Movement.⁴

A human rights defender is anyone that works – alone or as part of a larger organization – for the realization and protection of human rights.⁵ In this context, human rights defenders engage in protesting, observing, and documenting actions by law enforcement and the mistreatment of the Black⁶ community.⁷ For example, during the Civil Rights Movement in the 1960s, law enforcement officials met peaceful protests against police brutality with excessive force.⁸ Instead of listening, they sought to suppress dissenting opinions.⁹ This pattern has been repeated for decades.¹⁰

The Black Lives Matter Movement (BLM) was founded in 2013 in response to the murder of Trayvon Martin – an unarmed 17-year-old Black student – shot by a neighborhood watch captain.¹¹ Since its founding, BLM human rights defenders in the United States have come together using protests, social media, and publicity to bring attention to police violence committed against Black people in America.¹² In the spring and summer of 2020, the deaths of Ahmaud Arbery, Breonna Taylor, and George Floyd ignited a wave of outrage leading to over one thousand protests across the country.¹³ The violence and police brutality against Black people in the United States resulted in countless protests in the years preceding 2020, but not to this magnitude. The deaths of Arbery, Taylor, and Floyd were devastating and historic moments that culminated in millions of people exclaiming, “enough is enough.” In 2020, over 15 million people in the United States participated in protests and demonstrations in the months of May and June alone.¹⁴ People of all races joined in the protest against racial injustice, and united as victims of violence by public and private law enforcement officials.

The Chicago Police Department (CPD) and other law enforcement agencies violated the human rights of BLM activists by persistently silencing, suppressing, and surveilling human rights defenders – protestors, organizers, and activists – with little to no accountability.¹⁵ These agencies established a system of protest suppression and surveillance through

¹ Olivia B. Waxman, *History Shows the Problem with Focusing on Whether a Protest Is Nonviolent*, TIME (June 11, 2020, 2:39 PM), <https://time.com/5849679/history-protest-debate/>.

² Brenda Valdivia, Michael Hagerty, *In Moments of Great Social Change, America has a History of Violence*, HOUSTON MATTERS (June 10, 2020, 3:11 PM), <https://www.houstonpublicmedia.org/articles/shows/houston-matters/2020/06/10/375391/in-moments-of-great-social-change-america-has-a-history-of-violence/>.

³ As used in this report, human rights defenders are any person including activists who engage in protecting human rights.

⁴ As used in this report, the use of the term “law enforcement” includes police, the State’s Attorney’s Office, the mayor, and others supporting their work.

⁵ *Aliyev v. Azerbaijan*, (Judgment), App. Nos. 68762/12 & 71200/14, Eur. Ct. H.R. paras. 88-92 (2018) (discussing foundations of law related to human rights defenders); see also G.A. Res. 53/144, Declaration on Human Rights Defenders (Mar. 8, 1999) (adopting the declaration on human rights defenders).

⁶ Throughout this Report, we capitalize the letter “b” in Black when referring to people in a racial, ethnic, or cultural context. Capitalizing the “b” in Black is done to align with long-standing identifiers such as Latino, Asian American, and Native American. Further, the lack of capitalization of the letter “w” in white is to reflect the studies of critical race theorists who do not see the word white as descriptive of a group with a sense of common experiences. Importantly, white supremacist groups frequently capitalize white. See Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse*, 55 THEORY INTO PRACTICE 11, 13 (2016); Leticia Villareal Sosa, *School Resource Officers and Black Lives Matter Protests: It’s Time for School Social Work to Take a Stand*, 42 CHILDREN & SCHOOLS 203, 206 (2020).

⁷ Thomas J. Sugrue, *2020 Is Not 1968: To Understand Today’s Protests, You Must Look Further Back*, NAT’L GEOGRAPHIC: RACE IN AMERICA (June 11, 2020), <https://www.nationalgeographic.com/history/2020/06/2020-not-1968/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

¹⁵ Jim Daley, Martha Bayne & Jason Schumer, *What Happened on July 17?*, SOUTH SIDE WEEKLY (July 2020), <https://protesttimeline.southsideweekly.com/july-17/>.

mass arrests, detention without probable cause, the use of excessive force through physical abuse, and the digital and electronic surveillance of protestors.¹⁶ Such patterns of abuse led to the violation of countless human rights: including the rights of expression, association, and privacy.

The United States' violation of the rights of expression, association, and privacy of BLM activists directly censors human rights defenders and the public as a whole. Intimidation, violence, and the criminalization of human rights defenders is particularly problematic since their role is to protect human rights. State practices of arbitrary arrest and detention are a violation of the defenders' rights to liberty and security of person. The State's violation of such rights is unacceptable and it is the duty of the State to take all necessary measures to ensure the protection of human rights defenders against violence, threats, and discrimination.

United States law enforcement personnel has repeatedly used excessive force and committed a variety of human rights violations against human rights defenders battling racial injustice. Police officers targeted and criminalized protestors and used excessive and violent forms of policing with impunity.¹⁷ These practices are part of a larger, comprehensive system of policies that reinforce systemic racism and undermine the civil, political, and social rights of individuals. Such disproportionate police tactics have catastrophic effects and pose grave risks to protestors, as demonstrated by the summer of 2020 BLM protests. Police brutality against human rights defenders is an ongoing human rights issue that must be addressed to ensure the law enforcement agencies responsible are held accountable for their actions.

This report documents the numerous human rights violations committed against BLM defenders in an effort to seek accountability and advocate for systemic change in racial justice. The report begins by providing historical background of police brutality and misconduct in Chicago. Next, the report exposes the specific, violent suppression methods used by Chicago law enforcement during the BLM activism of 2020. It demonstrates the systematic criminalization of protestors through mass arrests without probable cause. Finally, the report identifies the State-sponsored and State-sanctioned surveillance of human rights defenders through the use of new and emerging technologies as various government agencies collaborate with the private sector.

This report is the product of a multi-year research project. In fact, although it has been two years since the massive mobilization of communities, protests, and promises of racial justice, very little has changed. BLM defenders and activists continue to be targeted, and officials have fallen short on delivering accountability and real change, even after years of repeated demands. This report provides an examination of historical research¹⁸ and reports documenting human rights violations committed against BLM activists, including reports by the American Civil Liberties Union (ACLU), Amnesty International, the U.S. Department of Justice Civil Rights Division, University of Chicago, and the Smithsonian Magazine, to name a few. Throughout the course of our research, we observed and interviewed dozens of individuals with first-hand accounts of the events in the Chicagoland area,¹⁹ and submitted Freedom of Information Act (FOIA) requests to various federal and state government agencies.²⁰ Notably, out of sixteen requests to law enforcement agencies, we received responses to only two, while the rest went unanswered.

II. Historical Background.

A. Chicago Law Enforcement's History of Surveillance

For generations, Black communities have been surveilled and brutalized by law enforcement agencies.²¹ Violence against Black communities in Chicago has been prevalent throughout Chicago's history.²² As in other parts of the United

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ In addition to researching the historic policies and practices of law enforcement in the United States, the IHRC also interviewed former Black Panther member Stan McKinney regarding his experiences with the Chicago Police Department. Zoom Interview with Stan McKinney, Black Panther Member (Nov. 11, 2020) (notes on File with UIC Law School International Human Rights Law Clinic) [hereinafter *McKinney Interview*].

¹⁹ Some identities of interviewees have been kept anonymous for their personal safety.

²⁰ The IHRC submitted FOIA requests to the Federal Bureau of Investigation, the Department of Justice, the White House, the Department of Homeland Security, the Secret Service, the Illinois State Police, the Mayor of Chicago, the Chicago Police Department, the Illinois State Police Merit Board, the Cook County State's Attorney's Office, the Chicago Police Department Board, the Chicago Department of Procurement, the Chicago Finance Department, the Chicago Law Department, the Chicago Public Building Commission, and the Chicago Department of Emergency Management & Communications.

²¹ See generally Alvaro M. Bedoya, *The Color of Surveillance*, SLATE (Jan. 18, 2016, 5:55 AM), <https://slate.com/technology/2016/01/what-the-fbis-surveillance-of-martin-luther-king-says-about-modern-spying.html>; Wenei Pilimon, *Not just George Floyd: Police departments have 400-year history of racism*, USA TODAY, <https://www.usatoday.com/story/news/nation/2020/06/07/black-lives-matters-police-departments-have-long-history-racism/3128167001/> (June 7, 2020, 2:44 PM).

²² *Investigation of the Chi. Police Dep't*, United States Dep't of Just. Civ. Rts. Div. and U.S. Att'y's Off. N.D. of Ill. (Jan. 13, 2017), available at <https://www.justice.gov/opa/file/925846/download>.

States, Black individuals in Chicago have been surveilled since slavery.²³ Former Pennsylvania death row inmate and journalist Mumia Abu-Jamal wrote:

Throughout the long, tortured centuries of oppression against Blacks in America, a special contempt was reserved for those who dared snitch against the endangered slave community, people who made their “livings” by selling out their own people, sending information to dreaded slave-catchers in the South, who used the infamous Fugitive Slave Act to track and re-enslave those who dared escape their fiendish clutches.²⁴

The surveillance of Black communities has continued from slavery to the present day. Surveillance practices historically consisted in the U.S. government using the Black Codes and Jim Crow laws to monitor individuals,²⁵ to the use of surveillance methods against civil rights activists and others who were found to be “dangerous” to disrupting white supremacy.²⁶

Targeted surveillance continued throughout the era of the Civil Rights Movement. The Federal Bureau of Investigation (FBI) engaged in widespread surveillance of Black organizations and individuals, including Dr. Martin Luther King, Jr. and Malcolm X.²⁷ The FBI employed various tactics when it came to surveilling Dr. King, including bugging his hotel rooms, using photographic surveillance, and physically observing King’s movements.²⁸ It used the information obtained from the surveillance to blackmail Dr. King and interfere with his personal and family life.²⁹ These tactics were designed and implemented by a covert, illegal surveillance program aimed at disrupting efforts by so-called “hate groups.”³⁰ COINTELPRO – short for “Counterintelligence Program” – had the mission of disrupting the Communist Party.³¹ In the 1960s it expanded to target other potentially “violent” domestic groups.³² One area of focus was on “Black extremists.”³³ Over 4,100 memos, letters, and reports available to the public detail the surveillance tactics used to counter “Black extremism” between 1968-1969.³⁴ By comparison, there are only 2,500 documents from 1964 to 1968 that detail the surveillance of “white hate groups.”³⁵

COINTELPRO was operational in at least twenty-two United States cities, including Chicago.³⁶ Its various offices communicated with one another about the movements of important Black activists and strategized on how they could discredit them.³⁷ One memo from the Charlotte office in North Carolina outlined ways in which the FBI could dismantle the Civil Rights work that was being accomplished:³⁸

This division feels that the Bureau must strive to eliminate the façade of civil rights and show the American public the true revolutionary plans and spirit of the Black Nationalist movement and its leader, expose and discredit them in the eyes of responsible individuals and organizations...³⁹

²³ Andrea L. Dennis, *A Snitch in Time: An Historical Sketch of Black Informing during Slavery*, 97 MARQ L. REV. 279 (2013).

²⁴ *Id.* at 285.

²⁵ These practices were designed to trap Black Americans in a permanent status of second-class citizenship. For example, South Carolina’s Black Codes fined Black individuals if they worked in any occupation other than farming or domestic servitude. Danyelle Solomon, Connor Maxwell & Abril Castro, *Systemic Inequality and American Democracy*, CTR. FOR AM. PROGRESS (Aug. 10, 2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/473003/systematic-inequality-american-democracy/>; History.com Editors, “Black Codes,” HISTORY, <https://www.history.com/topics/black-history/black-codes>, (Jan. 21, 2021).

²⁶ In the early 1900s, law enforcement targeted “race agitators” like Ida B. Wells and W.E.B. Du Bois; Nusrat Choudhury & Malkia Cyril, *The FBI Won’t Hand Over Its Surveillance Records on ‘Black Identity Extremists,’ so We’re Suing*, ACLU (Mar. 21, 2019, 12:45 PM), <https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/fbi-wont-hand-over-its-surveillance-records-black>; and at the end of World War I President Woodrow Wilson opening feared the Black servicemen returning from the war would become “the greatest medium in conveying Bolshevism to America” even as the Military Intelligence Division created a special “Negro Subversion” section devoted to spying on Black Americans; *Id.*

²⁷ Jeffrey O.G. Ogbar, *The FBI’s War on Civil Rights Leaders*, THE DAILY BEAST (Apr. 11, 2017, 12:15 AM), <https://www.thedailybeast.com/the-fbis-war-on-civil-rights-leaders>.

²⁸ Dia Kayyali, *The History of Surveillance and the Black Community*, THE ELECTRONIC FRONTIER FOUNDATION (Feb. 13, 2014), <https://www.eff.org/deeplinks/2014/02/history-surveillance-and-black-community>.

²⁹ The FBI sent Dr. King letters attempting to “blackmail into suicide” and edited “personal moments shared with friends and women” to break up his marriage. *Id.*

³⁰ NADINE FREDERIQUE, COINTELPRO: UNITED STATES GOVERNMENT PROGRAM, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/COINTELPRO>, (last visited Jan. 27, 2022).

³¹ *Id.*

³² See generally, COINTELPRO, FBI (Federal Bureau of Investigation Vault) <https://vault.fbi.gov/cointel-pro>, (last visited Jan. 27, 2022).

³³ *Id.*

³⁴ See generally, *Black Extremist Part 1-23*, at <https://vault.fbi.gov/cointel-pro>.

³⁵ See generally, *White Hate Groups Part 1-14* at <https://vault.fbi.gov/cointel-pro>.

³⁶ See generally, S. REP. NO. 94-755 (1976).

³⁷ *White Hate Groups*, *supra* note 35.

³⁸ *Id.* at 119-120.

³⁹ *Id.*

COINTELPRO's surveillance of the Black Panther Party had the purpose of dismantling it.⁴⁰ The FBI planted informants and constantly interviewed members.⁴¹ They also sent anonymous letters, encouraging violence between street gangs and the Black Panthers in various cities.⁴² This targeted disruption resulted in "the killings of four Black Panther Party members and numerous beatings and shootings."⁴³

Federal officials as well as local police forces surveilled Black and other ally activists. Interviews with Jack Hart and Stan McKinney, who were actively involved in social justice work and considered to be a "threat" at the time, illustrate the persistent and systematic use of surveillance and violence against activists. Hart was a member of the Inter-Communal Survival Committee (ICSC),⁴⁴ an organization coordinating and supporting the Black Panther Party.⁴⁵ One of the committee's main tasks in supporting the Black Panthers was to distribute the Black Panther Newspaper and encourage white people's involvement in the movement.⁴⁶ Whenever ICSC members travelled to the Black Panther headquarters in Indiana, they were consistently stopped by the police.⁴⁷ Rather than stopping ICSC members for cause, most stops were designed to harass them.⁴⁸ Hart was arrested five times over a 3-year period.⁴⁹ One arrest was for the alleged "unlawful use of a weapon."⁵⁰ The officer arresting him instigated a fight with Hart because he refused to allow the officer inside ICSC headquarters while manning the door during a meeting.⁵¹ On another occasion, Hart was arrested for stopping a fireman from harassing women on the street.⁵²

Stan McKinney joined the Black Panther Party in January of 1969, a month after the assassination of Fred Hampton.⁵³ According to McKinney, during that time officers drove around neighborhoods, searching for men to "pop out on."⁵⁴ Officers would take a revolver with only one bullet and hold it against an individual's head and fire (most of the time, the chamber was empty).⁵⁵ The officers also piled into cars and drove around for the sole purpose of jumping out and beating Black individuals, often with frozen newspapers and "billy clubs,"⁵⁶ torturing innocent people.⁵⁷ McKinney was arrested multiple times, often with no substantial charges.⁵⁸ In fact, 90% of the charges brought against members of the Black Panthers formally charged within the legal system were dropped.⁵⁹ The Black Panthers were aware of FBI surveillance both before and after the assassination of Fred Hampton.⁶⁰ They were, however, unaware of the extent of the FBI's involvement until COINTELPRO was exposed.⁶¹

During the weekend of the 1968 Democratic National Convention, protests erupted around Chicago.⁶² Peaceful protestors sought to voice their opinions about the Vietnam War, the murders of prominent individuals around the country, and the controversy surrounding the presidential candidates.⁶³ The protests turned violent after the CPD, the Illinois National Guard, and the United States Army brutalized protestors with the use of tear-gas, batons, and physical beatings.⁶⁴ These

⁴⁰ *Id.*

⁴¹ The FBI harassed members of the Black Panthers through raids and vehicle stops. The raid of Black Panther leader Fred Hampton's apartment resulted in his murder in 1969. An advocacy group called the Citizen's Commission obtained and publicly released FBI documents two years later, including a detailed floor plan of Hampton's home and evidence of the conspiracy between the CPD and FBI to cover up his assassination; G. Flint Taylor, *The FBI COINTELPRO Program, and the Fred Hampton Assassination*, HUFFINGTON POST, https://www.huffpost.com/entry/the-fbi-cointelpro-progra_b_4375527 (Feb. 2, 2014).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ The Inter-Communal Survival Committee (ICSC) was an organization working in Chicago to coordinate and support the Black Panther Party. Interview with Jack Hart, Black Panther Member (Oct. 27, 2020) (Notes on File with UIC Law School International Human Rights Law Clinic).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 2.

⁵² *Id.*

⁵³ McKinney was inspired to join the group because of his own struggles growing up in the first Black family on his block in the West Garfield Park neighborhood of Chicago.⁵³ As a child, he was prevented from attending the neighborhood school.⁵³ According to McKinney, a person joined the Black Panther Party for one of three reasons: inspiration, aspiration, or desperation.⁵³ As for McKinney, "I joined for the third – desperation at the situation I saw around me."⁵³ Nine-Ten Media, *Stan McKinney Former Black Panther Member Speaks Naperville Illinois*, YouTube (May 31, 2020), <https://www.youtube.com/watch?v=N-rDtCUMCso>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ A billy club is a type of handheld weapon used to beat people. *History and Use of a Billy Club*, <https://www.police1.com/police-history/articles/history-and-use-of-the-billy-club-ICrwpOfIpDTkHY2B/#:~:text=Nov%2016%2C%202016,old%20as%20the%20profession%20itself> (last visited May 3, 2022).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 3.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Jeanne D. McDowell, *The True Story of 'The Trial of the Chicago 7'*, SMITHSONIAN MAG. (Oct. 15, 2020), <https://www.smithsonianmag.com/history/true-story-trial-chicago-7-180976063/>.

⁶³ *Id.*

⁶⁴ *Id.*

protests resulted in the arrest and trials of Black Panthers and their “sympathizers.” A particularly defining moment at trial was when Bobby Seale, the founder of the Black Panthers, was tied to a chair and gagged in open court at the direction of the Judge.⁶⁵ Ultimately, the United States Court of Appeals for the Seventh Circuit dropped the charges against the defendants.⁶⁶ A report later found that the police instigated the violence that took place during the protests.⁶⁷

The surveilling of Black people was not limited to activists. The FBI gathered information and used it to fuel dissent against Black activists, as well as engaged in blackmail, coercion, and wrongful prosecution of Black individuals.⁶⁸ Unfortunately, the surveillance of Black activists did not end with the dismantling of COINTELPRO in the 1970s. Surveillance continued for years, and now, over half a century later, more sophisticated methods of surveillance have emerged, such as social media monitoring and through the use of highly advanced technology.⁶⁹ Despite the adoption of new policies and regulations for law enforcement officials in recent years, pervasive patterns of Black surveillance have remained constant throughout Chicago’s history.⁷⁰

B. Chicago Law Enforcement’s History of Police Brutality and Torture

Over the course of two decades, from the early 1970s to the early 1990s, former Chicago Police Commander Jon Burge and white detectives under his command were responsible for torturing over 125 Black people, Latinx, and other people of color.⁷¹ In 2003, former Governor George Ryan pardoned four Burge torture survivors on death row after he concluded that CPD officials tortured them into confessing to murders they did not commit.⁷² In July 2006, after decades of litigation, appointed special prosecutors found that detectives tortured dozens of people (mostly Black) between the 1970s and 1990s while under the supervision of Chicago Police Commander Burge.⁷³ On October 21, 2008, Burge was charged with perjury and obstruction of justice for lying under oath when he stated that he and detectives under his command did not participate in the torture of Black suspects.⁷⁴ Burge was later convicted and sentenced to four and a half years in prison.⁷⁵ Despite Burge’s countless human rights violations and clear culpability, the City continued paying his pension for several decades, even after being convicted and terminated from the CPD.⁷⁶ By 2015, the City paid more than \$100 million in lawsuits related to Burge’s actions, and ultimately provided reparations to Burge’s torture survivors and their family members in response to a multi-racial, intergenerational campaign waged by torture survivors, family members, and organizers.⁷⁷

Burge, as other corrupt officers, was protected by the CPD and the City of Chicago. From the late 1980s until the early 2000s, Reynaldo Guevara worked as a detective for the CPD.⁷⁸ For decades, Guevara and his officers allegedly framed Black people on the West Side of Chicago for countless crimes, including murder.⁷⁹ Although Guevara’s corruption was exposed in 2006, the City of Chicago protected Guevara and blocked efforts to free the individuals he falsely accused of crime.⁸⁰

After Guevara retired in 2005, another officer terrorized the streets of Chicago’s Black neighborhoods. For years, Sergeant Ronald Watts robbed, beat, and framed numerous Black residents of the Ida B. Wells housing projects.⁸¹ Today, some of Watts’ victims have been exonerated and compensated, and experts anticipate that Chicago will face an even larger payout of monetary compensation to Watts’s victims than they did to Burge’s.⁸² Over 87 people were framed by officer

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Ogbar, *supra* note 27.

⁶⁹ Tim Lau, *The Government Is Expanding Its Social Media Surveillance Capabilities*, BRENNAN CENTER FOR JUSTICE (May 22, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/government-expanding-its-social-media-surveillance-capabilities>.

⁷⁰ Mark Berman & Matt Zaposky, *Chicago Police Officers Have Pattern of Using Excessive Force, Scathing Justice Dept. Report Says*, WASH. POST, (Jan. 13, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/01/13/justice-dept-to-announce-results-of-investigation-into-chicago-police/>.

⁷¹ Logan Jaffe, *The Nation’s First Reparations Package to Survivors of Police Torture Included a Public Memorial. Survivors Are Still Waiting.*, ProPublica (July 3, 2020, 5:00 AM), <https://www.propublica.org/article/the-nations-first-reparations-package-to-survivors-of-police-torture-included-a-public-memorial-survivors-are-still-waiting>.

⁷² *Timeline: Accusations of Chicago Police Brutality*, NBC CHI., <https://www.nbcchicago.com/news/local/timeline-accusations-of-chicago-police-brutality/12641/>, (Jan. 13, 2017, 9:55 AM) [hereinafter *Timeline: Accusations CPD*]

⁷³ Berman et al., *supra* note 71.

⁷⁴ *Timeline: Accusations CPD*, *supra* note 73.

⁷⁵ *Id.*

⁷⁶ Paul Solotaroff, *The Untouchables: An Investigations Into the Violence of the Chicago Police*, ROLLING STONE (Nov. 19, 2020, 7:00 AM), <https://www.rollingstone.com/culture/culture-features/chicago-police-racism-violence-history-1088559>; see also U.S. Dept. of Just. Civil Rts. Div. & U.S. Att’y Off. N.D. Ill., *Investigation of the Chi. Police Dept.* 19 (Jan. 13, 2017).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

Watts and his team and their convictions amounted to a combined total of 274 years in prison.⁸³ Although their convictions were dismissed years later and they were finally freed, Watts himself only served 2 years in prison.⁸⁴

In January 2011, Darius Pinex was shot and killed by two Chicago police officers during a traffic stop.⁸⁵ The jury found that the killing committed by the CPD was justified.⁸⁶ However, a judge later found that two Chicago-based attorneys concealed evidence in the case.⁸⁷ Similar to Pinex, 19-year old Roshad McIntosh was shot and killed by a Chicago police officer on August 24, 2014.⁸⁸ Chicago's Independent Police Review Authority determined that the shooting was "within policy" and subsequently closed the case.⁸⁹ But it was later re-opened when a lawsuit by the family led the Independent Police Review Authority to search for new evidence regarding the shooting.⁹⁰ On October 20, 2014, Chicago Police Officer Jason Van Dyke fatally shot Laquan McDonald 16 times in the back.⁹¹ This incident led to protests throughout the City. Van Dyke was found guilty of Second-Degree Murder and 16 counts of Aggravated Battery.⁹² Van Dyke's trial received national news coverage, and Van Dyke's murder of McDonald gave rise to nationwide calls for police reform. In April 2015, the Chicago City Council approved a \$5 million settlement with the McDonald family.⁹³ However, in February of 2022, Van Dyke was given mandated supervised release, having served only half of his seven-year prison term.⁹⁴ Van Dyke's release was yet another example of the persistent impunity of CPD's use of violence against Black individuals and communities.

In December of 2015, the U.S. Justice Department's Civil Rights Division announced that it would investigate CPD, responding to allegations of patterns of "racial disparity" in their use of force.⁹⁵ The resulting 2017 U.S. Justice Department's federal investigation⁹⁶ found that the CPD "routinely uses excessive force and violates the constitutional rights of residents, particularly those who are Black and Latin[x]."⁹⁷

This historic and ongoing pattern of police brutality, targeted violence, and surveillance reveals the systemic criminalization of Black people in Chicago designed to punish and intimidate with impunity. Research and data from the last century show that victims of the CPD's violent misconduct are disproportionately Black. Today, the CPD's violence and pervasive surveillance toward its Black community has not meaningfully changed.

III. Chicago Law Enforcement Violated Protestors' Human Rights, Targeted Human Rights Defenders, and Suppressed Protestors' Right to Assemble

A. Chicago Law Enforcement Violated the Rights of Expression, Association, Liberty, and Security of Person Through the Use of Excessive Force Against Human Rights Defenders

The United States is a party to the International Covenant on Civil and Political Rights (ICCPR) and is obligated to protect the human rights of its people.⁹⁸ The ICCPR guarantees the rights to expression, association, liberty, and security of person.⁹⁹ Additionally, the United States is a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).¹⁰⁰ The ICERD prohibits racial discrimination and defines it as:

⁸³ The Exoneration Project, *Breaking: 7th Mass Exoneration of Victims of Corrupt CPD Sgt. Ronald Watts*, Univ. of Chi. L. Sch., <https://www.exonerationproject.org/uncategorized/breaking-7th-mass-exoneration-of-victims-of-corrupt-cpd-sgt-ronald-watts/> (last visited Feb. 16, 2022).

⁸⁴ *Id.*

⁸⁵ *Man Shot by Police in 2011 Remembered at Vigil*, ABC 7 CHI. (Jan. 7, 2016) <https://abc7chicago.com/1150616/>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Rosa Flores, Madeleine Stix, & Anne Lagamayo, *Chicago Police Shooting Probe Re-opened*, CNN (Aug. 3, 2017, 9:00 PM), <https://www.cnn.com/2017/08/03/us/chicago-mcintosh-police-shooting/index.html>.

⁸⁹ *Id.*

⁹⁰ *Id.* As of Jan. 20, 2022, the Estate of Roshad McIntosh filed a Statement of Additional Facts the require the denial of D. City of Chi Motion for Summary Judgment. (*Lane v. City of Chicago et al.*).

⁹¹ *Timeline: Accusations CPD*, *supra* note 89.

⁹² Cheryl Corley, *The Officer Who Killed Laquan McDonald Is Free After Three Years. Activists Are Angry*, NPR Webez Chi. (Feb. 3, 2022), <https://www.npr.org/2022/02/03/1077574977/jason-van-dyke-chicago-police-released-laquan-mcdonald>.

⁹³ *Timeline: Accusations CPD*, *supra* note 73.

⁹⁴ Corley, *supra* note 93.

⁹⁵ Mark Berman, *Justice Dept. Launches Investigation into the Chicago Police Department's Use of Force*, WASH. POST (Dec. 7, 2015), <https://www.washingtonpost.com/news/post-nation/wp/2015/12/07/justice-dept-announces-civil-rights-investigation-into-chicago-police-department/>.

⁹⁶ *Investigation of the Chicago Police Department*, U.S. Dep't. of Justice Civil Rights Div. & U.S. Att'y's Off. N.D. Dist. of Ill. (Jan. 13, 2017), <https://www.justice.gov/opa/file/925846/download>.

⁹⁷ Berman, *supra* note 96.

⁹⁸ Int'l Covenant on Civ. and Pol. Rts., Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁹⁹ *Id.*

¹⁰⁰ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, December 21, 1965, U.N.T.S., 660 [hereinafter CERD].

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹⁰¹

Functioning as more than just a prohibition on racial discrimination generally, Article 5(b) of the ICERD specifically provides for the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.¹⁰² Article 5(d)(i) protects the right to freedom of movement within the border of a State, and Article 5(d)(viii) protects the right to freedom of opinion and expression. Furthermore, Article 5(d)(ix) protects the right to freedom of peaceful assembly and association, and Article 5(f) protects the right of access to any place or service intended for use by the general public.¹⁰³

Human rights defenders play a special role to protect the vulnerable and, therefore, States have an obligation to provide them with greater human rights protections.¹⁰⁴ Taken together, the ICCPR and ICERD directly prohibit Chicago law enforcement's treatment of BLM defenders working to combat racial injustice. Yet BLM defenders' human rights have been violated through law enforcement's systematic use of excessive force against protestors.

These patterns of abuse have led to the violation of the rights to expression, association, privacy, liberty, and security of person. Under Article 19 of the ICCPR, every person has the "right to hold opinions without interference," and "everyone shall have the right to freedom of expression."¹⁰⁵ This right shall include the "freedom to seek, receive, and impart information and ideas of all kinds."¹⁰⁶ Article 19 protects the ability of all persons to freely exchange ideas.¹⁰⁷ Due to the nature of the work that human rights defenders do – namely reporting on human rights abuses and providing a voice for vulnerable populations – their ability to share information and ideas is essential.¹⁰⁸ The protection of human rights is more meaningfully advanced when human rights defenders have the ability to share ideas and information with the rest of the population and the world.¹⁰⁹ Therefore, "[n]o restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary."¹¹⁰ Additionally, intimidation, violence, and criminalization of human rights defenders is particularly problematic since violation of their human rights further impedes their ability to protect the human rights of others, particularly vulnerable populations.¹¹¹

The United States, through its law enforcement personnel, is responsible for continuous, systemic, and disproportionate use of force against human rights defenders and protestors in support of the BLM movement. In May and June of 2020 alone, over 15 million people in the United States participated in protests and demonstrations against police brutality.¹¹² The protests held across the country were markedly interracial – a mixture of Black, Asian American, Latinx, and white faces – a departure from historical demonstrations which generally put people of different races on different sides of the conflict.¹¹³ In fact, nearly 95% of counties in the United States that had a protest were majority white.¹¹⁴ The 2020 protests united groups of all backgrounds with one common goal: to support the BLM movement in the battle against racial injustice. Unfortunately, these protestors became victims of violence by public and private law enforcement officials. Police officers indiscriminately engaged in violence against people of all races, ages, and backgrounds. Protestors were assaulted, tear-gassed, and shot with rubber bullets.¹¹⁵ Violence against them occurred nationwide but particularly in larger cities like Chicago that share a historically tumultuous relationship with racial injustice and police brutality.

Protestors and witnesses to the Chicago summer 2020 demonstrations have agreed on one fact – the police brutality, contact, and violence committed against human rights defenders rivaled that of the Civil Rights Era – which is especially egregious considering that the protests were against racial injustice, disproportionate use of force, and

¹⁰¹ *Id.*, at art. 1

¹⁰² CERD at Article 5(b), *supra* note 101.

¹⁰³ CERD at Article 5, *supra* note 101.

¹⁰⁴ Michael Frost (Special Rapporteur on the situation of human rights defenders) *Situation of Women Human Rights Defenders*, U.N. Doc. A/HRC/40/60 (Jan. 10, 2019) at para. 14.

¹⁰⁵ ICCPR, *supra* note 99.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*, at art. 19; see Hum. Rts. Comm., Commc'n No. 2158/2012, *Sviridov v. Kazakhstan* U.N. Doc. CCPR/C/120/D/2147/2012, at para. 10.2.

¹⁰⁸ See David Kaye (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression), U.N. Doc. A/HRC/38/35 para. 21 (Apr. 6, 2018) ("The Declaration also protects the right to develop and discuss new human rights ideas, allowing all people to be part of the progressive development of human rights ideas and to be actively engaged in setting new directions for the human rights project. This right recognizes that some of these new ideas may be culturally, religiously or politically controversial; it is precisely this potential for controversy that demands space for free and open discussion and debate.")

¹⁰⁹ *Sviridov v. Kazakhstan*, *supra* note 107.

¹¹⁰ ICCPR, *supra* note 99.

¹¹¹ *Id.*

¹¹² Buchanan et al., *supra* note 14.

¹¹³ Sugrue, *supra* note 7.

¹¹⁴ Buchanan et al., *supra* note 14.

¹¹⁵ Sugrue, *supra* note 7.

discrimination.¹¹⁶ The most violent protests in Chicago during the summer of 2020 occurred on May 30, July 17, and August 15. On each occasion, law enforcement officials, both public and private, committed an indiscriminate level of violence against protestors. CPD officers pepper sprayed crowds, used rubber bullets, and pushed, shoved, and punched protestors until they were incapacitated.¹¹⁷

During the first weekend of protests, particularly on May 30, the CPD committed unprovoked acts of violence. Despite the peaceful nature of the demonstrations in downtown Chicago, buses filled with police officers in riot gear surrounded protestors and began beating them.¹¹⁸ People were pepper sprayed, chased down the streets, thrown to the ground, hit with batons, and beat until they were bleeding.¹¹⁹ Teenagers were harassed and arrested, and older persons were shot in the face with tear gas.¹²⁰ Police officers smashed phones out of the hands of anyone who they witnessed recording the incidents.¹²¹

The police-led escalation of violence continued on July 17, when a crowd of nearly 1,000 protestors in support of Black and Indigenous people started marching at Buckingham Fountain. The crowd stopped near the Christopher Columbus statue in Grant Park and attempted to tear down the statue in protest.¹²² Rather than seeking to de-escalate the situation, police used pepper spray on the group multiple times, including on youth protestors. One eyewitness to the police violence described the incident, saying that police officers were “hitting people with batons” and “pushing them around.”¹²³ The eyewitness added that CPD officers were “stepping on bikes, trying to destroy them and steal them.”¹²⁴ Another eyewitness to the violence stated that he “witnessed a man with long brown hair being thrown to the ground by police; as he sat there, looking dazed, a cop walked over to him and cracked him in the head with a baton – the sound was disgusting.”¹²⁵ Lastly, a protestor stated that police officers took her sister’s goggles off – the goggles that were intended to protect her from pepper spray – and sprayed “directly into her eyes.”¹²⁶

However, the worst acts of police violence occurred on August 15, immediately following the police shooting in Englewood of 20-year-old Latrell Allen, a Black man.¹²⁷ The August 15 march was organized by youth groups, GoodKids MadCity and Increase the Peace. This protest began peacefully, but later escalated when CPD engaged in unnecessary violence by using tear gas and batons against the peaceful crowd.¹²⁸ Prior to the initiation of violence at the August 15 march, CPD officers – equipped with riot gear – confronted protestors with assault rifles, shields, mace, tear gas, rubber bullets, and batons.¹²⁹ This pre-emptive show of excessive force evidences a *de facto*¹³⁰ CPD policy to use violence to intimidate and suppress protestors, even during peaceful protests. The head of the CPD, Superintendent David Brown, claimed that the officers responded “proportionally” to “get the situation under control,” but reports from activists and witnesses state the opposite.¹³¹ The most serious uses of violence included police officers pepper spraying, beating, “kettling” (a controversial police tactic used to trap protesters), and threatening protestors – many of whom were minors.¹³² Police officers even destroyed protestors’ cell phones and bikes – eliminating their ability to communicate, document the incidents, or get away.¹³³ The CPD’s brutality can be witnessed in numerous videos of the violent clashes on news outlets and social media.¹³⁴ The march’s organizers have made public statements identifying the CPD and other law enforcement

¹¹⁶ Anonymous Zoom Interview (notes on file with UIC Law School International Human Rights Law Clinic).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Grace Del Vecchio & Colin Boyle, *Protestors Try To Tear Down Columbus Statue in Chicago As Clashes Between Police, Activists Turn Violent*, BLOCK CLUB CHI. (July 17, 2020, 10:47 PM), <https://blockclubchicago.org/2020/07/17/protestors-try-to-tear-down-columbus-statue-in-chicago-as-clashes-between-police-activists-turn-violent/>.

¹²³ Jim Daley et al., *supra* note 15.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Jamie Nesbitt Golden & Maxwell Evans, *Police Shot A Black Man In Englewood, Then Misinformation Spread Like Wildfire*, BLOCK CLUB CHI. (August 11, 2020, 10:00 AM), <https://blockclubchicago.org/2020/08/11/police-shot-a-black-man-in-englewood-then-misinformation-spread-like-wildfire/>.

¹²⁸ Paige Fry & Katherine Rosenberg-Douglas, *Accusations Fly Between Protestors and Police One Day After Violent Clash Injured Dozens*, CHI. TRIB. (August 16, 2020, 8:52 PM), <https://www.chicagotribune.com/news/breaking/ct-downtown-protests-violent-20200816-v7yrehiibnbkvpqxsijgz4cme-story.html>.

¹²⁹ Nesbitt Golden et al., *supra* note 127.

¹³⁰ See *De facto/De Jure*, WASH. U. SCH. OF L., <https://onlinelaw.wustl.edu/blog/legal-english-de-factode-jure/> (last visited Feb. 17, 2022) (explaining *de facto* is a state of affairs true in fact but that is not officially sanctioned).

¹³¹ Madeline Kenney & Matthew Hendrickson, *24 Arrested, 17 Officers Hurt in Loop Protest After Earlier, Separate March Fails to Take Dan Ryan*, CHI. SUN TIMES (August 15, 2020, 4:02 PM), <https://chicago.suntimes.com/2020/8/15/21370268/dan-ryan-protest-chicago-south-side-police-brutality-cpd>.

¹³² Nesbitt Golden et al., *supra* note 127.

¹³³ Jeremy Goner, *Dozens File Federal Suit Alleging Chicago Police Abuse at this Year's Protests Over the Death of George Floyd*, CHI. TRIBUNE (Nov. 19, 2020, 1:01 PM), <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-police-protesters-federal-lawsuit-20201119-dldtv7hw45ekxgisifvojt6l4-story.html>.

¹³⁴ Fry et al., *supra* note 128.

agencies as the aggressors – claiming that they began an all-out assault on protestors and even infiltrated protestors with undercover officers.¹³⁵

Chicago Mayor Lori Lightfoot sided with the CPD and praised police officers for “quickly” settling the protests that devolved into violence, even when activists and elected officials criticized Chicago police for using unnecessarily aggressive tactics.¹³⁶ For instance, a coalition of ten elected officials issued a joint statement condemning the CPD’s response to the protests on August 15, calling it a “continued escalation of surveillance, violence, and detention.”¹³⁷ The coalition is comprised of five Chicago Alderpeople, four Illinois Lawmakers, and the Cook County Commissioner.¹³⁸ Part of their statement reads:

Chicagoans have been told that it is necessary to spend 40% of the Chicago budget on police in order to prevent violence and promote public safety. Yet this weekend, just 24 hours after a 12-year-old boy was shot and at the same time as another shooting was taking place on the South Side, Mayor Lightfoot and Supt. Brown stationed thousands of officers downtown, where they kettled, pepper sprayed, and beat demonstrators – some of them as young as 17 years old.¹³⁹

Although the events on each of the three aforementioned dates (May 30, July 17, and August 15) were organized by different organizations and attended by different groups of protestors and human rights defenders, all three events share something in common – unnecessary violence at the hands of law enforcement committed against protestors. At each event, unarmed peaceful protestors were confronted by riot police with a variety of violent weapons at their disposal, ranging from guns, rubber bullets, mace and pepper spray, batons, shields, and armored vehicles.¹⁴⁰ Furthermore, Chicago police officers were witnessed (illegally) covering or removing their name tags, badges, and other identifiers while on duty at protests, making it nearly impossible for protestors to identify them.¹⁴¹ There are countless images of officers at protests without proper badges and identification, and, as of June 2020, at least 78 official complaints were filed against CPD officers for taking part in this practice.¹⁴² An additional 519 complaints, alleging various acts of misconduct by police officers, were filed with the Civilian Office of Police Accountability from May 29, 2020 to June 11, 2020.¹⁴³ For instance, one CPD officer was stripped of all police powers after photos of him giving two middle fingers to protestors were published online.¹⁴⁴ Other complaints included allegations of the possible infiltration of officers among protestors, another common practice in the history of protests in the United States.¹⁴⁵

B. Chicago Law Enforcement Weaponized City Infrastructure Through the Use of Kettling and Mass Arrest, Raising the Bridges, CTA Shutdowns, and Mandatory Curfews

Chicago law enforcement used kettling and mass arrest, raising the bridges, CTA shutdowns, and mandatory curfews to suppress BLM defenders’ right to expression, information, and association. As discussed in Subsection A, every person has the “right to hold opinions without interference” and the right to “seek, receive, and impart information and ideas of all kinds.”¹⁴⁶ These rights are exercised by all people, but are especially critical to human rights defenders whose work is to protect the human rights of others.¹⁴⁷ Given the nature of their work, States have an obligation to provide human rights

¹³⁵ Cate Cauguiran, Jesse Kirsch & Alexis Adams, *Protestors Demand Accountability From Chicago police, Mayor Lightfoot After Violence Clash With Police in Loop*, ABC7 NEWS (August 16, 2020), <https://abc7chicago.com/community-events/chicago-protesters-demand-apology-from-cpd-mayor-after-loop-clash/6372706/>.

¹³⁶ *Id.*

¹³⁷ Shelby Bremer, *10 Elected Officials Condemn Chicago Police Response to Protests*, NBC CHI., <https://www.nbcchicago.com/news/local/chicago-politics/10-elected-officials-condemn-chicago-police-response-to-protests/2323647/>, (Aug. 17, 2020, 12:53 PM).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Cate Cauguiran, Jesse Kirsch & Alexis Adams, *Protestors Demand Accountability From Chicago Police, Mayor Lightfoot After Violence Clash With Police in Loop*, ABC7 NEWS (Aug. 16, 2020), <https://abc7chicago.com/community-events/chicago-protesters-demand-apology-from-cpd-mayor-after-loop-clash/6372706/>.

¹⁴¹ Jonathan Ballew, *Chicago Police Investigating 78 Complaints of Officers Removing or Covering Badges During Protests*, CHI. REP. (June 11, 2020), <https://www.chicagoreporter.com/chicago-police-investigating-78-complaints-of-officers-removing-or-covering-badges-during-protests/>.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Fran Spielman, *Lightfoot: Fire Police Officers Who Flipped Off Protesters, Covered Nametags and Badges*, CHI. SUN TIMES, <https://chicago.suntimes.com/city-hall/2020/6/5/21281684/mayor-lori-lightfoot-fire-chicago-police-officers-who-flipped-off-protesters-covered-nametags-badges> (Jun. 5, 2020, 2:48 PM).

¹⁴⁵ See *supra*, Section II (explaining the United States has a long history of law enforcement agencies infiltrating political or social organizations. The FBI has infiltrated multiple organizations in the past decades in order to teach revolutionaries skills which they would later be arrested for. There is documentation of this during the FBI’s Counter-Intelligence Program, or COINTELPRO, that operated from 1956 to 1971. COINTELPRO was later terminated and rightfully criticized by Congress and the American people for abridging first amendment rights); Madhu Srikantha, *Undercover UCPD Detective Infiltrates Protest*, THE CHI. MAROON (March 2013), <https://www.chicagomaroon.com/article/2013/3/1/undercover-ucpd-detective-infiltrates-protest/>; COINTELPRO, FBI Records: The Vault (December 2020), <https://vault.fbi.gov/cointel-pro>.

¹⁴⁶ ICCPR, *supra* note 99.

¹⁴⁷ *Human Rights Defenders: Protecting the Right to Defend Human Rights*, U.N., 2, <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf> (last visited Jan. 30, 2022) [hereinafter *Human Rights Defenders*].

defenders with additional protections to ensure that their rights are not violated.¹⁴⁸ The right to peaceful assembly is integral for the ability to express dissent, and cannot be restricted unless the restriction is both necessary and in conformity with the law.¹⁴⁹ When the rights to expression, information, and association are curbed through state-sponsored or state-sanctioned actions, it results in the censorship and silencing of both activists and the public.¹⁵⁰

The CPD, Chicago Mayor Lightfoot, and other State and City officials suppressed protestors' ability to assemble by kettling and mass arrest, raising downtown Chicago bridges, shutting down public transit, and implementing a mandatory citywide curfew through private contracting with third-party security firms.¹⁵¹ Notably, several individuals we interviewed indicated such tactics were used during peaceful protests, and it was only afterward that looting began.¹⁵² Regardless, as described in detail below, policing that indiscriminately censors and silences the public – and in particular Black and Brown voices – is not only ineffective, it violates the human rights to expression, information, and association.

a. Kettling and Mass Arrest

In August 2020, the CPD and Illinois State Police Troopers kettled protestors in downtown Chicago.¹⁵³ As previously mentioned, kettling is a controversial method used by law enforcement involving police confinement of a group of demonstrators or protestors in a small area.¹⁵⁴ This term derives from the German military, and is used to describe an army completely surrounded by a much larger force.¹⁵⁵ Kettling occurs when police officers block off streets and encircle protestors so that they have no way to exit from a park, city block, or other public space, then charge at them and make mass arrests.¹⁵⁶ While protest and riot management traditionally focus on dispersing crowds, kettling focuses on containment – it elevates tension and conflict, rather than defusing it.¹⁵⁷ Instead of preserving the police call to serve and protect those exercising their right to peacefully protest, kettling is designed to incite fear and panic and justify mass arrest as a result.¹⁵⁸

This is exactly what occurred in downtown Chicago on August 15, 2020. The CPD intentionally turned a peaceful protest into a violent one by blocking protestors from marching onto the Dan Ryan Expressway with a wall of law enforcement officers.¹⁵⁹ Herds of officers in riot gear charged from multiple directions, trapping hundreds of protestors and journalists, making it impossible for them to exit the area and comply with the dispersal orders that the police were issuing.¹⁶⁰ Police officers violently assaulted the confined protestors making mass arrests.¹⁶¹ One protestor was “hit multiple times with a baton” and “was tear-gassed all while trying to escape the area.”¹⁶² She added that “the officers claimed that they didn’t want [protestors] there, but as [the protestors] tried to leave, they wouldn’t let [them].”¹⁶³ Other witnesses confirmed that the CPD issued an order to disperse, but did not give protestors a reasonable opportunity to leave.¹⁶⁴ CPD leaders declined to answer questions regarding the use of kettling or other uses of force that were deployed against protestors during the August 15 protests.¹⁶⁵ However, when Superintendent David Brown was asked about the CPD’s use of kettling during a press conference, he merely stated that he had not heard of “allegations that there was kettling going on.”¹⁶⁶

¹⁴⁸ Michael Frost (Special Rapporteur on the situation of human rights defenders) *Situation of Women Human Rights Defenders*, U.N. Doc. A/HRC/40/60 (Jan. 10, 2019) at para. 14.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Anonymous Interview.

¹⁵² *Id.*

¹⁵³ Kenney et al., *supra* note 131.

¹⁵⁴ Colin Groundwater, *What Is Kettling?*, GQ CULTURE (June 2, 2020), <https://www.gq.com/story/what-is-kettling>.

¹⁵⁵ *Id.*

¹⁵⁶ Ali Watkins, *'Kettling' of Peaceful Protestors Shows Aggressive Shift by N.Y. Police*, N. Y. TIMES (June 5, 2020), <https://www.nytimes.com/2020/06/05/nyregion/police-kettling-protests-nyc.html>.

¹⁵⁷ Groundwater, *supra* note 154.

¹⁵⁸ *Id.*

¹⁵⁹ Kenney et al., *supra* note 131.

¹⁶⁰ Statements by India Jackson, an organizer with GoodKids MadCity, one of the organizations that organized the protest on August 15, 2020. Justin Laurence, *At Tense Downtown Protest, Police 'Kettle' Activists – And Aldermen Have Questions*, BLOCK CLUB CHI. (August 17, 2020, 9:55 AM), <https://blockclubchicago.org/2020/08/17/at-tense-downtown-protest-police-kettle-activists-and-aldermen-have-questions/>.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Bremer, *supra* note 137; Notably, the City of Chicago has a turbulent history with the use of kettling to suppress protestors. In fact, the City was previously sued over kettling practices, reaching a \$6.2 million settlement in a class-action lawsuit over the use of the tactic to arrest more than 700 people at a protest against the Iraq War in 2003. See David Heinzmann, *City offers \$6.2 million to settle arrests at 2003 war protest*, CHICAGO TRIBUNE (Feb. 9, 2012, 2:11 PM), <https://www.chicagotribune.com/politics/chi-city-offers-62-million-to-settle-arrests-at-2003-war-protest-20120209-story.html>.

Kettled protestors were arrested on various charges, including resisting arrest, failure to disperse, breaking curfew, aggravated battery, and disorderly conduct.¹⁶⁷ Notably, most charges were later dropped. This demonstrates that CPD and the Illinois National Guard implemented a *de jure* policy of arresting protestors *en masse* to temporarily prevent them from protesting, and thereby exercising their fundamental rights of expression and assembly.¹⁶⁸ Charges were filed to penalize the protestors for exercising their rights and to discourage them from attending future protests.¹⁶⁹

To protect the rights of protestors, police departments across the country should adopt new measures to respond to demonstrations in a non-violent manner.¹⁷⁰ But instead, state lawmakers have passed (or attempted to pass)¹⁷¹ laws criminalizing and restricting the right to protest.¹⁷² According to a report by PEN America, 116 bills of this nature were proposed in state legislatures between 2015 and 2020.¹⁷³ As of now, 23 of those bills in 15 different states became law, and 12 bills are still pending.¹⁷⁴ By expanding the definition of “rioting,” these new laws allow individuals to be prosecuted merely for exercising their First Amendment rights.¹⁷⁵ They also protect the use of violence by police forces – a huge step in the *wrong* direction.¹⁷⁶

b. Raising the Bridges

In addition to kettling, the City of Chicago raised the bridges in the downtown area to restrict protestors’ free movement and to suppress people’s ability to properly protest.¹⁷⁷ After the protests (and incited looting) that occurred on Michigan Avenue in August of 2020, Mayor Lightfoot ordered most of the bridges downtown to be raised for the second time in three months.¹⁷⁸ The river bridges of downtown Chicago were thus weaponized for aggressive policing.¹⁷⁹ The goal was clear: to keep people out of the center of the City by cutting off access from the surrounding areas.¹⁸⁰ Mayor Lightfoot announced the bridges were raised to protect businesses and reassure residents, but longtime Chicago residents say they “can’t remember any other time where the bridges were raised in the name of crime prevention or public safety – it is basically saying that you’re protecting one part of the City from another part.”¹⁸¹ The image of the bridges being raised demonstrated a clear symbol of racial divide in Chicago. While people were protesting racial injustice and police brutality against Black Americans in one of the most racially and economically segregated cities in the country, bridges were made uncrossable “like drawbridges over a castle moat.”¹⁸² Bridges which connect the north and south sides of the City and the east to the west – sides that generally serve as representations for white wealth versus Black and Brown disinvestment.¹⁸³

c. CTA Shutdowns

Mayor Lightfoot repeatedly restricted access to downtown Chicago as a measure to “prevent looting and vandalism.”¹⁸⁴ For instance, on the evening of May 30 – following a violent clash between protestors and the CPD – City of Chicago authorities cancelled most public transportation services to the area, lifted most downtown bridges, and banned downtown parking.¹⁸⁵ Additionally, expressway ramps were closed¹⁸⁶ limiting entry to downtown to just five designated access points.¹⁸⁷ The City’s rationale behind restricting people’s access to downtown Chicago was that “the best way to

¹⁶⁷ Minvyonne Burke, *May 30 Coverage of Nationwide Unrest and Ongoing Protests*, NBC NEWS (May 30, 2020, 11:16 AM), <https://www.nbcnews.com/news/us-news/blog/george-floyd-death-nationwide-protests-live-updates-n1219376/ncrd1219621#blogHeader>.

¹⁶⁸ Anonymous Interview.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Anti-Protest Bills Around the Country*, ACLU (June 23, 2017), <https://www.aclu.org/issues/free-speech/rights-protesters/anti-protest-bills-around-country> (last visited Jan. 30, 2022).

¹⁷² Rev. Jimmie Hawkins, Langley Hoyt, Statement on the Criminalization of Protest, Presbyterian Church (June 30, 2020), <https://www.voterve.net/mobile/PCUSA/Campaigns/75534/Respond>.

¹⁷³ Naveena Sadasivam, U.S. States Have Been Trying to Criminalize Protests For the Past Five Years, ROLLING STONE (June 4, 2020, 11:42 AM), <https://www.rollingstone.com/politics/politics-features/u-s-states-have-been-trying-to-criminalize-protests-for-the-past-five-years-1009986/>.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Rev. Jimmie Hawkins, *supra* note 172.

¹⁷⁷ Whet Moser, *The Precedent for Cutting Off the Loop*, CHI. MAG. (August 12, 2020, 9:12 AM), <https://www.chicagomag.com/news/august-2020/chicago-riots-bridges-cta-closed/>.

¹⁷⁸ *Id.*

¹⁷⁹ Maya Dukmasova, *Lightfoot Turns City’s Infrastructure Into Weapons Against Protestors*, CHI. READER (November 18, 2020), <https://www.chicagoreader.com/chicago/lightfoot-bridges-protest/Content?oid=84346254>.

¹⁸⁰ Mick Dumke, *In Lori Lightfoot’s Chicago, Bridges Have Become Barricades*, PRO PUBLICA (August 14, 2020, 5:00 AM), <https://www.propublica.org/article/draft-bridges>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Dumke, *supra* note 180.

¹⁸⁵ *Id.*

¹⁸⁶ *Overnight Limited Access to Downtown Chicago Continues Saturday Night*, NBC CHI., <https://www.nbcchicago.com/news/local/overnight-limited-access-to-downtown-chicago-continues-saturday-night/2323058/>, (Aug. 15, 2020, 8:46 PM).

¹⁸⁷ Dumke, *supra* note 180.

secure an area is to limit who can get in.”¹⁸⁸ The access points were limited and guarded by Chicago Police officers and were difficult to pass, and residents and essential employees were required to show proof that they lived or worked in the area.¹⁸⁹

Mayor Lightfoot and other City officials ordered the shutdown – or limited service – of public transit multiple times over that summer, each time with insufficient notice.¹⁹⁰ The official rationale was to “prevent looting and vandalism,” but the shutdowns left many people stranded.¹⁹¹ After the first weekend of protests in May, all public transportation – CTA and Metra – were shut down for two days in a row.¹⁹² Both CTA and Metra announced the suspension of train and bus services online *on the day* the suspensions were set to begin.¹⁹³ Following these initial suspensions, public transit proceeded to shut down prior to prominent protests for the duration of the summer.¹⁹⁴ CTA and Metra began to announce shut downs *one hour in advance* of major protests by publicly disclosing the suspensions on Twitter.¹⁹⁵ Residents who rely on public transit as their source of transportation to their place of employment experienced hardships with the City’s lack of adequate notice.¹⁹⁶ Indeed, a petition was circulated demanding that the City provide at least *four hours’ notice* of service changes or shutdowns.¹⁹⁷

The shutdowns of public transit had a disproportionate impact on people of color.¹⁹⁸ While CTA use decreased during the pandemic, research demonstrates that Black and Latinx essential workers on the South and West sides of the City still relied on buses and trains for commuting.¹⁹⁹ The City has been repeatedly criticized for its tactics, with many arguing that the shutdown of public transit showed no concern for people’s safety or livelihoods.²⁰⁰ These restrictions had serious ramifications on people’s work commutes, health-care routines, and personal finances.²⁰¹ Essential workers without a vehicle or access to public transportation (or even access to bike-sharing services) were left with one option – walking – but with the increased presence of police officers on the streets, walking felt unsafe for most Black and Latinx residents and essential employees.²⁰² Ultimately, Mayor Lightfoot and City of Chicago officials were more concerned with protecting downtown businesses and the City’s wealthier residents than acknowledging the police violence that led to the protests in the first place.²⁰³

d. Mandatory Curfews

During the protests that took place in the summer of 2020, many major cities such as Los Angeles, Atlanta, Miami, New York, Dallas, Philadelphia, and Chicago imposed curfews.²⁰⁴ On May 30, 2020 – while thousands of people were protesting in the streets of downtown Chicago – the City announced that it would be imposing a citywide curfew, set to begin only half an hour later.²⁰⁵ Again, this lack of sufficient notice surprised and angered protestors who had very limited opportunity to find a way home in time.²⁰⁶ The City had raised all the bridges across the Chicago River except for one, shut down all CTA and Metra services in and out of the downtown area, and restricted nearly all access to downtown.²⁰⁷ In discussing the curfew announcement – which was made via Twitter and in the form of cell phone emergency alerts – Mayor Lightfoot stated that she believed 35 minutes was “ample notice.”²⁰⁸ She added that the curfew would help the CPD “be

¹⁸⁸ *Id.*

¹⁸⁹ Mayor Lori Lightfoot (@chicagosmayor), TWITTER (Aug. 10, 2020, 5:42 PM), <https://twitter.com/chicagosmayor/status/1292939488402931713>.

¹⁹⁰ Sun Times Staff, *CTA Shutting Down Bus and Train Services Sunday Night*, CHI. SUN TIMES, <https://chicago.suntimes.com/news/2020/5/31/21276051/lightfoot-limits-access-loop-curfew-protest-riots-chicago>, (May 31, 2020, 5:52 PM); Ariel Parrella-Aureli, *Buses, Trains Shouldn’t Be Shut Down If There Are Election Protests, Transit Advocates Say*, BLOCK CLUB CHI. (October 19, 2020, 9:00 AM), <https://blockclubchicago.org/2020/10/19/buses-trains-shouldnt-be-shut-down-if-there-are-election-protests-transit-advocates-say/>.

¹⁹¹ *Id.*

¹⁹² Sun Times Staff, *supra* note 190.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Parrella-Aureli, *supra* note 190.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Dukmasova, *supra* note 179.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Ben Pope, Sam Kelly, Mitchell Armentrout & Matthew Hendrickson, *Lightfoot Announces Curfew As Police SUVs Flipped, Set On Fire In Clashes with Rioters During George Floyd Protests in Downtown*, CHI. SUN TIMES, <https://chicago.suntimes.com/2020/5/30/21275575/chicago-protest-george-floyd-federal-plaza-loop-police-arrests>, (May 30, 2020, 11:44 PM).

²⁰⁵ Block Club Chi. Staff, *Live Updates: CTA Shutting Down Monday Night, Advocates Call on City Leaders To Crack Down On Police Brutality*, BLOCK CLUB CHI. (June 1, 2020, 9:30 PM), <https://blockclubchicago.org/2020/06/01/live-updates-chicago-shuts-down-cta-as-neighborhoods-looted-protests-continue-in-wake-of-george-floyds-killing/>.

²⁰⁶ Dukmasova, *supra* note 179.

²⁰⁷ Colleen K. Connell, *Chicago’s Curfew Was Illegal and A Mistake*, CHI. SUN TIMES (June 16, 2020, 4:05 PM),

<https://chicago.suntimes.com/2020/6/16/21293454/chicago-curfew-illegal-mistake-aclu-protests>.

²⁰⁸ *Id.*

aggressive in arresting,” stating that the police will merely “arrest those who don’t comply.”²⁰⁹ The pretext for the citywide curfew was public safety.²¹⁰ Yet the protestors stranded downtown experienced Lightfoot’s curfew as an unjust use of municipal infrastructure. The curfew was essentially a “kettling” tactic that paved the way for police officers to make countless arrests indiscriminately.²¹¹ The curfew lasted eight nights, ran from 9 p.m. to 6 a.m., and resulted in over 400 arrests.²¹²

Unsurprisingly, Mayor Lightfoot and City officials did not consider the effect that a CPD-enforced curfew would have on Black individuals.²¹³ The ACLU criticized Mayor Lightfoot and the City of Chicago, stating that the eight-night citywide curfew “enforced by the police in the wake of protests against police violence targeting Black people was unconstitutional and the wrong response.”²¹⁴ Moments after the curfew was announced, the ACLU expressed concerns that the curfew would be used to restrict constitutionally protected speech and protest, and that it would be disproportionately enforced against Black people.²¹⁵ The ACLU’s executive director stated that “the curfew basically gave the CPD *carte blanche* to continue over-policing people of color.”²¹⁶ Data regarding the arrests made for curfew violations validate both concerns.²¹⁷ Although Black people comprise just 30% of the population in Chicago, 75% of protestors arrested for alleged violations of the curfew were Black.²¹⁸ Data obtained through an information request confirms that 329 of the 440 people arrested – in only the first five days of the curfew – identified as Black.²¹⁹ This disparity is especially concerning given the racial diversity present at the protests,²²⁰ and taking into account that right-wing extremists and organizers present at the protests were far more violent – and more of a threat to public safety – than BLM protestors.²²¹ This truly demonstrates that with Chicago’s sordid history of racism, whenever police are given unfettered discretion to stop or arrest people,²²² Black people will inevitably bear the consequences.²²³

In addition to CPD enforcement of the curfew upon protestors, the City of Chicago acquiesced to private contracting firms – and private individuals to act as law enforcement.²²⁴ In fact, the City of Chicago paid over \$1.2 million to three private security firms – Monterrey Security, AGB Investigative Services, and Illinois Security Professionals – for over 100 private security guards to be dispatched across the city.²²⁵ The guards were primarily focused on the South and West sides of the City, notable because of the high Black and Latinx populations in these areas of Chicago.²²⁶ According to Mayor Lightfoot, the private guards were meant to be “another set of eyes and ears to support efforts to deter looting” and were not meant to be armed or have police powers.²²⁷ But in practice, the guards were acting like law enforcement officials.²²⁸ Numerous reports document the presence of private individuals wearing tactical vests without any identifying logos or insignias – armed with aluminum baseball bats and other weapons – patrolling the streets, enforcing curfew, telling protestors and even journalists (who qualified as ‘essential’ persons) to “go home.”²²⁹ Witnesses saw individuals armed with military grade weapons – with no patches or identifiers – standing alongside uniformed Chicago Police officers to guard retail stores and deter looting.²³⁰ These eye-witness accounts confirm that Mayor Lightfoot’s supposed restrictions on the private security guards were not adequately monitored or enforced, and that the guards were acting as law enforcement officials.

Protestors in Chicago during the summer of 2020 were faced with untold violence at the hands of City officials, Chicago Police, and other public and private law enforcement officials. At the three aforementioned protests – May 30, July 17, and August 15 – countless protestors of all ages were brutally attacked, injured, harassed, and arrested. Protestors’

²⁰⁹ Dukmasova, *supra* note 179.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Report: 75% of Chicago Curfew Violation Arrestees Were Black*, AP NEWS (June 14, 2020), <https://apnews.com/article/d882c5772aa9654251b1990ba3323edc> [hereinafter *Report: Curfew Arrests*].

²¹³ Connell, *supra* note 207.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Report: Curfew Arrests*, *supra* note 219.

²¹⁷ Connell, *supra* note 207.

²¹⁸ *Report: Curfew Arrests*, *supra* note 219.

²¹⁹ *Id.*; see also UNESCO, *Safety of Journalists Covering Protests*, World Trends in Freedom of Expression & Media Development (2020), <https://static.poder360.com.br/2020/09/unesco-violencia-jornalistas-protestos.pdf> (noting that journalists have a critical role in reporting and informing audiences on protest movements. For many years, UNESCO has been raising global awareness to ensure that they can do this safely and without fear of persecution, and training security forces and the judiciary on international norms in freedom of expression).

²²⁰ Connell, *supra* note 207.

²²¹ Ryan Devereaux, *Leaked Documents Show Police Knew Far-Right Extremists Were The Real Threat At Protests, Not “ANTIFA”*, THE INTERCEPT (July 15, 2020, 12:15 PM), <https://theintercept.com/2020/07/15/george-floyd-protests-police-far-right-antifa/>.

²²² Connell, *supra* note 207.

²²³ Devereaux, *supra* note 221.

²²⁴ *City of Chi. Paying Up To \$1.2 Million To Private Security Firms to Deter Looting*, NBC CHI., <https://www.nbcchicago.com/news/local/city-of-chicago-paying-up-to-1-2-million-to-private-security-firms-to-deter-looting/2285718/>, (June 6, 2020, 8:03 PM).

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Anonymous Interview.

²²⁹ *Id.*

²³⁰ *Id.*

personal property was damaged, and their movements restricted by law enforcement. Additionally, the City of Chicago and the CPD implemented numerous measures designed to suppress protestors, including kettling, raising the bridges, shutting down public transit, and a citywide curfew. The City cited public safety concerns as their primary reason behind the use of such disruptive measures, but critics of City officials accuse them of implementing these measures solely to justify mass arrest. Protestors were “guilty” of being in a particular place at a particular time – something Chicago Police and City officials wrongfully deemed criminal.²³¹

C. Chicago Law Enforcement Targeted and Abused NLG Legal Observers for Their Role at Protests as Human Rights Defenders

International human rights law “attaches particular importance to the special role of human rights defenders.”²³² Human rights defenders are identified by the actions they take to protect or further the protection of human rights.²³³ Anyone that defends human rights is considered a human rights defender, however, the most common examples of human rights defenders include lawyers, activists, organizers, protestors, journalists, nongovernmental organization (NGO) workers, and Legal Observers (LOs)²³⁴ who are also described as the “eyes and ears of the legal team.”²³⁵

Human rights defenders are not granted more rights, but rather, since human rights defenders are vulnerable based on the type of work they do, the State has an obligation to ensure that they are afforded heightened protections.²³⁶ States must take all necessary measures to ensure that human rights defenders are safe in “exercis[ing] the rights to freedom of opinion, expression, peaceful assembly and association, which are essential for the promotion and protection of [all] human rights.”²³⁷ States have a duty to “take all necessary measures to ensure the protection of human rights defenders²³⁸ against any violence, threats, retaliation, *de facto* adverse discrimination, pressure, or any other arbitrary action as a consequence of [their] legitimate exercise of their human rights.”²³⁹

BLM activists and LOs were among the protestors who suffered from the excessive force and abuse of police in Chicago during the summer of 2020.²⁴⁰ The “Legal Observer Program” is part of a comprehensive system of legal support by the National Lawyers’ Guild Mass Defense Committee designed to enable people “to express their political views as fully as possible without unconstitutional disruption or interference by the police and with the fewest possible consequences from the criminal justice system.”²⁴¹ The National Lawyers’ Guild (NLG) provides legal support for political activists, protestors, and movements for social change, generally by organizing and equipping LOs at protests and other events.²⁴² LOs are typically tasked with observing, recording, and reporting incidents and activities of law enforcement officers in relation to protestors.²⁴³ They are trained to document any arrest, use of force, intimidating display of force, denial of access to public spaces, and any other actions by law enforcement officers that appear to restrict demonstrators’ ability to express their views.²⁴⁴ The thorough reporting conducted by LOs has been successful in defending and advancing the rights of protestors, including in criminal trials and lawsuits against federal and local governments for their unlawful actions.²⁴⁵ As such, LOs are essential in enabling and facilitating protestors’ right to protest.²⁴⁶

During the widespread protests that took place in Chicago in the summer of 2020, NLG LOs attended the protests only to document police activity and ensure demonstrators’ rights.²⁴⁷ While at protests, LOs typically wore bright green hats and other paraphernalia with the label “NLG Legal Observer” in order to identify their role to other protestors, but

²³¹ *Id.*

²³² *E.g.*, Michael Frost (Special Rapporteur on the situation of human rights defenders) *Situation of Women Human Rights Defenders*, U.N. Doc. A/HRC/40/60 (Jan. 10, 2019) at para. 208.

²³³ *Id.*

²³⁴ *E.g.*, Michael Frost (Special Rapporteur on the situation of human rights defenders) *Situation of Women Human Rights Defenders*, U.N. Doc. A/HRC/40/60 (Jan. 10, 2019) at para. 4; see also What Is A Legal Observer?, Green & Black Cross, <https://greenandblackcross.org/guides/what-is-a-legal-observer/> (last visited Feb. 17, 2022) (defining legal observers as trained volunteers who support the legal rights of activists. They provide basic legal guidance and are independent witnesses of police behavior at protests. Legal Observers are typically law students, legal workers, and lawyers who may or may not be locally licensed).

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Aliyev v. Azerbaijan*, *supra* note 5; see also G.A. Res. 53/144, *supra* note 5.

²³⁸ The term ‘human rights defenders’ includes activists, organizers, protestors, journalists, Legal Observers, lawyers, and others.

²³⁹ *Human Rights Defenders*, *supra* note 163.

²⁴⁰ *Police Targeting NLG Legal Observers at Black Lives Matter Protests*, NAT’L LAWYERS’ GUILD (June 7, 2020), <https://www.nlg.org/police-targeting-nlg-legal-observers-at-black-lives-matter-protests/>, [hereinafter *Police Targeting NLG*].

²⁴¹ *NLG Legal Observer Program*, NAT’L LAWYERS GUILD, <https://www.nlg.org/legalobservers/> (last visited Jan. 30, 2022).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Police Targeting NLG*, *supra* note 240.

unfortunately this made them an easy target for police.²⁴⁸ Reports from NLG chapters in multiple cities, including Chicago, show that the police were intentionally targeting LOs.²⁴⁹ Prior to being grabbed from the back and forcibly arrested, one LO heard an officer exclaim, “get the girl in the green hat!” Another LO was physically detained by a group of police officers who referred to his legal observation as “suspicious activity” and “harassment” and attempted to confiscate his notes. Other LOs were physically assaulted and pepper sprayed by police and were told that their “credentials would not protect them.”²⁵⁰

Multiple LOs were arrested, attacked, injured, and tear gassed while monitoring the demonstrations against racialized police brutality.²⁵¹ LOs reported accounts of police attacking people with batons and bicycles, running protestors down with horses and police vehicles, and freely deploying tear gas, pepper spray, rubber bullets, and flash-bang grenades.²⁵² LOs were also detained or arrested for monitoring protests after the initiation of (arguably illegal) curfews in Chicago.²⁵³ The majority of the charges brought against LOs include disorderly conduct, resisting arrest, failure to disperse, and breaking curfew.²⁵⁴ The National Lawyers’ Guild has strongly condemned these attacks on LOs, calling CPD’s behavior “unacceptable and unnecessary.”²⁵⁵

IV. Chicago Law Enforcement Uses Modern Surveillance Technology to Monitor and Control Human Rights Defenders

According to Article 17 of the ICCPR, “no one shall be subjected to arbitrary or unlawful interference with his privacy...”²⁵⁶ Violations of Article 17 occur when law enforcement agencies hinder a person’s rights by interfering with their private information. The technology used by CPD violates the privacy provision of the ICCPR. Article 2(1)(a) of the ICERD provides that State parties are obligated to avoid all conduct that racially discriminates against “persons, groups of persons, or institutions, national or local.”²⁵⁷ The historic and systematic practice of using this technology against the Black community violates the ICERD.²⁵⁸

Modern technology has been used in Chicago for many years to surveil and suppress protestors and human rights defenders. Such technology ranges from devices that let out deafening sounds during protests, to equipment that gathers nearby cellular phone data.²⁵⁹ Many other forms of technology are not publicized. Instead, the CPD conceals it from the public to avoid scrutiny. The methods of surveillance used by CPD violate international human rights, such as the ICCPR.

ShotSpotter has been used as a form of surveillance by CPD for many years. ShotSpotter is a sound detection system to detect gunshot sounds.²⁶⁰ The technology itself records and filters all sound in an area to isolate gunshots; however, all audio that is captured is stored, seriously threatening privacy.²⁶¹ The City of Chicago has one of the largest contracts for ShotSpotter technology, and designated employees are tasked with listening for gunshots and sending Chicago Police Officers to the general area where the noise occurred.²⁶² However, ShotSpotter is prone to error in urban settings due to skyscrapers, insufficient microphones, and many noises that mimic gunfire (like cars backfiring or dogs barking).²⁶³ According to a new study conducted by the MacArthur Justice Center at Northwestern Law, of all ShotSpotter deployments by CPD, “89% turned up no gun-related crime and 86% led to no report of any crime at all.”²⁶⁴ Based on this information, “there were more than 40,000 dead-end ShotSpotter deployments.”²⁶⁵ Instead of effectively addressing real

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵² *NLG Condemns Violent Police Response to Black Lives Matter Protests Nationwide*, NAT’L LAWYERS’ GUILD (June 1, 2020), <https://www.nlg.org/nlg-condemns-violent-police-response-to-black-lives-matter-protests-nationwide/>.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ ICCPR, *supra* note 99.

²⁵⁷ CERD at Article 2(1)(a), *supra* note 101.

²⁵⁸ *Id.*

²⁵⁹ *Stingrays and the Chicago Police Department*, ACLU IL. (Oct. 7, 2019), <https://www.aclu-il.org/en/publications/stingrays-and-chicago-police-department#:~:text=First%2C%20law%20enforcement%20agencies%20may,is%20engaged%20in%20a%20crime> [hereinafter *Stingrays CPD*]; aaroncync, *Chicago Police Demonstrate LRAD*, CHICAGOIST (May 15, 2012, 2:00 PM), https://chicagoist.com/2012/05/15/chicago_police_demonstrate_lrads.php.

²⁶⁰ Joey Cavise & Richard Gutierrez Interview (UIC Law School International Human Right Clinic) Oct. 27, 2020.

²⁶¹ *Id.*

²⁶² Joey Cavise & Richard Gutierrez Interview (UIC Law School International Human Right Clinic) Feb. 22, 2021.

²⁶³ *Id.*

²⁶⁴ Patrick Elwood, *Study: ShotSpotter Technology Led To Over 40k Dead-end CPD Deployments in 21 Months*, WGN WEB DESK, <https://wgntv.com/news/chicago-news/study-shotspotter-technology-led-to-over-40k-dead-end-cpd-deployments-in-21-months/>, (May 3, 2021, 9:49 PM).

²⁶⁵ *Id.*

gun violence, when officers are deployed because of ShotSpotter, “it creates a powder keg situation for residents who just happen to be in the vicinity of a false alert.”²⁶⁶

This inaccurate and ineffective surveillance is directly tied to acts of violence committed by the police against civilians, such as in the shooting and killing of 13-year-old Adam Toledo.²⁶⁷ Police arrived on the scene after a ShotSpotter notification went off alerting them of a gunshot.²⁶⁸ Upon arrival, police shot and killed 13-year-old Adam Toledo.²⁶⁹ The Civilian Office of Police Accountability essentially shielded the officers who killed Toledo from facing serious consequences.²⁷⁰ The main outcome of Toledo’s murder was a proposal for Chicago Mayor Lightfoot’s office to review CPD’s foot pursuit practices.²⁷¹ Protests occurred all over the nation in outcry of Toledo’s murder.²⁷² Despite activists protesting the use of ShotSpotter for its correlation with police violence in Black neighborhoods, Chicago Police renewed its three-year contract with ShotSpotter in August 2021 for \$33 million.²⁷³

Stingray technology is another form of surveillance used by CPD to monitor protestors and activists. Stingrays are devices that are used to gather all data from the cellular phones of individuals who are close to the device.²⁷⁴ The CPD purchased this technology in 2018, but thus far, the public has not been informed as to how the department is using it.²⁷⁵ According to Illinois law, agencies must have a warrant to use Stingray technology and even with a warrant can only use it to locate or identify a specific person.²⁷⁶ It is unclear whether CPD is using Stingray technology in accordance with Illinois law.²⁷⁷ Little transparency exists with CPD’s use of this technology, indeed, our FOIA request was denied in its entirety.²⁷⁸ Throughout our investigation, we discovered it is nearly impossible to obtain any information about Stingray technology or how it is used by the CPD.²⁷⁹

Another type of technology, known as Long Range Acoustic Devices (LRADs), has been used across the country and is highly controversial. Nearly a decade ago in 2013, Chicago purchased two LRAD devices for \$20,000 each.²⁸⁰ The City reasoned that they were purchased to relay messages in a more effective way during large events.²⁸¹ However, the technology is not limited to projecting information. It can also release a loud, deafening sound to any individual within a thousand feet of it.²⁸² LRADs are used by cities to control protestors and “emit pain-inducing sound waves up to 150 decibels.”²⁸³ LRADs have frequently been used for protest suppression in the City of Chicago. Interestingly, the technology was originally used by the U.S. military in overseas armed conflicts.²⁸⁴

The inappropriate use of LRADs on protestors has been the subject of recent litigation across the country. In 2014, at a BLM protest in New York City, the New York City Police Department (NYPD) used its LRAD devices against protestors, and were sued for doing so.²⁸⁵ The United States Court of Appeals for the Second Circuit held that using LRAD technology can lead to Fourteenth Amendment violations.²⁸⁶ The holding further prohibited NYPD officers from claiming qualified immunity when it pertains to the use of LRADs.²⁸⁷ Additionally, cities have reached settlements related to injuries sustained from LRAD technology. For example, Pittsburgh paid a \$72,000 settlement to a woman who suffered permanent hearing loss as a result of the Pittsburgh Police Department’s use of LRAD technology.²⁸⁸ According to first-hand accounts of LOs

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ Jessica Goldstein, *Chicago Police Refuse to Give Answers about Killing of 28-Year-Old Turrell Brown*, WORLD SOCIALIST WEBSITE (Sept. 21, 2021), <https://www.wsws.org/en/articles/2021/09/22/brow-s22.html>.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ Mauricio Peña, *Activists Want City to Cut Ties With ShotSpotter- But Chicago Police Already Extended Its Contract two More Years*, BLOCK CLUB CHI., (Aug. 23, 2021, 7:55 AM), <https://blockclubchicago.org/2021/08/23/activists-want-city-to-cut-ties-with-shotspotter-but-chicago-police-already-extended-its-contract-two-more-years/>.

²⁷⁴ *Stingrays CPD*, *supra* note 259.

²⁷⁵ *Id.*

²⁷⁶ *Id.*; Citizen Privacy Protection Act, 725 ILCS 137/10.

²⁷⁷ *Id.*

²⁷⁸ FOIA Response from CPD.

²⁷⁹ *Id.*

²⁸⁰ *Stingrays CPD*, *supra* note 259.

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Chicago Police Sound Cannon: LRAD ‘Sonic Weapon’ Purchased Ahead of NATO Protests*, HUFFINGTON POST, https://www.huffpost.com/entry/chicago-police-sound-cannon-lrad-nato-summit_n_1518322 (May 16, 2012).

²⁸⁴ *Id.*

²⁸⁵ Alex Pasternack, *Piercing Sound Can Be Excessive Police Force, Federal Court Rules*, FAST COMPANY (June 14, 2018)

<https://www.fastcompany.com/40585221/piercing-sound-can-be-excessive-police-force-federal-court-rules>; *Edrei v. Maguire*, 892 F.3d 525 (2nd Cir. 2018).

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

present at the Chicago protests in the summer of 2020, protestors believe that at least one LRAD was present. The presence of LRADs at the Chicago protests demonstrates CPD's willingness to use proven dangerous technology on protestors.

Finally, there is a City of Chicago law enforcement team uniquely focused on surveilling individuals through social media. Using technology known as SOMEX (Social Media Exploitation), the team works within the CPD to monitor social media content and detect what they consider "illegal activity."²⁸⁹ The CPD used this technology to follow the BLM protests during the summer of 2020.²⁹⁰ According to an arrest report filed by CPD, the SOMEX team's surveillance led to the apprehension of an individual in connection with a backpack stolen from the Gucci store in downtown Chicago in August 2020.²⁹¹ The backpack was posted for sale on the website OfferUp, where the SOMEX team identified it as a looted item from the Gucci store.²⁹² The SOMEX team discovery led to the individual's arrest.²⁹³ Arguably, the individual's "reasonable expectation of privacy" was violated by the SOMEX team's surveillance.²⁹⁴ Although SOMEX is independent from CPD, the technology furthers CPD's ability to surveil individuals online and has likely contributed to the criminalization of Black and Brown communities.

The examples of surveillance technology discussed above are just a few examples of surveillance tactics used by the City of Chicago. They do not encompass the vast array of surveillance mechanisms used against protestors, activists, or defenders.²⁹⁵ As the City of Chicago becomes more sophisticated with its surveillance techniques, there is an increased risk of the violation of the right to privacy of Black and Brown communities. Given the clear human rights to privacy and freedom from discrimination, light must be shed on these practices until change is brought to the City of Chicago, the CPD, and other cities and law enforcement departments across the country.

VI. Conclusion

To this day, two years after the events described in this report, the CPD continues to use abusive tactics and modern technology to persecute the Black community and target human rights defenders, particularly those within Black and Brown communities. The CPD has repeatedly violated BLM defenders' rights to expression, association, liberty, security of person, privacy, and freedom from racial discrimination. Through the use of kettling, mandatory curfews, raising the bridges, and CTA shutdowns, coupled with mass arrest, Chicago law enforcement has weaponized the City's infrastructure against Black and Brown communities. Rather than protecting the right to peacefully protest, the CPD has incited violence and employed brutality against those defending against racial discrimination.

The use of technology surveillance of BLM protestors has expanded since the 2020 protests. Recently, it has been exposed that body cameras worn by Chicago police officers can record and collect biometric information of protestors which can be used for real time surveillance through facial recognition.²⁹⁶ The CPD has spent hundreds of thousands of dollars on computing infrastructure over the years, and in 2012 requested \$2 million to develop facial recognition technology.²⁹⁷ Yet Chicago has no public policy governing law enforcement's use of facial recognition.²⁹⁸ Now, CPD can run facial recognition searches against a mug shot database.²⁹⁹ It is unclear if police are required to have reasonable suspicion to run a search, and whether the CPD filters its mugshot database to eliminate people who were never charged, had charges dropped or dismissed, or were ultimately found innocent.³⁰⁰ Additionally, the FBI can request facial recognition searches of 43 million Illinois driver's license and ID photos, creating a virtual line-up of their state residents.³⁰¹

²⁸⁹ Special Order S03-02-01, Strategic Decision Support Centers: Operations and Accountability, Chi. Police Dep't (July 26, 2019).

²⁹⁰ Interview (UIC Law School International Human Rights Clinic).

²⁹¹ Chi. Police Dep't Arrest Rep. R. at 3 (Nov. 9, 2020).

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Freedom of Expression and the Internet, (Dec. 31, 2013); General Comment 16, provides that interferences "provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances (emphasis added)."

²⁹⁵ In his personal capacity, Michael Buresh submits FOIA requests in order to get information about the technology that CPD uses. Based on his findings, CPD has an automated license plate reader program in place that are branched out to all Illinois agencies. Similarly, CPD has a contract with Vigilant Solutions that host the plates on a server so all of the information can be shared with the Illinois State Police. There are also documents obtained through a FOIA request that explain the CPD's facial recognition policy.

²⁹⁶ Claire Garvie et al., *The Perpetual Line-Up: Unregulated Police Face Recognition in America*, GEORGETOWN L. CTR. ON PRIV. & TECH. (Oct. 18, 2016), <https://www.perpetuallineup.org/sites/default/files/2016-12/The%20Perpetual%20Line-Up%20-%20Center%20on%20Privacy%20and%20Technology%20at%20Georgetown%20Law%20-%2020121616.pdf>

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

In addition to the evolving use of technology to surveil Black and Brown communities, Chicago law enforcement has further demonstrated its racially discriminatory policies and practices through its support of John Catanzara to head the City's chapter of the Fraternal Order of Police (the CPD union).³⁰² Elected in May of 2020, in his first year of office, Catanzara's many critics say he has repeatedly positioned himself and the union to promote violence and systemic racism.³⁰³ Catanzara has suspended officers who show support for the BLM movement.³⁰⁴ He has also defended rioters who stormed the Capitol in January 2021.³⁰⁵ He even stated that the officer who killed 13-year-old Adam Toledo was "heroic."³⁰⁶ Notably, he has been the subject of 50 complaints throughout his 23-year span as an officer.³⁰⁷ Catanzara was subjected to a termination hearing in November 2021 after social media posts emerged including one in which he refers to Muslim people as "savages" who "all deserve a bullet."³⁰⁸ Rather than face termination, Catanzara retired on the first day of the hearings and announced his candidacy for Mayor of Chicago.³⁰⁹

Increasing police presence to stop activists from protesting law enforcement-based human rights violations and patterns of abuse against Black Americans and human rights defenders is nothing new. Racially discriminatory policies and practices will continue until Chicago City officials and law enforcement are held to account. Effective accountability is difficult in the face of systematic prejudicial and discriminatory law enforcement methods like kettling, raising bridges, citywide curfews, and mass arrests.

The abusive approach employed by CPD during the summer of 2020 in response to BLM protests must be understood in the historical context of repeated and systematic violation of the Black and Brown communities' right to expression, association, liberty, security of person, privacy, and freedom from racial discrimination. The City's repression of human rights defenders has played a role in silencing those voices and preventing the movements from growing and becoming more effective. Two years later, Black and Brown communities in Chicago and across the country have yet to see the systemic change that massive numbers of people were advocating for. Although the protests occurred nearly two years ago, the continuous use of police brutality and surveillance of activists has yet to stop. Allowing the CPD and other law enforcement to continue to engage in these practices with impunity further endangers human rights. Changes must be made to protect and preserve the human rights of Black and Brown communities. This change must be made in Chicago, as well as the rest of the United States where Black and Brown communities continue to have their human rights violated.

³⁰² Sam Charles, *Chicago Police Union Choses New President in Runoff Election*, CHI. SUN TIMES, <https://chicago.suntimes.com/news/2020/5/8/21252822/chicago-fraternal-order-police-union-new-president-election-catanzara-graham>, (May 9, 2020, 4:34 PM).

³⁰³ Emanuella Evans & Adeshina Emmanuel, *Analysis: Here's How Chicago's Most Powerful Police Union Preserves Tradition of Problematic Leadership*, INJUSTICEWATCH (Sept. 13, 2021), <https://www.injusticewatch.org/news/2021/analysis-heres-how-chicagos-most-powerful-police-union-maintains-tradition-of-problematic-leadership/>.

³⁰⁴ In 2020, after John Catanzara, the lodge president promised to suspend or even dismiss from the union any officer who knelt during protests. In response, Chicago police Officer Carmella Means, who is Black, took a knee in uniform with one arm raised outside of the union's headquarters during her lunch break. "Kneeling to take a stand against racism, injustice and police brutality." As a result, Means was suspended for challenging the organization. She appealed to the state FOP office, but was denied. She also notified the union's national office; Annie Sweeney, *Punished By FOP For Kneeling In Protest, Chicago Police Officer Fights To Have Suspension Reversed On Principle*, CHI. TRIBUNE (Oct. 6, 2021, 1:09 PM), <https://www.chicagotribune.com/news/criminal-justice/ct-met-fop-suspension-officer-protest-20211006-clzni3yucvlg5jjsicqyk3dpcq-story.html>.

³⁰⁵ Jeremy Gorner & Alice Yin, *Cook County State's Attorney Kim Foxx Calls on Chicago Police Union Boss To Resign For Comments Downplaying Mob Attack On US Capitol After He Apologizes*, CHI. TRIBUNE (Jan. 8, 2021, 5:08 PM), <https://www.chicagotribune.com/news/criminal-justice/ct-catanzara-fop-capitol-riot-apology-20210108-h4rnwz2inbggrhwbqghv5e73za-story.html>.

³⁰⁶ Evans et al., *supra* note 303.

³⁰⁷ Lauren Cole, *Catanzara: 23 Years of Misconduct Complaints and Social Media Controversies*, CHI. JUST. PROJECT (July 13, 2021), <https://chicagojustice.org/2021/07/13/john-catanzara-misconduct-social-media/>.

³⁰⁸ Tom Schuba, *Controversial Chicago Police Union Leader, Facing Possible Dismissal, Says He Will Quit the Department and Run for Mayor*, CHI. SUN TIMES, <https://chicago.suntimes.com/news/2021/11/15/22784118/john-catanzara-retirement-chicago-police-mayor>, (Nov. 15, 2021, 8:36 PM).

³⁰⁹ *Id.*