

**IN THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

Michael Brown and Lezley McSpadden,

Petitioners,

v.

United States of America,

Respondent–State.

Final Written Observations

Case No. 15.169

Submitted August 9, 2024

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I. Introduction

In accordance with a letter sent by the Honorable Inter-American Commission on Human Rights (“the Commission” or “Honorable Commission”) dated June 28, 2024, we write to submit the Petitioners’ final written observations regarding the merits hearing convened by the Commission in *Michael Brown and Lezley McSpadden vs. United States* (Case No. 15.169).

Petitioners have alleged that the State is responsible for the following violations: Article I: right to life, liberty and personal security for arbitrarily killing Mike Brown; Article II: right to equality before the law for the racial discrimination that plagued the Ferguson Police Departments policing practices, Officer Darren Wilson’s unlawful stop and murder of Mike Brown, and the State’s myriad flawed investigations; Article V: right to protection of honor, personal reputation, and private and family life in disparaging the victims Mike Brown and Lezley McSpadden; Article XVIII: right to a fair trial and judicial protection for the failure of the Ferguson Police Department, former St. Louis County Prosecutor Robert McCulloch, the Department of Justice, and current St. Louis County Prosecutor Wesly Bell to conduct serious, thorough, and impartial investigations; Article XXV: right of protection from arbitrary arrest in the decision to detain Mike Brown on arbitrary grounds; and Article XXVI: right to due process of law for failure to use an objectively fair process of investigation.

The date of this filing, August 9, 2024 marks the ten-year anniversary of Mike Brown’s death. In the last decade, the State has utterly failed to take sufficient measures to prevent police violence, especially extrajudicial killings of Black people. This was true in 2014 when the State’s failure to prevent police violence fostered a culture of impunity in which Officer Darren Wilson (“Officer Wilson” or “Wilson”) murdered Mike Brown (“Mike”). It is also true today as evidenced by the fact that police killed more people in 2023 than any year previously recorded, and at the time of writing this brief communities have just witnessed the high profile extrajudicial execution of Sonya Massey in Illinois.¹

As Petitioners’ brief will show, the State has failed to fully and impartially investigate Officer Wilson’s murder of Mike Brown. The Ferguson Police Department (“FPD”) took

¹ Sam Levin, *2023 Saw Record Killings by US Police. Who is Most Affected?*, The Guardian (Jan. 8, 2024), <https://www.theguardian.com/us-news/2024/jan/08/2023-us-police-violence-increase-record-deadliest-year-decade> (hereinafter “Levin”);

Amy Goodman & Denis Moynihan, *Justice for Sonya Massey, Say Her Name*, Democracy Now (Aug. 1, 2024), https://www.democracynow.org/2024/8/1/justice_for_sonya_massey_say_her.

no meaningful steps to hold Officer Wilson accountable. Former St. Louis County Prosecutor Bob McCulloch conducted a fundamentally flawed and irredeemably biased investigation and grand jury process. The U.S. Department of Justice (“DOJ”) failed to conduct a credibly independent investigation, and instead issued a deeply flawed report that was designed to persuade the public that Officer Wilson’s conduct was justified. Current St. Louis County Prosecutor Wesley Bell abdicated his responsibility to conduct a fresh and independent investigation, and instead, fueled by his personal political ambition, decided not to re-open the case. Across every single flawed investigation, the State has trampled or outright denied Lezley McSpadden’s rights to access to justice, truth, transparency, participation, and information, in some cases espousing overt racial discrimination at the moment they deprived her of these fundamental human rights.

The result is nothing short of blanket impunity for Officer Wilson, who has not faced a single form of accountability—administratively, civilly, criminally, or otherwise.

International law is clear that the mere existence of domestic laws, investigations, and other accountability mechanisms alone are insufficient to satisfy the State’s legal obligations. As the Commission has held, these processes must be adequate and effective.²

In the present case, the United States argues for a legal standard so low, in order to assert its compliance with international law, that it would result in systematic and ongoing serious human rights violations.

The State confuses the fact that it has taken *some* meager steps to prevent racist policing and police violence in the country, with its international legal obligation to undertake serious and *sufficient* efforts to address its culture of impunity. The State expressly confuses the fact that *some* form of an “investigation” into the murder of Mike Brown took place, with its international legal obligation to conduct a *substantive* investigation that is serious, thorough, impartial and in line with international standards to establish the truth. The State expressly confuses the fact that *some* laws, policies, and mechanisms exist to remedy violations of racist policing and police violence, with its international legal obligation to ensure *adequate* and *effective* laws, policies, and mechanisms exist to hold perpetrators accountable and provide reparations to victims and survivors.

² IACHR, *Police Violence Against Afro-descendants in the United States*, OEA/Ser.L/V/II. Doc.156/18 (2018), paras. 6, 9, and 313 (hereinafter “IACHR Police Violence”)

This brief of Petitioner’s Final Observations will accordingly address the merits arguments put forth by the State in the Hearing on the Merits held by the Inter-American Commission on July 10, 2024, the Commission’s questions posed to Petitioners at the Hearing on the Merits, and the State’s Brief of “Further Observations”, including over 1,000 pages of annexes, submitted on July 5, 2024 in support of the hearing.

II. Summary of Facts

On August 9, 2014, Darren Wilson, a white police officer, shot and killed Mike Brown, an unarmed Black teenager. At approximately noon, Mike Brown was walking down a small street near his grandmother’s apartment complex in Ferguson, Missouri—a suburb right outside of St. Louis—with a friend, Dorian Johnson, when they were approached by Officer Wilson.³ According to Dorian, the closest witness to the afternoon’s events, the officer approached them in his SUV police vehicle, told them to “get the fuck onto the sidewalk.”⁴

Mike Brown and Officer Wilson exchanged a few words, but Mike and Dorian quickly disengaged and walked away. Officer Wilson then turned his vehicle perpendicular to the street, blocking Mike and Dorian’s walking path. As Officer Wilson exited his patrol car, he hit Mike’s body with the driver door.⁵ Witnesses assert the two then began to scuffle.⁶ Officer Wilson immediately resorted to using deadly force and attempted to draw his gun.⁷ Wilson declined to use non-deadly force, like his mace, baton, or flashlight.⁸ Although a taser was a reasonable alternative for Wilson to use, he “usually elect[s] not to carry one.”⁹ The only weapon that Officer Wilson made immediately available to himself was the most fatal—his firearm. Officer Wilson initiated the unnecessary and heated altercation near his police car while Mike stood at the window of the vehicle; but when the officer fired two shots, one of which penetrated Mike’s thumb, Mike ran away.¹⁰

³ *What Happened in Ferguson?*, N.Y. Times (Aug. 10, 2015), <https://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html>.

⁴ Trymaine Lee, *Eyewitness to Michael Brown Shooting Recounts His Friend’s Death*, MSNBC News (Aug. 12, 2014), <http://www.msnbc.com/msnbc/eyewitness-michael-brown-fatal-shooting-missouri> (hereinafter “Lee”).

⁵ U.S. Department of Justice, *Department of Justice Report Regarding the Criminal Investigation Into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson* 6 (2015) (hereinafter “Brown Report”).

⁶ *See supra* n.3.

⁷ *See Missouri v. Darren Wilson*, Tr. of Grand Jury Testimony (hereinafter “Grand Jury Testimony”), Volume V at 214. All volumes of released grand jury transcripts are available here, <https://apps.stlpublicradio.org/ferguson-project/evidence.html>.

⁸ *Id.* at 213–214.

⁹ *Id.* at 205.

¹⁰ *See supra* n.3.

According to multiple witnesses, Officer Wilson chased Mike on foot. Witnesses also contend that Brown raised his hands in a surrendered position—his wounds are consistent with this account—as he begged the officer not to shoot. Despite his pleas in surrender, Officer Wilson fired his weapon. No witness reported that the officer gave Mike orders before killing him.¹¹

Following his murder, Mike Brown’s body was left uncovered in the middle of the street that runs through the Canfield Green Apartments, a densely populated apartment complex, for over four hours.¹² Officer Wilson made no effort to resuscitate Mike, nor did he call for an ambulance.

After a series of fatally flawed investigations and discriminatory treatment of Lezley McSpaden, the State has allowed Officer Wilson to escape all forms of accountability.

III. Officer Wilson Unlawfully Stopped, Detained, and Killed Mike Brown in Violation of Articles I and XXV of the American Declaration

As Petitioners detailed in our Merits Brief, Officer Wilson violated U.S. law and article XXV of the American Declaration by unlawfully stopping and detaining Mike Brown on August 9, 2014.¹³ The State’s only argument against this claim is that the DOJ did not find that Officer Wilson’s actions violated U.S. law in its one-sided report regarding the federal criminal investigation into the shooting (“the Brown Report”), which omitted relevant evidence that Wilson was lying.¹⁴

The Brown Report asserts that Officer Wilson’s testimony is credible when Wilson claimed after the fact that he suspected Mike Brown of the robbery of the Ferguson Market. However, the report offers no explanation of its determination in light of all the contradictory evidence.

¹¹ Ryan Reilly & Amber Ferguson, *Witnesses to Michael Brown Shooting Tell the Same Basic Story About His Death*, Huffington Post (Sep. 16, 2014), https://www.huffpost.com/entry/michael-brown-shooting-video_n_5831226.

¹² Julie Bosman & Joseph Goldstein, *Timeline for a Body: 4 Hours in the Middle of a Ferguson Street*, N.Y. Times (Aug. 23, 2014), <http://www.nytimes.com/2014/08/24/us/michael-brown-a-bodys-timeline-4-hours-on-a-ferguson-street.html>.

¹³ Pet’rs’ Merits Br. 43-50 (hereinafter “Merits Brief”).

¹⁴ State’s Further Observations Br. 24 (hereinafter “Further Observations”). The State cites page 78 of the Brown Report to support this claim made in their brief, but page 78 of the Brown Report contains no mention of the DOJ’s findings with respect to the legality of Wilson’s stop of Mike.

During the initial police investigation, Officer Wilson told police investigators he did not suspect Mike or Dorian of having committed a crime when the physical altercation between him and Mike occurred.¹⁵

Officer Wilson only made this claim after the local convenience store surveillance of Mike and his friend in the store prior to the encounter was publicly disseminated. Officer Wilson's claims are also in direct contradiction with the police chief's public statement that the initial contact with Mike was unrelated to the theft. During a press conference on August 15, 2014, Ferguson Police Chief Thomas Jackson repeatedly stated that Mike and Dorian were stopped because "they were walking down the middle of the street."¹⁶ It was only after video footage of Mike in the convenience store allegedly stealing cigarillos surfaced that Officer Wilson modified his statement to imply that he had probable cause and reasonable suspicion to conduct a lawful stop.

By offering no new arguments or evidence to refute these facts, the State only accomplishes to identify yet another significant flaw in the DOJ's one-sided Brown Report.

As Petitioners have previously briefed and the facts continue to demonstrate, Officer Wilson initiated an unlawful, violent encounter with an unarmed Mike Brown, failed to exhaust any form of non-lethal force, chased Mike down while firing at Mike's back as he ran away, and then fatally shot Mike in the head as he was surrendering. These actions also constitute an extrajudicial killing in violation of Article I of the American Declaration, and following the racist pattern and practice of the Ferguson Police Department also amount to a violation of Article II.

IV. The State Violated its Obligation to Conduct a Serious, Thorough, and Impartial Investigation into Mike Brown's Murder, Resulting in Impunity

The State asserts that it has satisfied its international obligation to investigate the murder of Mike Brown.¹⁷ Unfortunately, not only has the State failed multiple times to conduct serious, prompt, thorough, and impartial investigations in accordance with international standards, the result of each flawed attempt has perpetrated new racialized violence against Lezley McSpadden ("Lezley") and her family.

¹⁵ Statement of Darren Wilson to St. Louis County Police Department (Aug. 10, 2014).

¹⁶ *PoliticsNation*, Friday, August 15, 2014, NBC News (Aug. 15, 2014), <https://www.nbcnews.com/id/wbna55889127> (last visited Aug. 9, 2024) (hereinafter "PoliticsNation").

¹⁷ Further Observations, *supra* n.14, at 16.

We will now analyze: 1) the Ferguson Police Department's failure to meaningfully hold Officer Wilson accountable; 2) former St. Louis County Prosecutor Bob McCulloch's failure to conduct an unbiased investigation and grand jury proceeding; 3) the DOJ's failure to conduct an impartial, independent, and thorough investigation; and 4) former St. Louis County Prosecutor Wesley Bell's failure to conduct a fresh, independent and thorough investigation.

A. The Ferguson Police Department Failed to Take Meaningful Steps to Hold Officer Wilson Accountable in Violation of Article I of the American Declaration

The Ferguson Police Department ("FPD") did not take any meaningful action to hold Officer Darren Wilson accountable for the death of Mike Brown. Officer Wilson was put on temporary, paid administrative leave, which is not a sanction and is not designed to bring accountability.¹⁸

Neither Wilson, nor anyone at FPD, ever filed a use-of-force report—the foundational document required by department policy to be filed whenever force is used in the course of policing.¹⁹ FPD placed Officer Wilson on *temporary, paid* leave after he killed Mike Brown. Ferguson's Chief of Police even promised to immediately reinstate Officer Wilson.²⁰ During the Hearing on the Merits, Lezley testified that shortly after the murder, an FPD detective called her to inform her that Wilson would immediately be allowed to patrol the streets again:

Within 24 hours I received a phone call from a detective... He said to me that Darren Wilson would return to work right away after he gets psychological testing... I absolutely knew that something wasn't right. I didn't know who shot

¹⁸ *What May Happen to Officer Darren Wilson After Ferguson Grand Jury Decision*, ABC News (Nov. 18, 2014), <https://abcnews.go.com/US/happen-officer-darren-wilson-ferguson-grand-jury-decision/story?id=26996822>.

¹⁹ Jason Sickles, *Chief: Ferguson Officer Darren Wilson 'Immediately' Returns if Cleared in Michael Brown's Death*, Yahoo News (Nov. 14, 2014), <https://www.yahoo.com/news/chief-ferguson-officer-darren-wilson-immediately-returns-if-cleared-in-michael-browns-death--020541972.html> (hereinafter "Sickles Ferguson Chief"); Jason Sickles, *Key Report in Michael Brown Shooting Doesn't Exist, Ferguson Police Say*, Yahoo News (Sept. 25, 2014), <https://www.yahoo.com/news/ferguson-police-internal-record-on-controversial-shooting-of-michael-brown-doesnt-exist-001401818.html> (hereinafter "Sickles Internal Record"); see also U.S. Department of Justice, *Investigation of the Ferguson Police Department* 29 n.17 (2015) (hereinafter "Ferguson Report").

²⁰ Sickles Ferguson Chief, *supra* n.19.

my son... A name was not revealed to me. But I was being told that this person would be returning to work with his toolbelt. With his gun.²¹

On November 29, 2014, amidst promises to fully reinstate him, Officer Wilson resigned under his “own free will.”²² This allowed him to remain eligible for certain post employment benefits he might have been denied if terminated for cause.

With no action taken by FPD, Officer Wilson retained an active law enforcement license issued by the Missouri Department of Public Safety, and was free to be rehired as a police officer anywhere in Missouri, and free to apply for a license in any jurisdiction in the United States. The Missouri Department of Public Safety later confirmed that no action was ever taken to revoke Officer Wilson’s law enforcement license.²³

The failure of police departments and state authorities to revoke law enforcement licenses from police who have murdered people is further evidence of the State’s systematic failure to hold police officers accountable administratively. As an investigative report by *The Intercept* found in 2023, “[o]ut of 54 officers involved in 14 high-profile killings that spurred Black Lives Matter protests in the last nine years, only 10 had their certifications or licenses revoked as a matter of disciplinary action.”²⁴

FPD had the opportunity to take any number of measures to hold Officer Wilson accountable, including official reprimand, suspension (without pay), termination of employment, or termination of Wilson’s law enforcement license.

Ultimately, FPD’s routine failures to investigate and respond to officer misconduct should come as no surprise, as police departments across the country have proved over and over that they are systematically incapable of holding their own officers accountable.²⁵ Even the State admits that FPD was fundamentally incapable of holding Officer Wilson accountable, repeatedly emphasizing in its arguments and annexes to its “Further Observations” brief before the Commission that FPD had eroded the public’s trust by its

²¹ Comisión Interamericana de Derechos Humanos, *CIDH - 21 - US - Case 15.169 Michael Brown Jr. and Lesley Mcfadden*, YouTube (July 10, 2024), <https://www.youtube.com/watch?v=BMMJnYJRaJ4> (starting at 35:05) (hereinafter “Merits Hearing Testimony”).

²² *Darren Wilson Resigns from Ferguson Police Department*, CBS News (Nov. 29, 2014), <https://www.cbsnews.com/news/darren-wilson-resigns-from-ferguson-police-department/>.

²³ Gabb Schivone, *Most Cops Involved in High-Profile Killings Since 2014 Kept Their Licenses*, *The Intercept* (Sept. 16, 2023), <https://theintercept.com/2023/09/16/police-decertification-license/>.

²⁴ *Id.*

²⁵ See Thomas Harvey Expert Witness Test. 2-3, July 24, 2024.

“lack of any meaningful system for holding officers accountable when they violate law or policy.”²⁶

As detailed in the DOJ’s civil investigation into the Ferguson Police Department (“the Ferguson Report”) submitted by the State in its annexes to its “Further Observations” brief:

Through [FPD’s] system for taking, investigating, and responding to misconduct complaints, a police department has the opportunity to demonstrate that officer misconduct is unacceptable and unrepresentative of how the law enforcement agency values and treats its constituents. In this way, a police department’s internal affairs process provides an opportunity for the department to restore trust and affirm its legitimacy. Similarly, misconduct investigations allow law enforcement the opportunity to provide community members who have been mistreated a constructive, effective way to voice their complaints. And, of course, effective internal affairs processes can be a critical part of correcting officer behavior, and improving police training and policies.

Ferguson’s internal affairs system fails to respond meaningfully to complaints of officer misconduct. It does not serve as a mechanism to restore community members’ trust in law enforcement, or correct officer behavior. Instead, it serves to contrast FPD’s tolerance for officer misconduct against the Department’s aggressive enforcement of even minor municipal infractions, lending credence to a sentiment that we heard often from Ferguson residents: that a “different set of rules” applies to Ferguson’s police than to its African-American residents, and that making a complaint about officer misconduct is futile.

Despite the statement in FPD’s employee misconduct investigation policy that “[t]he integrity of the police department depends on the personal integrity and discipline of each employee,” FPD has done little to investigate external allegations that officers have not followed FPD policy or the law, or, with a few notable exceptions, to hold officers accountable when they have not. Ferguson Police Department makes it difficult to make complaints about officer conduct, and frequently assumes that the officer is telling the truth and the complainant is not, even where objective evidence indicates that the reverse is true.²⁷

²⁶ Ferguson Report, *supra* n.19, at 82.

²⁷ *Id.*

The DOJ's Ferguson report goes on to make the follow staggering findings, detailing the extreme measure FPD took to shield its officers from accountability:

- “Even when individuals do report misconduct, there is a significant likelihood it will not be treated as a complaint and investigated. In one case, FPD failed to open an investigation of an allegation made by a caller who said an officer had kicked him in the side of the head and stepped on his head and back while he was face down with his hands cuffed behind his back.”²⁸
- “FPD appears to intentionally not treat allegations of misconduct as complaints even where it believes that the officer in fact committed the misconduct.”²⁹
- “Even where a complaint is actually investigated, unless the complaint is made by an FPD commander, and sometimes not even then, FPD consistently takes the word of the officer over the word of the complainant, frequently even where the officer's version of events is clearly at odds with the objective evidence. On the rare occasion that FPD does sustain an external complaint of officer misconduct, the discipline it imposes is generally too low to be an effective deterrent.”³⁰

The Commission makes clear that “the accountability system must include provision for *administrative*, disciplinary, and criminal sanctions of those responsible for any violations.”³¹ The mere existence of FPD protocol to hold its officers accountable cannot be credited as a remedy for accountability, because it is neither adequate nor effective.

Even Officer Wilson explained in his own words that he never expected an internal affairs investigation to have any impact on his status as an officer in good standing: “You know, a typical police shooting is: you get about a week to a week and a half off, you see a shrink, you go through your Internal Affairs interviews. And then you come back.”³² Strikingly, when referring to the typical “week and a half off” an officer receives after a shooting, Officer Wilson is referring to *paid* leave.

²⁸ *Id.* at 83.

²⁹ *Id.* at 84.

³⁰ *Id.* at 85.

³¹ IACHR Police Violence, *supra* n.2, para 272.

³² Jake Halpern, *The Cop*, The New Yorker (Aug. 3, 2015), <https://www.newyorker.com/magazine/2015/08/10/the-cop> (hereinafter “Halpern”).

FPD's complete abdication of its duty to hold Officer Wilson accountable administratively constitutes a violation of the American Declaration.

B. Former St. Louis County Prosecutor Bob McCulloch's Biased Investigation Constitutes a Violation Articles II, V, XVIII, and Article XXVI of the American Declaration

Petitioners' Merits Brief establishes a thorough account of the myriad fatal flaws in the investigation carried out by former St. Louis County Prosecutor Bob McCulloch in conjunction with the St. Louis County Police Department.³³

As the State offers no contesting facts or arguments to the Petitioners' brief, there is no support on record for a finding that McCulloch's investigation fulfilled the State's international obligations to carry out a serious, thorough, and impartial investigation in line with international standards.

Instead of conducting an investigation to establish the truth of Mike Brown's murder, McCulloch abused his prosecutorial discretion by intentionally manipulating the grand jury process to effectively present a one-sided defense of Officer Wilson, ensuring that a trial would never take place.

In the United States, the purpose of a grand jury is to assess whether there is probable cause to believe a crime has been committed. In Missouri, criminal charges may be filed against a defendant through either indictment or an "information."³⁴ An "information" gives the prosecutor authority to bring charges on their own by filing a complaint with the court and seeking signature from a judge. The prosecutor may also file charges through a grand jury, that is convened to review the charges and assess whether probable cause exists to indict a person. The prosecutor is "entitled to exercise his discretion as to which course of action he selects."³⁵ When using a grand jury, a criminal case will only move forward if a grand jury returns an indictment. Because of the low threshold of a probable cause finding, less than .01% of prosecutions fail to go forward as a result of a grand jury failure to indict.³⁶

³³ Merits Brief, *supra* n.13, at 31-42.

³⁴ Mo. Sup. Ct. R. 23.01.

³⁵ *State v. McGee*, 757 S.W.2d 321, 325 (Mo. Ct. App. 1988).

³⁶ Mark Motivans, *Federal Justice Statistics 2010 – Statistical Tables*, U.S. Dep't of Just. (Dec. 2013), available at <https://bjs.ojp.gov/>; Ben Casselman, *It's Incredibly Rare for a Grand Jury to Do What Ferguson's Just Did*, FiveThirtyEight (Nov. 24, 2014), <https://fivethirtyeight.com/features/ferguson-michael-brown-indictment-darren-wilson/>.

In a highly irregular move, McCulloch inverted the process, presented primarily exculpatory evidence to the grand jury in defense of Officer Wilson, and failed to present evidence on the record that plainly supported a probable cause finding for an indictment.

1. Bob McCulloch's Mishandling of the Case Was Fueled by Decades of Racial Animus Towards Black People

Running further afoul of his duty to conduct a serious, thorough, and impartial investigation, McCulloch presented evidence to the grand jury designed to impugn the character of Mike Brown, the victim in the case. By introducing evidence of Mike's marijuana use (irrelevant to a finding of probable cause by a grand jury), McCulloch sought to divert attention away from Officer Wilson's culpability. McCulloch trafficked in anti-Black racist tropes that still permeate U.S. society_tropes that are a fundamental cause of the immense, systematic racial disparities in the United States criminal legal system. As further evidence of McCulloch's blatant racial discrimination, he consciously chose to *omit* any evidence of Officer Wilson's drug use, despite high levels of creatinine documented in Wilson's system, indicative of anabolic steroids known to increase a person's propensity for violence_evidence that is crucial to a grand jury determination of probable cause.

As Carl L. Hart, a professor at Columbia University and renowned scholar of drug use in the United States has observed:

In the early 20th century, the white establishment increasingly viewed drug use by racial minorities as a threat to the social order. Prominent newspapers, physicians, and politicians peddled lurid, false stories about Chinese opium-den owners inducing white women into their establishments to defile them. Officials concocted tales about Black men who took cocaine turning into homicidal criminals impervious to bullets and forcing white women into prostitution. Others promoted incredible stories about Black and Mexican American marijuana users and violent crimes. These fabrications facilitated passage of the country's first nationwide drug laws.³⁷

³⁷ Carl L. Hart, *The Claim That Drugs Killed George Floyd Relies on a Racist Trope*, Vox (Apr. 8, 2021), <https://www.vox.com/first-person/22373806/george-floyd-trial-derek-chauvin-minneapolis-black-lives-matter> (hereinafter "Hart Racist Trope"); see also Nkechi Taifa, *Race, Mass Incarceration, and the Disastrous War on Drugs*, Vox (May 10, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs>.

These racist anti-Black stereotypes have been weaponized systematically to prevent police accountability, as Carl J. Hart further observed, when lawyers defending Officer Derek Chauvin attempted to use deflect his responsibility for the murder of George Floyd in 2020:

Some version of this played-out defense was put forth when former Ferguson police officer Darren Wilson shot and killed teenager Mike Brown, when former Chicago police officer Jason Van Dyke shot and killed teenager Laquan McDonald, when former Minnesota police officer Jeronimo Yanez shot and killed a defenseless Philando Castile, and when former Tulsa police officer Betty Jo Shelby shot and killed a nonthreatening Terence Crutcher. Drugs did not contribute to any of these individuals' deaths. But officers' depraved indifference for Black life certainly did.³⁸

The gentle questioning of Officer Wilson with no cross-examination contrasts sharply to the racially discriminatory characterization of Mike Brown and the sharp challenges McCulloch and his prosecutors made to eyewitnesses who discredited Wilson's truthfulness. One legal expert described the questioning of Officer Wilson as "inept", "unclear about the theory", "more journalistic... than prosecutorial", and the questioning of witnesses who presented a challenge to Wilson's narrative as "competent", with a "crisp" theory and "questions crafted to drive the theory."³⁹

Sadly, this came as no surprise to the Black community in the St. Louis area. In the Hearing on the Merits, Lezley McSpadden testified to how the community warned her about McCulloch's anti-Black, pro-cop bias.⁴⁰ As one local organizer explained: "McCulloch's regime was viewed as racist, corrupt and seemingly immune to introspection and reform."⁴¹ Antonio French, a locally elected St. Louis official, told the New York Times that "[n]obody thinks Michael Brown can get a fair shake from this guy. There is very little faith, especially in the black community, that there would ever be a

³⁸ Hart Racist Trope, *supra* n.37.

³⁹ Ernie Lewis, *Two Prosecutors in Ferguson*, National Association for Public Defense (Dec. 14, 2014), <https://publicdefenders.us/blogs/two-prosecutors-in-ferguson/>.

⁴⁰ Merits Brief, *supra* n.13, at 26:06.

⁴¹ David Carson, *McCulloch Looks Back at 35 Years as St. Louis County Prosecutor; Says 'Ferguson is the Only Reason I'm Retiring'*, St. Louis Post-Dispatch (Dec. 24, 2018), https://www.stltoday.com/news/local/metro/mcculloch-looks-back-at-35-years-as-st-louis-county-prosecutor-says-ferguson-is-the/article_f4ae91a4-8083-5855-9010-0d71d0357c36.html.

fair trial.”⁴² Missouri State Senator Jamilah Nasheed collected 70,000 signatures from the public in a petition calling for McCulloch to recuse himself from the case.⁴³

Despite widespread acknowledgement of the racist impact of the death penalty in the United States, in McCulloch’s 28 years as prosecutor, he imposed death sentences against 23 people,⁴⁴ a rate which one expert deemed: “very, very much outside the norm ... nationwide, McCulloch qualifies as one of the most active users of the death penalty.”⁴⁵

McCulloch’s racism was so well-known to the community, that it became the driving motivation for voters to rise up and vote him out of office in the first election held after his mishandling of the case.⁴⁶ As one local organizer put it: “[McCulloch] had long been a villain to Black people. I think we knew that, and we just needed to give each other permission to say that out loud.”⁴⁷

Four years after his electoral defeat, “attendees at the Oregon District Attorneys Association conference walked out of McCulloch’s first presentation because it was filled with racist jokes and “offensive” jabs.”⁴⁸ McCulloch’s racist views offended even fellow white prosecutors at the conference, when he held up a picture of a group of black men standing on a Ferguson street corner and told the audience: “This is what we’re dealing with,” framing these young Black men as “thugs.”⁴⁹ One white prosecutor later wrote about this experience:

The main conference on Thursday opened with a plenary session conducted by the outgoing District Attorney of St. Louis County, Missouri, Robert McCulloch. It was during his presentation that, unfortunately, we learned not everyone in our line

⁴² Frances Robles, *St. Louis County Prosecutor Defends Objectivity*, N.Y. Times (Aug. 20, 2014), <https://www.nytimes.com/2014/08/21/us/st-louis-county-prosecutor-defends-objectivity.html?ref=us>.

⁴³ Andrew Romano, *Why Ferguson is So Mad at Prosecutor Bob McCulloch*, Yahoo News (Nov. 25, 2014), <https://www.yahoo.com/news/how-prosecutor-bob-mcculloch-s-controversial-past-is-making-matters-worse-in-ferguson-212622087.html>.

⁴⁴ *Death Penalty and Race*, Amnesty International (June 26, 2023), <https://www.amnestyusa.org/issues/death-penalty/death-penalty-facts/death-penalty-and-race/>.

⁴⁵ Ryan Krull, *Bob McCulloch’s Most Lasting Legacy May be His Insistence on the Death Penalty*, St. Louis Public Radio (Nov. 10, 2022), <https://www.stlpr.org/law-order/2022-11-10/bob-mccullochs-most-lasting-legacy-may-be-his-insistence-on-the-death-penalty>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Michael Harriot, *Failed Ferguson, Mo., Prosecutor Bob McCulloch Headlined a Conference for District Attorneys. It Did Not Go Well*, The Root (Aug. 30, 2018), <https://www.theroot.com/failed-ferguson-prosecutor-bob-mcculloch-headlined-a-co-1828715397>.

⁴⁹ *Id.*

of work seems to share our commitment to equity, diversity and dignity. I found Mr. McCulloch's remarks to be offensive and unprofessional. Having spoken with all of the members of our office who were present, I know that every MCDA attendee agrees.⁵⁰

McCulloch's differential treatment of Mike Brown, compared with white Officer Wilson, amounts to a violation of the prohibition of racial discrimination under Article II of the American Declaration and international law. In light of McCulloch's well-known reputation to the community he policed and even his white peers, the evidence of racial discrimination is incontrovertible.

2. Bob McCulloch's Bias in Favor of Police Drove Him to Manipulate the Grand Jury Process

McCulloch's anti-Black prejudice is not the only documented personal bias impacting the partiality of his investigation and grand jury process. It was well-established at the time that McCulloch possessed a deep personal bias in siding with the police and shielding them from accountability.⁵¹ McCulloch's father was a St. Louis policeman killed in the line of duty by a Black man when McCulloch was 12. His brother, nephew, and cousin all served with the St. Louis police. His mother worked as a clerk for the force for 20 years. McCulloch himself once proclaimed: "I couldn't become a policeman, so being county prosecutor is the next best thing."⁵²

Throughout his nearly 30-year career McCulloch did not prosecute a single murder by police. McCulloch presented evidence to a grand jury on four other police killings, and never once got an indictment.⁵³ In one case he failed to bring charges against two

⁵⁰ *Id.*

⁵¹ Pema Levy, *Ferguson Prosecutor Robert P. McCulloch's Long History of Siding With the Police*, Newsweek (Aug. 29, 2014), <https://www.newsweek.com/ferguson-prosecutor-robert-p-mccullochs-long-history-siding-police-267357> (hereinafter "Levy"); Jamelle Bouie, *Protesting the Prosecution*, Slate (Aug. 21, 2014), <https://slate.com/news-and-politics/2014/08/protest-for-robert-mccullochs-recusal-the-st-louis-prosecutor-is-accused-of-long-standing-and-personal-police-bias.html> (hereinafter "Bouie Protesting"); *Background of Prosecutor in Ferguson Case Has Some Questioning Probe's Credibility*, CBS News (Aug. 18, 2014), <https://www.cbsnews.com/news/background-of-prosecutor-in-ferguson-case-has-some-suspicious-of-bias/>; Leigh Ann Caldwell, *Concerns Arise About Prosecutor in Michael Brown Case*, CNN (Aug. 20, 2014), <https://www.cnn.com/2014/08/19/us/ferguson-prosecutor-mcculloch/index.html>.

⁵² Levy, *supra* n.51.

⁵³ Dana Milbank, *Bob McCulloch's Pathetic Prosecution of Darren Wilson*, Washington Post (Nov. 25, 2014), https://www.washingtonpost.com/opinions/dana-milbank-bob-mccullochs-pathetic-prosecution-of-darren-wilson/2014/11/25/a8459e16-74d5-11e4-a755-e3227229e7b_story.html.

detectives who murdered two unarmed Black men by shooting into their car 20 times.⁵⁴ It is no surprise that Ferguson residents called McCulloch “a cop's best friend.”⁵⁵

McCulloch’s bias and callousness toward Mike Brown and his family was on full display during his news conference announcing the results of the manipulated grand jury process. As one CNN legal commentator noted, “His tone was icy and divisive. His sympathy for the Brown family was perfunctory. He seemed more angry at the news media than about the death of a young man.”⁵⁶ In fact, Lezley found out that the grand jury had reached its decision from watching cable news. As the family’s attorney put it, “It was very painful on behalf of his mother and father, that they did not get the notice that they were going to find out before the media found out.”⁵⁷

Even still, McCulloch’s personal biases are far from the only flaws in his investigation that amount to violations of articles II, XVIII, and XXVI of the American Declaration.

3. The Grand Jury Proceeding Contained Numerous Errors

As Petitioners extensively detailed in our Merits Brief, McCulloch’s handling of the grand jury proceedings was rife with error.⁵⁸

He improperly instructed the grand jury to evaluate Officer Wilson’s actions under a Missouri law that had been found to be unconstitutional.⁵⁹

McCulloch improperly allowed Officer Wilson to testify on his own behalf before the grand jury without cross-examination or a single challenge to the inconsistencies in Wilson’s testimony—a move that prosecutors in his own office noted was extraordinary and never afforded to non-police defendants in grand jury processes.

McCulloch provided the grand jury with unchallenged perjured testimony, despite knowledge that certain witnesses were “clearly not telling the truth.”⁶⁰ The State

⁵⁴ Bouie Protesting, *supra* n.51.

⁵⁵ Levy, *supra* n.51.

⁵⁶ Jeffrey Toobin, *Decision to Announce Grand Jury Decision at Night Devastating*, CNN (Nov. 25, 2014), <https://www.cnn.com/2014/11/25/opinion/toobin-ferguson-grand-jury/index.html>.

⁵⁷ Holly Yan, *Ferguson: Why Was the Grand Jury Decision Kept Secret for Hours*, CNN (Nov. 25, 2014), <https://www.cnn.com/2014/11/25/justice/ferguson-announcement-timing/index.html>.

⁵⁸ Merits Brief, *supra* n.13, at 32-40.

⁵⁹ *Id.* at 38.

⁶⁰ German Lopez, *Prosecutor in Ferguson Grand Jury Says He Knew Some Witnesses Were Lying*, Vox (Dec. 19, 2014), <https://www.vox.com/2014/12/19/7425533/robert-mcculloch-perjury>.

acknowledges that “large parts of [Witness 40’s] testimony have admittedly been fabricated from media accounts, and her bias in favor of Wilson is readily apparent.”⁶¹ McCulloch never cross-examined this witness. By contrast McCulloch and his team *did* cross-examine and challenge Witness 34 whose testimony supported a finding of probable cause, and McCulloch and his team repeatedly questioned the closest eye-witness to Mike Brown’s murder in a manner seeking to corroborate Officer Wilson’s story.

McCulloch’s investigation also omitted key physical evidence without explanation. Despite a police report and photographs from the crime scene identifying an “apparent projectile” labeled as “evidence 17”_the object on the road closest to Mike Brown’s body_no photographs or testimony about “evidence 17” were ever produced before the grand jury, and no explanation for this omission was ever given.

When one grand juror sought to exercise their right to freedom of expression and speak about their concerns over participating in the flawed grand jury process, Missouri state authorities obtained a court order to prevent this grand juror from speaking publicly. In the complaint seeking to exercise their right to freedom of expression, the grand juror stated:

The presentation of evidence to the grand jury investigating Wilson differed markedly and in significant ways from how evidence was presented in the hundreds of matters presented to the grand jury earlier in its term... the State’s counsel to the grand jury investigating Wilson differed markedly and in significant ways from the State’s counsel to the grand jury in the hundreds of matters presented to the grand jury earlier in its term... the investigation of Wilson had a stronger focus on the victim than in other cases presented to the grand jury... [and] the presentation of the law to which the grand jurors were to apply the facts was made in a muddled and untimely manner compared to the presentation of the law in other cases presented to the grand jury.⁶²

Ultimately even McCulloch acknowledged that you could “take out a witness here, a witness there, and come to a different conclusion.”⁶³ As one legal expert noted:

⁶¹ Brown Report, *supra* n.5, at 72.

⁶² See Compl. at ¶¶ 19-22, Grand Juror Doe v. McCulloch, No. 4:15-cv-00006 (Jan. 5, 2015), https://www.aclu-mo.org/sites/default/files/field_documents/grand_juror_doe_complaint_1-5-15_1.pdf.

⁶³ Dana Milbank, *Dana Milbank: Bob McCulloch: The Face Injustice*, St. Louis Post-Dispatch (Nov. 26, 2014), https://www.stltoday.com/townnews/law/dana-milbank-bob-mcculloch-the-face-of-injustice/article_cd768b85-9fa1-5b02-8b92-a35ba6069cc1.html.

And that's exactly why we have public trials: to litigate conflicting accounts in a setting where the burden of proof is much higher than the probable-cause standard of the grand jury. Instead, McCulloch short-circuited the process, reinforcing a sense among African-Americans, and many others, that the justice system is rigged.⁶⁴

In light of these facts, the State marshals no defense of McCulloch's fatally flawed investigation and grand jury process.

At best, in its "Further Observations" brief, the State vaguely gestures toward the purported "transparency" of the grand jury process, based on the sole fact that the transcripts were subsequently released to the public. On its face, the State's gesture toward transparency is fundamentally false. First, as documented, the Missouri state officials obtained a court order to prevent a grand juror from publicly expressing their concerns about the process. Second, the grand jury was never informed of "evidence 17", nor the evidence of the officer's steroid use, nor cross-examination of a lying witness, nor cross-examination of Officer Wilson himself. Third, McCulloch instructed the grand jury to consider an unconstitutional legal standard at the outset of the process, and chose *not* to release the part of the grand jury transcript where this instruction was allegedly "corrected." As the facts demonstrate, McCulloch's investigation and grand jury process was nothing short of transparently biased.

Legal experts resoundingly responded with harsh criticism of McCulloch's fatally flawed investigation and grand jury process. "Failure was intentional," proclaimed one expert.⁶⁵ Even one conservative criminal justice expert expressed: "Darren Wilson Got a Private Trial Run by Friendly Prosecutors".⁶⁶

It is telling that the State offers not a single argument that Bob McCulloch conducted a serious and impartial investigation in line with international standards.

⁶⁴ Dana Milbank, *Dana Milbank: Bob McCulloch: The Face Injustice*, St. Louis Post-Dispatch (Nov. 26, 2014), https://www.stltoday.com/townnews/law/dana-milbank-bob-mcculloch-the-face-of-injustice/article_cd768b85-9fa1-5b02-8b92-a35ba6069cc1.html.

⁶⁵ Shaymaa Shwel, *Betraying The American Public's Trust and Police Accountability Interrogations: The Darren Wilson Story*, 16 Intercultural Hum. Rts. L. Rev. 59 (2021). Available at: <https://scholarship.stu.edu/ihrtr/vol16/iss1/4>.

⁶⁶ Jacob Sullum, *Darren Wilson Got a Private Trial Run by Friendly Prosecutors*, Reason (Nov. 26, 2014), <https://reason.com/2014/11/26/darren-wilson-got-a-private-trial/>.

Instead, after gesturing toward the supposed transparency of the investigation, the State argues that “[e]ven if the Commission determines that the grand jury process was flawed as Petitioners allege, the DOJ’s investigations fully satisfy the Commission’s stated requirements.”⁶⁷

The State also fails to recognize that *if* McCulloch’s investigation resulted in human rights violations, the State would have a duty to hold McCulloch accountable. To date the State has not taken a single action to investigate the flawed McCulloch investigation and his misuse of the grand jury process, let alone to hold him accountable. Not only does the DOJ’s criminal investigation fail to cure these violations, its authority is not designed to be a cure.

Therefore, the myriad violations of the State’s obligations manifested in the McCulloch investigation amount to violations of Articles II, V, XVIII, and XXVI of the American Declaration in their own right -- including the State’s obligation to hold Bob McCulloch accountable for these violations.

C. The DOJ Criminal Investigation into Mike Brown’s Murder Fails to Fulfill the State’s Obligations under Articles I, XVIII and XXVI of the American Declaration and Further Harms Lezley McSpadden and Her Family

Nowhere in the record does the State allege that Bob McCulloch’s investigation was credible or fulfilled the State’s legal obligations under international law. This is telling. Instead, the State attempts to paper over the deeply biased and flawed nature of Bob McCulloch’s investigation, by repeatedly grouping it with what it claims were two other criminal investigations by the DOJ and Wesley Bell.⁶⁸ It asserts that the DOJ investigation, carried out in conjunction with Bob McCulloch under a completely different legal standard—one which the State admits is often prohibitive to accountability—somehow cures the human rights violations stemming from McCulloch’s flawed investigation, despite the resulting impunity.⁶⁹

The State repeatedly incorporates the DOJ’s criminal investigation report (“Brown Report”) into its arguments before the Commission as the basis of its claims. In its

⁶⁷ Further Observations, *supra* n.14, at 21.

⁶⁸ *Id.* at 2.

⁶⁹ *Id.* at 21. “Even if the Commission determines that the grand jury process was flawed as Petitioners allege, the DOJ’s investigations fully satisfy the Commission’s stated requirements.”

“Further Observations” brief and during the Hearing on the Merits, the State encouraged the Commission to read the Brown Report—often touting its length as evidence of its credibility. The Petitioners welcome State’s repeated encouragements to read the report, as a plain reading of the Brown Report demonstrates *prima facie* evidence of the lack of a serious, thorough, and impartial federal investigation.

At the outset, it is worth noting that a DOJ investigation under 18 U.S.C. § 242 (“Section 242”) is never a sufficient replacement or cure for a local investigation that possesses much broader authority to hold perpetrators accountable for excessive use of force.⁷⁰ For this reason, the lack of investigation by the FPD and the flaws of the McCulloch investigation in and of themselves both represent violations of articles I, XVIII and XXVI the American Declaration.

The State’s most shocking claim, though, is its assertion that the DOJ carried out a serious, thorough, and impartial criminal investigation consistent with international standards into Officer Wilson’s murder of Mike Brown. As Petitioners detail below, the flaws of the DOJ criminal investigation into Mike Brown’s murder represent *additional* violations of the American Declaration under article V, including the harm furthered by the DOJ’s Brown Report in impugning the character of Mike Brown and hiding the truth.

1. The DOJ Failed to Conduct a Meaningfully Independent and Impartial Investigation Free from the Errors Committed by Bob McCulloch and Local Investigators

It is impossible to find that the DOJ investigation was substantively independent from the investigation carried out by Bob McCulloch. The Brown Report states that federal authorities collaborated with and relied on Bob McCulloch’s investigation. The DOJ “jointly interviewed” countless witnesses with Bob McCulloch’s investigators. DOJ investigators reviewed Bob McCulloch’s physical, ballistic, forensic, and crime scene evidence, but did not independently (or even jointly) collect their own physical evidence, with the sole exception of conducting an independent autopsy.⁷¹ The chief of the DOJ’s criminal section in charge of the Brown investigation emphasized that the DOJ must investigate: “*along with* the [Missouri] state government”, to conduct an:

⁷⁰ See Section VI. A. in the present brief below.

⁷¹ Brown Report, *supra* n.5, at 4; Robina Institute, *Ferguson Conference*, YouTube (Oct. 13, 2017), <https://www.youtube.com/watch?v=VV8HXOK3Dts&t=2909s> (starting at 0:42:00). (hereinafter “Ferguson Conference”).

independent, but *collaborative* investigation... to make sure we aren't screwing up the state investigation by doing witness interviews or taking evidence in a way that might damage their ability, if there is an underlying state charge on these much broader statutes. We do not want to mess that up. So we need to *coordinate* what we are doing.⁷²

The line attorney leading the investigation also admitted that “there was *a lot of coordination*” with McCulloch’s investigators, and that the DOJ “*had to collaborate*” with local investigators.⁷³

The nature of the DOJ investigation was thoroughly *dependent* upon the local investigation. This level of deep collaboration and coordination precludes a finding that the investigation was substantively independent, impartial, and thorough.

Without a truly independent, impartial, serious, and thorough investigation, free from the influence of the fatal flaws committed by Bob McCulloch and local investigators, the DOJ’s investigation was flawed *ex ante*.

2. The DOJ’s Brown Report Presents a One-Sided Narrative in Favor of Darren Wilson

The Brown report goes to extreme lengths to present the one-sided exculpatory evidence of Officer Wilson as credible. The State’s assertion that the substance of the Brown Report represents the culmination of a serious, thorough, and impartial investigation fails on its face. First, the Brown Report fails to acknowledge and incorporate relevant evidence and context from the DOJ’s Ferguson Report released on the same day. Second, the Brown Report omits evidence that is unfavorable to Officer Wilson. And third, and perhaps most egregiously, the Brown Report not only relies on a fundamental evidentiary inconsistency, but fails to acknowledge that this inconsistency even exists.

In the Hearing on the Merits and in its “Further Observations” brief, the State urges the Commission to read the Brown Report in its entirety, as the Brown Report itself claims that it “details the Department’s investigation, findings, and conclusions”⁷⁴ and that

⁷² *Id.*

⁷³ *Id.* at 0:57:30.

⁷⁴ Brown Report, *supra* n.5, at 1.

“*when viewed as a whole*”⁷⁵, the evidence does not support a conclusion that Officer Wilson used excessive force.

But in reality, the report only reaches this conclusion by cherry picking from the evidentiary record, failing to “detail” significant evidence -- even evidence contained in the DOJ’s civil Ferguson Report released the same day, preventing the ability to view the evidence “as a whole.”

The Brown Report presents a one-sided narrative written to justify a political decision to not indict Officer Wilson, thus violating the State’s obligation to conduct a serious, thorough, and impartial investigation in line with international standards in order to establish the truth and hold the perpetrator accountable.

a) The DOJ’s Brown Report Fails to Acknowledge and Incorporate Relevant Evidence Uncovered from its Civil Investigation into the Ferguson Police Department

The same day that the DOJ released the findings of its criminal investigation in the Brown Report, the DOJ also released the findings of its civil investigation into FPD. In its civil investigation the DOJ found that, among other human rights violations:

- “FPD engages in a pattern of excessive force”⁷⁶
- “Many FPD uses of force appear entirely punitive. Officers often use force in response to behavior that may be annoying or distasteful but does not pose a threat. The punitive use of force by officers is unconstitutional and, in many cases, criminal.”⁷⁷
- “FPD Use of Force Often Results from Unlawful Arrest and Officer Escalation”⁷⁸
- “Many officers are quick to escalate encounters with subjects they perceive to be disobeying their orders or resisting arrest”⁷⁹
- “Officers expect and demand compliance even when they lack legal authority. They are inclined to interpret the exercise of free speech rights as unlawful disobedience, innocent movements as physical threats”⁸⁰

⁷⁵ *Id.* at 5.

⁷⁶ Ferguson Report, *supra* n.19, at 28.

⁷⁷ *Id.* at 33.

⁷⁸ *Id.* at 34.

⁷⁹ *Id.* at 28.

⁸⁰ *Id.* at 2.

- “FPD’s approach to policing impacts how its officers interact with students” leading them “to use force when communication and de-escalation techniques would likely resolve the conflict”⁸¹
- FPD officers have “a pattern of resorting to force too quickly” and an “overreliance on force” when interacting with “juvenile students”⁸²
- “The overwhelming majority of force—almost 90%—is used against African Americans”⁸³
- “The race-based disparities created by Ferguson’s law enforcement practices cannot be explained by chance” and occur “because Ferguson law enforcement practices are directly shaped and perpetuated by racial bias.”⁸⁴
- FPD practices were “directly shaped and perpetuated by racial bias” which exists “in nearly every aspect of Ferguson police ... operations”⁸⁵
- “The racial animus and stereotypes expressed by ... supervisors suggest that they are unlikely to hold an officer accountable for discriminatory conduct or to take any steps to discourage the development or perpetuation of racial stereotypes among officers.”⁸⁶
- “This documentary evidence of explicit racial bias is consistent with reports from community members indicating that some FPD officers use racial epithets in dealing with members of the public.”⁸⁷
- “FPD’s use-of-force review system is particularly ineffectual. Force frequently is not reported. When it is, there is rarely any meaningful review.”
- “Perhaps the greatest deviation from FPD’s use-of-force policies is that officers frequently do not report the force they use at all. There are many indications that this underreporting is widespread.”⁸⁸
- “These deficiencies in use-of-force review can have serious consequences. They make it less likely that officers will be held accountable for excessive force and more likely that constitutional violations will occur. They create potentially devastating liability for the City for failing to put in place systems to ensure officers operate within the bounds of the law. And they result in a police department that does not give its officers the supervision they need to do their jobs safely, effectively, and constitutionally.”⁸⁹

⁸¹ *Id.* at 37.

⁸² *Id.* at 35.

⁸³ *Id.* at 28.

⁸⁴ *Id.* at 70.

⁸⁵ *Id.* at 71.

⁸⁶ *Id.* at 73.

⁸⁷ *Id.*

⁸⁸ *Id.* at 38.

⁸⁹ *Id.* at 41.

Incredibly, each of these findings describe the precise pattern of Officer Wilson's murder of Mike Brown:

- Officer Wilson used excessive force, by hitting Mike Brown with his car, by failing to use less lethal force (like his mace, flashlight, or baton), by chasing Mike Brown and shooting at him while he was running away, and firing the fatal shots as Mike Brown was unarmed and in surrender.
- When initiating his violent encounter with Mike Brown, Officer Wilson screamed “get the fuck onto the sidewalk,”⁹⁰ a behavior that Wilson clearly considered annoying or distasteful but that does not pose a threat.
- Officer Wilson's stop of Mike Brown was unlawful, and it was Wilson who initiated and escalated the violence.
- When Mike Brown did not immediately move to the sidewalk, Officer Wilson became violent towards him.
- Officer Wilson lacked legal authority when he unlawfully stopped Mike Brown, demanding his compliance in an expletive-laden order, and testified that he felt threatened by Mike Brown's very existence as a young Black man (calling him a demon and hulk-like figure).
- Mike Brown was an 18-year-old student, and Officer Wilson could have used communication and de-escalation at multiple points to resolve the situation without using deadly force or any force at all.
- Officer Wilson resorted to force immediately upon encountering Mike Brown who was an 18-year-old student.
- Mike Brown was a Black teenager, the precise demographic target of Officer Wilson and FPD's racist policing practices.
- Officer Wilson has a long and well-documented history of anti-Black racism and racial discrimination, and he previously worked at a police force that was disbanded because of its racist culture and practices.
- Officer Wilson was immersed in FPD's racist culture and was a documented footsoldier in furthering FPD's racist and unlawful policing.
- Officer Wilson confessed that he did not expect to be held accountable for his racist policing and excessive force use of force.

⁹⁰ Lee, *supra* n.4; Compl. at ¶ 19, Brown v. City of Ferguson, No. 15SLCC01367 (St. Louis Cnty. Cir. Ct. Apr. 23, 2015), <https://www.scribd.com/doc/262845216/Michael-Brown-lawsuit>.

- Officer Wilson’s expletive-laden stop of Mike Brown, his admission to using the “n-word” in the past, and his testimony calling Mike Brown a “demon” and “hulk-like” figure showed his willingness to use racially discriminatory language.
- Officer Wilson never filed a use-of-force report.
- FPD never conducted a review of Officer Wilson’s use of force or held him accountable for failing to file a use-of-force report.
- Officer Wilson did not receive any meaningful supervision of his use of force that is needed to do his job safely, effectively, and constitutionally.

Despite the myriad unmistakable ways that Officer Wilson’s actions conformed to the racist patterns and practices of the FPD, the Brown Report does not include a single reference to these (or any other) findings from its Ferguson Report_evidence that is unquestionably relevant to a thorough investigation into Wilson’s actions and any legitimate analysis of the likelihood that Wilson violated Mike Brown’s rights.

In several relevant passages, the Ferguson Report explains some findings in immense detail that describe with precision the nature of Officer Wilson’s violent encounter with Mike Brown on August 9, 2014:

A defining aspect of FPD’s pattern of excessive force is the extent to which force results from unlawful stops and arrests, and from officer escalation of incidents. Too often, officers overstep their authority by stopping individuals without reasonable suspicion and arresting without probable cause. Officers frequently compound the harm by using excessive force to effect the unlawful police action. Individuals encountering police under these circumstances are confused and surprised to find themselves being detained. They decline to stop or try to walk away, believing it within their rights to do so. They pull away incredulously, or respond with anger. Officers tend to respond to these reactions with force.⁹¹

[A] significant number of the documented use-of-force incidents involve charges of Failure to Comply and Resisting Arrest only. This means that officers who claim to act based on reasonable suspicion or probable cause of a crime either are wrong much of the time or do not have an adequate legal basis for many stops and arrests in the first place. [...] This pattern is a telltale sign of officer escalation and a strong indicator that the use of force was avoidable.⁹²

⁹¹ Brown Report, *supra* n.5, at 34.

⁹² *Id.* at 35.

The Ferguson Report also details the racist culture that permeated the Ferguson Police Department in which Officer Wilson was immersed:

The following emails are illustrative:

- A November 2008 email stated that President Barack Obama would not be President for very long because “what black man holds a steady job for four years.”
- A March 2010 email mocked African Americans through speech and familial stereotypes, using a story involving child support. One line from the email read: “I be so glad that dis be my last child support payment! Month after month, year after year, all dose payments!”
- An April 2011 email depicted President Barack Obama as a chimpanzee.
- A May 2011 email stated: “An African-American woman in New Orleans was admitted into the hospital for a pregnancy termination. Two weeks later she received a check for \$5,000. She phoned the hospital to ask who it was from. The hospital said, ‘Crimestoppers.’”
- A June 2011 email described a man seeking to obtain “welfare” for his dogs because they are “mixed in color, unemployed, lazy, can’t speak English and have no frigging clue who their Daddies are.”
- An October 2011 email included a photo of a bare-chested group of dancing women, apparently in Africa, with the caption, “Michelle Obama’s High School Reunion.”
- A December 2011 email included jokes that are based on offensive stereotypes about Muslims.⁹³

Critically, each of these email exchanges involved supervisors of FPD’s patrol and court operations. FPD patrol supervisors are responsible for holding officers accountable to governing laws, including the Constitution, and helping to ensure that officers treat all people equally under the law, regardless of race or any other protected characteristic. The racial animus and stereotypes expressed by these supervisors suggest that they are unlikely to hold an officer accountable for discriminatory conduct or to take any steps to discourage the development or perpetuation of racial stereotypes among officers.⁹⁴

⁹³ *Id.* at 72.

⁹⁴ Ferguson Report, *supra* n.19, at 73.

Inexplicably, the Brown Report also omits crucial findings from its Ferguson Report describing a pattern of officers lying and a culture of impunity:

Our investigation raised concerns in particular about how FPD responds to untruthfulness by officers. In many departments, a finding of untruthfulness pursuant to internal investigation results in an officer's termination because the officer's credibility on police reports and in providing testimony is subsequently subject to challenge. In FPD, untruthfulness appears not even to always result in a formal investigation, and even where sustained, has little effect.⁹⁵

[...] By failing to hold officers accountable, FPD leadership sends a message that FPD officers can behave as they like, regardless of law or policy, and even if caught, that punishment will be light. This message serves to condone officer misconduct and fuel community distrust.⁹⁶

Yet again, the Brown Report fails to even acknowledge that Officer Wilson's actions followed these patterns in nearly every detail. Neither does the Brown Report offer an explanation of how Wilson's actions were somehow distinct from the violative practices the DOJ found rampant in the FPD. This glaring omission is of paramount importance to an investigation seeking to establish the truth and examine all available evidence, and it is incontrovertibly relevant to any legal analysis attempting to determine whether a prosecutor could secure a conviction at trial.

At one point, the Ferguson Report finds a flaw in FPD's racist and unlawful practices that perfectly describes the DOJ's own failures in investigating Officer Wilson:

[The] use-of-force review system is particularly ineffectual. Force frequently is not reported. When it is, there is rarely any meaningful review. Supervisors do little to no investigation; either do not understand or choose not to follow [the] use-of-force policy in analyzing officer conduct; rarely correct officer misconduct when they find it; and *do not see the patterns of abuse that are evident when viewing these incidents in the aggregate.*⁹⁷

⁹⁵ *Id.* at 85.

⁹⁶ *Id.* at 86.

⁹⁷ Brown Report, *supra* n.5, at 38.

In the present case, the DOJ indeed failed to acknowledge the patterns of abuse that are evident when viewing Officer Wilson's actions in the aggregate of FPD's racist policing and police violence.

One explanation for how the DOJ could omit such crucial evidentiary findings was given by the head of the criminal section of DOJ's Civil Rights Division:

One thing also to keep in mind, is that the criminal investigation for civil rights -- the federal criminal investigation -- is also completely independent from the civil investigation. So, we are each these kind of independent operators gathering facts on our own and making our own conclusions. And that's really important that we keep the criminal investigative process separate from the civil investigative process and decision making.⁹⁸

This explanation on its own is clearly insufficient. On its face, it amounts to a possible admission that the DOJ's criminal investigation was deeply flawed and its investigators and line prosecutors failed to take into account this critical evidence. Even still, the criminal investigation was completed around January 2015,⁹⁹ months before the DOJ's civil investigation concluded and they released their two reports in March of 2015, with high-level officials up to the Attorney General being briefed along the way on the findings of each report.

b) The Brown Report Omits Key Evidence that is Unfavorable to Officer Wilson

(1) The Brown Report Omits Evidence of Officer Wilson's Anti-Black Racial Bias

The Brown Report never acknowledges a single piece of evidence of Officer Wilson's history of racist, anti-Black discrimination.

Officer Wilson's use of racial slurs prior to murdering Mike Brown is one of the clearest examples of his explicit racial bias against Black people. In Wilson's sworn testimony

⁹⁸ Robina Institute, *Ferguson Conference*, YouTube (Oct. 13, 2017), <https://www.youtube.com/watch?v=VV8HXOK3Dts&t=2909s> (starting at 0:48:00).

⁹⁹ Matt Apuzzo & Michael S. Schmidt, *U.S. Not Expected to Fault Officer in Ferguson Case*, N.Y. Times (Jan. 21, 2015), <https://www.nytimes.com/2015/01/22/us/justice-department-ferguson-civil-rights-darren-wilson.html> (hereinafter "Apuzzo & Schmidt")

from the wrongful death lawsuit filed against him in 2015, he admitted that both he and other Ferguson police used the word “n*gger” to describe Black people.¹⁰⁰

Officer Wilson also espoused numerous racist stereotypes of Black people and the communities he policed.

When Officer Wilson first applied to work as a police officer, he purposely sought to work in the northern portion of St. Louis County (“North County”), which has a higher Black and low-income population.¹⁰¹ There are more reports of crime in North County, and Wilson reasoned working there would boost his career.¹⁰² It is telling that Wilson was not interested in actually protecting and serving the majority Black community. Rather, he opted to patrol in a “tough” area to get promoted.¹⁰³ For Wilson, Black residents were not human beings who deserved safety and care; they were meal tickets to advance his own career.

In accepting his first policing job, Officer Wilson willingly joined the Jennings Police Department, despite it having a “reputation of racism” -- a reputation so widely known and so egregious that Black people avoided driving through Jennings “like the plague.” Wilson admits that Jennings’ racist reputation “didn’t make a vivid impression on him.” He later claimed that the Black community’s charges of racism were just an “excuse”, and he refused to acknowledge how the long history of racially discriminatory policing could impact his interaction with the Black community (“I’m not going to delve into people’s life-long history and figure out why they’re feeling a certain way”).¹⁰⁴ Officer Wilson described the area as poverty-ridden and admitted that he felt “intimidated and unprepared” interacting with residents there. He described working in North County as a “culture shock”.¹⁰⁵

¹⁰⁰ Lily Herman, *The Police Officer Who Shot Michael Brown Admits to Using the N-Word*, Teen Vogue (Mar. 15, 2017), <https://www.teenvogue.com/story/darren-wilson-police-officer-michael-brown-use-n-word>; Zac Cheney-Rice, *Darren Wilson Called Black People “Niggers” on Duty, Lawyer Denies it Was Derogatory*, Mic (Mar. 14, 2017), <https://www.mic.com/articles/171067/darren-wilson-called-black-people-niggers-on-duty-lawyer-denies-it-was-derogatory>.

¹⁰¹ Halpern, *supra* n.32.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

In March 2011, the Jennings City Council voted to shut down the police department where Officer Wilson worked because it was plagued with corruption and racist practices.¹⁰⁶

In search of a new job, Officer Wilson admitted that he did not want to work in a “white area”, as he preferred working in Black communities where there was more “policing” to do and because he “had fun there.”¹⁰⁷

When asked about the socio-economic drivers of crime in the community, like the lack of jobs, Officer Wilson distinguished between himself (a white man) who started out working low-end jobs, by saying that in the Black community there is a “lack of initiative to get a job. Wilson blamed Black culture for the alleged criminality he observed, claiming that Black youth were “wrapped up in a different culture” instead of choosing “the right culture.”¹⁰⁸

Officer Wilson’s statement comports with racist attitudes that Black people in communities like North County struggle because they are allegedly made up of people who are “lazy or [lack] drive, criminal, and [engage] in self-destructive or anti-social behaviors.”¹⁰⁹ Wilson admitted that he never read the DOJ’s Ferguson report, but still dismissed the findings about the FPD’s pattern and practice of racially discriminatory policing, claiming that the data was “skewed” to fit an “agenda”.¹¹⁰

In an interview with ABC News one week after McCulloch cleared Officer Wilson of all charges, Wilson denied the existence of racial tensions in Ferguson.¹¹¹ Elsewhere Wilson admitted that he was uncomfortable around the majority Black community he patrolled, and that post-shooting, he only went to areas “with like-minded individuals” where it was “not a mixing pot.”¹¹²

When pressed about his racially coded language about “Black culture”, Officer Wilson struggled to answer, claiming “[i]t is the same younger culture that is everywhere in the

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Bryan Adamson, *Thugs, Crooks, and Rebellious Negroes: Racist and Racialized Media Coverage of Michael Brown and the Ferguson Demonstrations*, 32 Harv. J. Racial & Ethnic Just. 189, 225 (2016) (hereinafter “Adamson”). Available at: <http://digitalcommons.law.seattleu.edu/faculty/747>.

¹¹⁰ Halpern, *supra* n.32.

¹¹¹ Pamela Engel, *Darren Wilson Doesn’t Think There’s Any Racial Tension in Ferguson*, Business Insider (Nov. 26, 2014), <https://www.businessinsider.com/darren-wilson-denies-racism-in-ferguson-2014-11>.

¹¹² Halpern, *supra* n.32.

inner cities.” Wilson’s use of the term “inner city” and alarm about youth in gangs “running the streets” is a racist dog whistle.¹¹³ Wilson’s use of “inner city” reflects decades of media depictions of Black men as criminals. “Long understood as code for ‘Black,’ ‘urban’ news stories made negative stereotypes about Blacks salient. In linking Blacks in explicit and implicit ways to the welfare system, crime, drugs, or even the AIDS epidemic, mass media pathologized urban Black citizens and spaces.”¹¹⁴ Here, Wilson’s reliance on racist tropes about “dangerous” Black youth in “inner cities” would go on to shape how he interacted with and spoke about Mike Brown.

While the DOJ omitted all of Officer Wilson’s anti-Black racial bias described above, the Brown Report does document Wilson’s racist description of Mike Brown in his testimony. Astoundingly, however, the Brown Report simply reprinted Wilson’s testimony without a single acknowledgment of the racial discrimination present in Wilson’s words.

One of the most damning indicators of Officer Wilson’s racial bias appears in his grand jury testimony. There, Wilson referred to Mike as a “demon” who possessed “immense power”.¹¹⁵ Wilson goes to extreme lengths to dehumanize Mike. Wilson does not even refer to Mike as a human being, stating: “it looks like a demon.”¹¹⁶ Notably, the DOJ does not record this full quote from Wilson in the Brown Report, choosing instead to selectively conceal the fact that Wilson used the singular subject pronoun “it” (for non-humans) when referring to Mike as a demon.¹¹⁷

Officer Wilson also claims Mike had an “intense aggressive face” that was “looking straight through” him, like Wilson “wasn’t even there.”¹¹⁸ He described Mike as a hulk-like figure, comparing him to WWE wrestler Hulk Hogan.¹¹⁹ Despite being roughly the same height as Mike (6 feet, 4 inches), Wilson claimed he felt like “a 5-year-old” in Mike’s presence.¹²⁰

¹¹³ Justin Charity, *What Does “Inner City” Mean, Anyway?*, Complex (Feb. 1, 2016), <https://www.complex.com/life/a/justin-charity/inner-city-origin-and-proliferation-of-sloppy-political-language>.

¹¹⁴ Adamson, *supra* n.109, at 224.

¹¹⁵ Janelle Bouie, *Michael Brown Wasn’t a Superhuman Demon*, Slate (Nov. 26, 2014), <https://slate.com/news-and-politics/2014/11/darren-wilsons-racial-portrayal-of-michael-brown-as-a-superhuman-demon-the-ferguson-police-officers-account-is-a-common-projection-of-racial-fears.html> (hereinafter “Bouie Demon”).

¹¹⁶ *Id.*; Adamson, *supra* n.109, at 229.

¹¹⁷ “Wilson then described Brown becoming enraged, and that Brown ‘looked like a demon.’” Brown Report, *supra* n.5, at 14.

¹¹⁸ Bouie Demon, *supra* n.115.

¹¹⁹ *Id.*

¹²⁰ *Id.*

Officer Wilson describes Mike as superhuman, alleging that the young teen “was almost bulking up to run through the shots, like it was making him mad that I’m shooting at him.”¹²¹ Wilson’s depiction of Mike as a superhuman combatant impervious to bullets originates from centuries of stereotyping Black men as brutes.¹²² Throughout the 19th and early 20th century, major news outlets were notorious for publishing sensational stories about “giant negroes” and “black brutes” who terrorized white civilians and police officers.¹²³ Wilson’s characterization of Mike during his grand jury falls squarely into this sordid history of the racist stereotyping of Black men.

**(2) The Brown Report Omits Evidence of Officer
Wilson’s History of Unlawful, Unconstitutional
Policing**

Not only did the Brown Report fail to investigate or acknowledge Officer Wilson’s well-documented history of anti-Black racial animus, it also failed to detail Wilson’s history of violating people’s rights as a footsoldier of two police departments found to have engaged in widespread racist policing and excessive force.

One investigative journalist presented Erin Murphy, Norman Dorsen Professor of Civil Liberties at New York University School of Law and an expert in unlawful police practices,¹²⁴ with a sample of four examples of Officer Wilson’s policing found in police records.

In one egregious example, Murphy found that Wilson’s actions clearly violated the United States Constitution:

On February 27, 2014, he stopped a twenty-three-year-old black man named Aaron Simmons, outside a minimart. In the police report, Wilson remarks that the minimart was known as a place where drugs were sold. He also mentions that it was cold outside, and that while patrolling he had seen Simmons four times “in this area.” Wilson reports that, for his own safety, he told Simmons to remove his hands from his pockets. Simmons objected: it was freezing, and his pockets were

¹²¹ Adamson, *supra* n.109, at 229-230.

¹²² Bouie Demon, *supra* n.115; Adamson, *supra* n.109, at 223.

¹²³ Lauren Williams, *The Terrifying Racial Stereotypes Laced Through Darren Wilson’s Testimony*, Vox (Nov. 25, 2014), <https://www.vox.com/2014/11/25/7283327/michael-brown-racist-stereotypes> (hereinafter “Williams Stereotypes”).

¹²⁴ *Faculty*, NYU Law, <https://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.biography&personid=31567>. (last visited Aug. 9, 2024).

empty. Wilson forcibly removed Simmons's "hands from his pants, during which Simmons actively resisted my control." Wilson then requested Simmons to place his hands against the police car, so that he could be searched for weapons. When Simmons refused, Wilson arrested him for failure to comply. The report does not say that Simmons possessed anything illegal. During the arrest process, Wilson notes, he and Simmons had several physical confrontations, including one, at the police station, in which "Simmons was pushed against the wall."¹²⁵

In Murphy's expert assessment, the other three incidents also represented "questionable constitutional behavior" and when taken together the incidents painted "a familiar picture of contemporary law enforcement." In response to the investigative reporter's follow-up, "Wilson conceded that the failure-to-comply ordinance was exploited as an 'easy way to arrest someone.'"¹²⁶

Instead of documenting and confronting this highly relevant evidence directly, the Brown Report summarily dismissed Officer Wilson's documented history of violations in a single footnote, claiming that "[s]uch allegations were not substantiated, and do not contain information admissible in federal court in support of a prosecution."¹²⁷ A claim that is demonstrably false and plainly contradicted by the available evidence.

Other glaring omissions of the Brown Report include the fact that Officer Wilson never filed a use-of-force report¹²⁸, changed his testimony over time¹²⁹, and publicly admitted that he had no personal expectation that he would be held accountable for his actions.¹³⁰

In addition to suppressing damning evidence of Officer Wilson's history, the DOJ also fails to document the abundant evidence of Mike Brown's character in the community that is utterly incompatible with Wilson's description of Mike's actions on August 9. Mike Brown had no record of criminal activity and no known associations with criminal activity. He was a stellar student about to attend college, widely loved, with an affable demeanor, and viewed as a leader in his family and in the community. Such information would have been highly relevant to any jury in assessing Wilson's credibility and

¹²⁵ Halpern, *supra* n.32.

¹²⁶ *Id.*

¹²⁷ Brown Report, *supra* n.5, at 16 n.8.

¹²⁸ Sickles Ferguson Chief, *supra* n.19; Sickles Internal Record, *supra* n.19; *see also* Ferguson Report, *supra* n.19, at 29, n.17.

¹²⁹ Statement of Darren Wilson to St. Louis County Police Department (Aug. 10, 2014); *see also* PoliticsNation, *supra* n.16.

¹³⁰ Halpern, *supra* n.32.

characterization of Mike, yet the DOJ does not acknowledge or address this inconsistency in the Brown Report.

**c) The Brown Report Ignores a Fundamental Contradiction
Between the Physical Evidence and Officer Wilson's
Testimony**

The DOJ uses a fundamental contradiction between physical evidence and Officer Wilson's testimony to bolster Wilson's account and to contest the accounts of multiple eyewitnesses who challenged Wilson's testimony.

Multiple eyewitnesses testified that Mike Brown held his hands up in surrender as Officer Wilson murdered him. But the Brown Report goes to great lengths to characterize the physical evidence in a way meant to undermine the veracity of these claims. The DOJ acknowledges that it conducts in-depth analysis of this single point of contention because of the widespread media reports attesting to it, reports that led to "Hands Up! Don't Shoot!" becoming a rallying cry of the protests in Ferguson and around the nation. In doing so, the DOJ demonstrates its capacity to marshal a thorough analysis of the physical evidence with regards to the positions of Mike's hands at the time of his murder.

Yet, inexplicably the DOJ fails to explain anywhere in its analysis that the very same physical evidence of the position of Mike Brown's hands presents a fundamental contradiction with Officer Wilson's testimony. In fact, the DOJ does not even acknowledge that this fundamental contradiction exists. Instead, the DOJ first relies upon this fundamental contradiction in the physical evidence to *credit* the truthfulness of Wilson's testimony, not *discredit* it. The DOJ then relies upon this fundamental contradiction in the physical evidence to *discredit* the testimony of eye-witness accounts that challenge Wilson's testimony, not *credit* them. The DOJ finally relies upon this fundamental contradiction in the physical evidence to assert that Wilson was protected by an affirmative defense (citing United States case law) that purportedly prevented the DOJ from bringing criminal charges against Wilson.

Officer Wilson testified under oath, and repeated multiple times (as corroborated by a colleague who discussed the matter with him just after the murder), that Mike Brown put his *right* hand in his right waistband as if Mike was reaching for a gun, and charged at

Wilson, “hand in waistband.”¹³¹ Wilson testified that as a result, he was fixated on the right side of Mike’s body.¹³² Wilson’s account is plainly contradicted by the record.

First, the evidentiary record confirms that Mike Brown did not have a gun or any other object in his waistband or on the right side of his clothing.¹³³

Second, the physical evidence revealed that Officer Wilson shot Mike Brown in Mike’s right thumb and that it was bleeding at the time of the chase.¹³⁴ If Mike did inexplicably reach his right hand into his empty waistband and run with it in that location as Wilson shot at him, the physical evidence would have undoubtedly revealed blood on the waistband, because the blood oozing out of Mike’s right thumb was found along the road.¹³⁵ However, no blood was found anywhere on Mike’s waistband.¹³⁶

Third, and most damning to the notion that the DOJ’s report represents a serious, thorough, and impartial investigation, the DOJ emphasizes throughout its report that it was Mike’s *left* hand (not his right hand) that was found near (though not inside) his *left* waistband (not his right waistband). In other words, the very physical evidence the DOJ deploys in an attempt to discredit the “Hands Up! Don’t Shoot!” narrative, demonstrates that Wilson was lying.¹³⁷

Instead of acknowledging this crucial discrepancy and explaining in detail how Wilson could have made such a critical mistake, the DOJ simply ignores this fundamental contradiction at the heart of their report.

Astonishingly, the DOJ uses this physical evidence to erroneously bolster Wilson’s account, stating in the Brown Report that “Wilson’s version of events is corroborated ... by the fact that Brown went to the ground with his left hand at (although not inside) his waistband.”¹³⁸

Doubling down on its obvious mistake, the DOJ then relies on the physical evidence of Mike’s *left* hand near his waistband to discredit multiple eye-witnesses whose testimony

¹³¹ Brown Report, *supra* n.5, at 15.

¹³² *Id.*

¹³³ *Id.* at 17.

¹³⁴ *Id.* at 7, 15, 16, 17, 18.

¹³⁵ *Id.* at 7, 15, 16, 17, 18.

¹³⁶ *Id.* at 19 n.15.

¹³⁷ *Id.* at 17.

¹³⁸ *Id.* at 82.

was unfavorable to Wilson’s account, including the primary witness to the murder (Witness 101).¹³⁹

Finally, the DOJ relies on this evidence as the crucial fact to bolster Wilson’s “reasonable” fear for his life (i.e. that he “believed” Mike Brown had a gun), justifying Officer Wilson’s use of lethal force to murder Mike. This is the first and strongest reason that the DOJ presents to make the case that they would be unable to prosecute Wilson and hold him criminally accountable.¹⁴⁰

The Brown Report even goes so far as to claim that “[t]here is no evidence upon which prosecutors can rely to disprove Wilson’s stated subjective belief that he feared for his safety”¹⁴¹, and that:

Wilson’s statements ...*would not be subject to effective impeachment for inconsistencies or deviation from the physical evidence.* Therefore, in analyzing all of the evidence, federal prosecutors found Wilson’s account to be credible.¹⁴²

Petitioners can not conjure a rational explanation for such a fundamental flaw in the DOJ’s findings and analysis. Mistaking the right hand for the left hand in this way cannot be explained by the complexities involved in examining physical evidence. This leads to the following inescapable conclusion: the DOJ found incontrovertible physical evidence that Officer Wilson lied about Mike Brown reaching for his right waistband, failed to acknowledge it, and then blatantly relied upon this evidence to erroneously substantiate their decision not to prosecute Wilson.

Ultimately, no serious, thorough, and impartial investigation could result in a report with such crucial omissions and fundamental inconsistencies. As a result, the Brown Report presents a fundamentally flawed, one-sided public narrative that just so happens to align with the biased investigation by Bob McCulloch and the narrative of the racist Ferguson Police Department.

3. The State’s DOJ Reports Were Tools of Public Persuasion Designed to Quell Public Outrage

¹³⁹ *Id.* at 46, 57, 81.

¹⁴⁰ *Id.* at 84.

¹⁴¹ *Id.* at 7.

¹⁴² *Id.* at 16.

The authors of the DOJ report admit that they took the unusual step in preparing the Brown Report.¹⁴³ The Brown Report was written with the goals of persuading the public of a one-sided account of the facts designed to quell public outrage over the murder.¹⁴⁴ When understood in this light, the internal contradictions and deep flaws of the report begin to make sense.

The Brown Report was released on the same day as the DOJ's report of its civil investigation into the Ferguson Police Department ("Ferguson Report"). At the time this was widely understood by public relations experts to be a deft public relations move, in order to affirm that there was in fact racist policing taking place in Ferguson, while avoiding a difficult political confrontation with powerful Police Unions and their supporters.¹⁴⁵ By giving a stamp of approval to the undeniably biased narrative of McCulloch's investigation, the report not only fails to amount to evidence of a serious, thorough, and impartial investigation, it actually perpetrated *more* harm on Lezley and her family by obscuring the truth and disparaging the reputation of Mike Brown.

To understand how the Department of Justice could have issued a such a biased report that relied heavily on Bob McCulloch's flawed investigation, was plagued with internal inconsistencies, and went to lengths to bolster Officer Wilson's specious account justifying his murder of Mike Brown, it is crucial to understand *why* the DOJ became involved in the matter.

Far from the story the State portrays of a diligent federal government that is swift to take action to hold police accountable, the DOJ acted only because a social movement in 2014 forced them to do so.

While the United States has subjected Black people to state violence since its founding and racism has been endemic to police forces since their inception, the rallying cry of #BlackLivesMatter was launched as a social media hashtag in the wake of George

¹⁴³ Robina Institute, *Ferguson Conference*, YouTube (Oct. 13, 2017), <https://www.youtube.com/watch?v=VV8HXOK3Dts&t=2909s> (starting 1:05:00).

¹⁴⁴ On July 12, 2017 top DOJ officials in charge of the Brown Report and Ferguson Report gathered for a full day symposium entitled "Ferguson as a Case Study in Persuasion" where the officials detail at length their motivation for writing the Brown Report in order to persuade the public of their desired narrative in light of ongoing protests and community outrage over the lack of accountability for Mike Brown's murder. <https://robinainstitute.umn.edu/events/ferguson-case-study-persuasion>; As the moderator, a top DOJ official at the time of the investigations explained, "today we gather to discuss the application of these ideas and themes both in terms of its effects on its audience, those who are to be persuaded, and on those producing said documents, doing the persuading" Ferguson Conference, *supra* n.71, at 0:28:00.

¹⁴⁵ As Jonathan Capehart explained, the DOJ's "rollout was smart as a communication strategy", it was "smart" to put both reports "out at the same time." Ferguson Conference, *supra* n.71, at 2:39:00.

Zimmerman's vigilante murder of Trayvon Martin in Florida in 2012. But, this rallying cry that would become the largest social movement in the history of the United States was ushered into (white-dominated) mainstream public discourse only *after* Officer Wilson murdered Mike Brown, and only *because* of the organizing and people power of the Movement for Black Lives.

Three weeks before Officer Wilson murdered Mike Brown, bystander cell-phone footage immortalized the infamous last words of Eric Garner exclaiming "I can't breathe!" while Officer Daniel Pantaleo choked Garner to death on the streets of New York.¹⁴⁶

Despite decades of the State largely ignoring the problem of racist policing and police violence in the United States, these two murders of unarmed Black men by white cops became a moment of racial reckoning in the United States that dominated media headlines. As the FPD met protestors in Ferguson with extreme and militarized state violence, the headlines and public discontent with the state of policing in the U.S. rightfully reached a fever pitch. The DOJ was completely perplexed by and utterly unprepared for this level of public outrage.

The former Deputy Assistant Attorney General in the Civil Rights Division of the Department of Justice who oversaw both the criminal and civil rights sections in 2014 later reflected about Mike Brown's murder: "It was a bit befuddling to us at the Department of Justice. We couldn't quite figure out why this instance erupted in the way it did. We couldn't quite figure it out."¹⁴⁷

The then-head of Criminal Section of the Civil Rights Division at the Department at the time, who would wind up overseeing the federal criminal investigation into Mike Brown's murder, explained in further detail:

So, August 9 was a Saturday -- a weekend -- and this may tell you a little bit about our line of work. I've been in the Civil Rights Division (I'm career) twenty-something years. I've been handling these kinds of cases twenty-something years. And I *did* hear in the media that, um, an African-American man had been shot by a white police officer. And it *didn't* register as big of an incident as it became locally for me at the time, because I see those cases, as I said, sadly with

¹⁴⁶ While Officer Daniel Pantaleo faced administrative sanction when his employment as a police officer in New York was terminated, he has never been held criminally accountable by state or federal authorities for murdering Eric Garner.

¹⁴⁷ Ferguson Conference, *supra* n.71, at 0:51:30.

some frequency. Um, and... so my first reaction *wasn't* -- I mean my first reaction was ok, we need to kinda get on this, we need to look at this, we need to go into our standard operating mode. Within a short period of time, I realized something else is going on here, and I don't know what it is. But this thing is, you know, something has erupted here. And this is becoming a really serious situation, and this case is becoming very important to this country in a way that I don't fully understand, but I see it happening.¹⁴⁸

Similarly, as the protests continued and the movement forged on, an explosive civil society report released five days after Officer Wilson murdered Mike Brown and which documented the systemic racist practices of the Ferguson Police Department proved to be too much for the civil investigators at DOJ to ignore.

Initially inclined to inaction, the Deputy Chief in the Special Litigation Section of the Civil Rights Division at the DOJ at the time recalled:

...shootings of unarmed Black men are far too frequent in this country, and we certainly don't open up a pattern and practice investigation every time they occur. ...I did not, sort of, think much of it when the initial reporting of the shooting came, um, across my social media. I knew that it was bad, and I read it with interest. But it really wasn't until the follow-up, um, tweets and stories started coming through, with first 30 people, and then 200 people, and then 800 people. Within hours hundreds of people were in the street."¹⁴⁹

ArchCity Defenders, a holistic legal advocacy organization that combats the criminalization of poverty and state violence, especially in communities of color, released their groundbreaking report¹⁵⁰ on August 14, 2014¹⁵¹ after nearly a year of in-depth human rights documentation efforts exposing the systemic racism of the criminal legal system in Ferguson.

As preeminent scholar Amna A. Akbar, Charles W. Ebersold & Florence Whitcomb Ebersold Professor of Law at The Ohio State University Moritz College of Law, described:

¹⁴⁸ Ferguson Conference, *supra* n.71, at 0:48:20.

¹⁴⁹ *Id.* at 0:52:25.

¹⁵⁰ *Municipal White Courts White Paper*, ArchCity Defenders, (Aug. 14, 2014), https://www.archcitydefenders.org/wp-content/uploads/2022/10/2014_ACD_MunicipalCourts_Whitepaper-1-1.pdf.

¹⁵¹ Victoria Bekiempis, *Driving While Black in Ferguson*, Newsweek (Aug. 14, 2014), <https://www.newsweek.com/ferguson-profiling-police-courts-shooting-264744>.

In 2014, the St. Louis–based ArchCity Defenders issued a white paper on the municipal courts based on their extensive court-watching program. That report, *understood as a precursor to the DOJ’s Ferguson report issued the following year*, documented the banal brutality of roughly thirty courts that collected millions in fines and fees from Black, poor, and housing insecure people in St. Louis County. The arrest warrants then issued for failure to pay landed many in jail, rendering them ineligible for the meager housing and public assistance programs available. By the design of municipal officials, judges, and the police, the millions Ferguson generated in fines and fees made up a whopping 20 percent of the local budget, offsetting tax cuts for the wealthy and local corporations.¹⁵²

Nearly a month after the release of ArchCity’s report garnered national media attention, the DOJ decided to open its civil investigation into FPD on September 4, 2014.

It is important to note that the State admits that the DOJ deviated from its standard procedures by issuing the Brown Report. In the words of the head of the DOJ’s Criminal Division who oversaw the Brown investigation:

We don’t often write reports. It is the rare case that we would write a report... In most of the incidents that we make decisions on, we don’t write any report at all. ...I can only think of a very few cases in where we’ve done a report like this. So, it was a really unusual thing for us to do. We did not have ... deep experience in doing something like this, because it hadn’t been something we had done, and we had to figure it out, sort of, on our own.¹⁵³

DOJ lawyers explained in detail how the report was written for the public and for the media, not a typical legal investigative memorandum of law or evidentiary findings in a process to establish the truth and hold perpetrators accountable. When asked if the media played “a significant role” in the DOJ’s “decision to deviate from prior practice” and write the Brown report, the DOJ official in charge of the investigation replied emphatically: “Yes!”¹⁵⁴

As one top DOJ official later recalled about the drafting of the Brown Report:

¹⁵² Amna A. Akbar, *Justice From Below*, n+1 Magazine, <https://www.nplusonemag.com/issue-46/politics/justice-from-below/> (emphasis added).

¹⁵³ Ferguson Conference, *supra* n.71, at 1:05:00.

¹⁵⁴ *Id.* at 1:34:00.

Ultimately I think thinking about persuasion, and what's persuasive, to audiences is really important, because we're in a time, where I think command and control, or innate trust in authority, is not enough. I think the definitive word from an official investigative body, report, or *fact finding in and of itself is not going to be enough*.¹⁵⁵

At a public event, an audience member who used to work at DOJ asked about the DOJ's highly coordinated public relations strategy of releasing both the criminal investigation report and civil investigation report on the same day:

Knowing that you had two pretty significant complex investigations going on at the same time. I'm assuming one of them is done first. Can you guys just briefly talk about the decisions of knowing it was important to get these two out at the same time because of the dynamic out there? Who finished first? Was someone on a bench for a while? And just give us some insight into that?"¹⁵⁶

The head of DOJ's criminal division who oversaw the Brown Report simply replied: "No"¹⁵⁷—refusing to provide insight into the DOJ's highly coordinated public relations strategy.

In fact, it was common knowledge that the DOJ criminal investigation had reached its conclusion sometime in January, around two months prior to the DOJ releasing the Brown Report on the same day as its findings from the civil investigation in the Ferguson Report.¹⁵⁸ As Lezley testified in the Hearing on the Merits, it was about this same time that the white DOJ line attorney leading the criminal investigation (the same line attorney who would later espouse racially discriminatory stereotypes about Lezley herself), began to turn cold and warn Lezley that she would be "looking into" negative information about Mike's character—information such as a juvenile criminal record that indeed never existed.

Further emphasizing the propagandistic purpose of the DOJ's Brown report, the head of the DOJ Criminal Division stated that "[i]t was important that the Attorney General [Eric

¹⁵⁵ *Id.* at 0:26:00.

¹⁵⁶ *Id.* at 1:35:00.

¹⁵⁷ *Id.*

¹⁵⁸ Apuzzo & Schmidt, *supra* n.99.

Holder] announce the findings,” because he was a Black man. “If I answer honestly: Did race have some role there?” the DOJ official explained: “Yes.”¹⁵⁹

With this knowledge, the biased nature and internal inconsistencies of the Brown Report detailed above become understandable. The Brown Report was *not* a comprehensive report of the “evidence as a whole” in service of a serious, thorough, and impartial investigation in line with international standards in order to establish the truth and hold a perpetrator accountable. The report was a carefully crafted tool to quell public outrage about the death of a Black teenager by a white cop—to continue with the status quo.

Because of the immense social pressure applied by local protests and the Movement for Black Lives, the DOJ knew that its investigations could not come up completely empty. With the ArchCity report widely reported by national media, already detailing the systemic racist pattern and practices of the Ferguson Police Department and municipal court system¹⁶⁰, it would have been impossible for the civil investigation to ignore.

By releasing the civil Ferguson Report simultaneous to the Brown Report, the State was able to bolster their credibility as a “force for justice” and distract from their lack of dutiful investigation into Mike Brown’s murder, by repackaging information that was already researched and made available to the public by local civil society months earlier.

Nevermind the obvious fact that Officer Wilson was immersed in FPD’s racially discriminatory culture, carrying out their racist practices that preyed upon Black civilians in and around Ferguson. None of which is mentioned in the Brown Report.

By and large, the public relations strategy worked. The DOJ released its reports to the media several hours before their press conference, ensuring the media was consumed by the DOJ’s “solomonic” wisdom indicting the Ferguson Police Department, while Mike’s murderer walked free.¹⁶¹

To this day, Officer Wilson is still free. Not because he was cleared of all culpability after a serious, thorough, and impartial investigation, but because the DOJ violated its obligations under the American Declaration and abdicated its responsibility to hold Mike’s murderer accountable.

¹⁵⁹ Ferguson Conference, *supra* n.71, at 1:37:00.

¹⁶⁰ The Ferguson Report references the ArchCity study on which its report relied at page 1, para 2.

¹⁶¹ Ferguson Conference, *supra* n.71, at 2:41:00.

4. The DOJ's Discriminatory Mistreatment of Lezley McSpadden during their Investigation and the Discriminatory Narrative in the Brown Report Caused Additional Harm to Lezley McSpadden and her Family in Violation of Articles I and V of the American Declaration

The DOJ's racially discriminatory mistreatment of Lezley McSpadden gives rise to additional violations of the American Declaration.

As the American Civil Liberties Union (ACLU) and Mothers Against Police Brutality (MAPB) detail in their *amicus* brief before the Commission in the present case:

Under the norms and obligations of international law at large, victims of crimes, including police violence, and their next-of-kin, who are also considered victims, are entitled to robust protections and rights from the investigatory stage through prosecution, and beyond. Broadly, victims maintain rights to truth, judicial protection, and remedies. More specifically, victims are entitled to ...transparency and communication through the investigative process; ...and, importantly, to prompt and individualized social, psychological, financial, and other support from the point of victimization well beyond any criminal or civil resolution.¹⁶²

In the Hearing on the Merits, Lezley testified to the lack of transparency and racially discriminatory treatment by State officials during the DOJ's investigatory phase and announcement of its decision not to hold Officer Wilson accountable.¹⁶³

Lezley testified that the DOJ line attorney in charge of its criminal investigation mined Lezley for information for months, without providing a transparent window into the status of the investigation.¹⁶⁴ Over the course of their myriad conversations, Lezley was fully cooperative and provided voluminous information about Mike and his stellar reputation as a son, brother, and role model within the community—all of which the DOJ ignored and refused to include in the Brown Report. At one point around January 2015, the DOJ line attorney abruptly changed her tone with Lezley, and issued a foreboding warning that the DOJ would have to look into Mike's "record."

¹⁶² American Civil Liberties Union & Mothers Against Police Brutality, *Amicus Br. in Support of Pet'rs* 10.

¹⁶³ Merits Hearing Testimony, *supra* n.21, at 09:25.

¹⁶⁴ *Id.*

As Lezley testified, she was confused by the veiled threat of the DOJ line attorney, because Mike did not have any juvenile or criminal record. The DOJ had been investigating for nearly five months and should have known this to be the case.

In the United States, one of the most pernicious anti-Black stereotypes that fuels the mass incarceration crisis is the unfounded, but widely-held, racist stigma that young Black men are “criminals.”

In particular, researchers from Johns Hopkins University and Montclair State University have examined how “unarmed Black male victims, particularly ... at the hands of law enforcement, have been posthumously criminalized” in order to justify their murders by police:

The synonymy of Blackness with criminality is not a new phenomenon in America. Documented historical accounts have shown how myths, stereotypes, and racist ideologies led to discriminatory policies and court rulings that fueled racial violence in a post-Reconstruction era and has culminated in the exponential increase of Black male incarceration today. Misconceptions and prejudices manufactured and disseminated through various channels such as the media included references to a “brute” image of Black males. In the 21st century, this negative imagery of Black males has frequently utilized the negative connotation of the terminology “thug.” In recent years, law enforcement agencies have unreasonably used deadly force on Black males allegedly considered to be “suspects” or “persons of interest.” The exploitation of these often-targeted victims' criminal records, physical appearances, or misperceived attributes has been used to justify their unlawful deaths.¹⁶⁵

When the DOJ line attorney suddenly began to traffic in these racist stereotypes, Lezley became alarmed, exacerbating the immense pain and trauma that she was experiencing on a daily basis after Officer Wilson murdered her son.

The DOJ's lack of transparency and mistreatment of Lezley continued until March 4, 2015, the day the DOJ announced the findings of their criminal and civil investigations.

¹⁶⁵ Calvin John Smiley and David Fakunle, *From “Brute” To “Thug:” The Demonization And Criminalization Of Unarmed Black Male Victims In America*, 26 J Hum Behav Soc Environ (2016), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5004736/>.

As Lezley testified, on March 4, 2015, the DOJ summoned her to their local office to inform her of the DOJ's decision. First, the DOJ forced Lezley to wait in an undignified and disrespectful fashion for nearly two hours in the lobby in agonizing anticipation. When the DOJ finally invited Lezley in to speak, they sat her down at a large conference table with government officials lined with stacks of paper, and summarily informed her they would not be holding Officer Wilson accountable for murdering her son.

As a grieving mother who had already been failed by FPD and Bob McCulloch, Lezley's trauma surfaced and her emotional dam broke upon hearing the devastating news that once again her son's murderer would enjoy blanket impunity, and this time from the federal government.

Instead of responding with care, compassion, or social services to help Lezley manage her trauma, the DOJ line attorney in charge of the investigation doubled down on her anti-Black racist stereotypes and exclaimed that *she* was afraid of *Lezley*. As Lezley testified, the DOJ line attorney went so far as to proclaim that if she ever encountered Lezley in public, she would cross to the other side of the street.

As Dr. Wendy Ashley, Professor and Department Chair, Social Work Department at California State University, Northridge, explains:

In the aftermath of slavery and the resulting social, economic, and political effects, Black women have become the victims of negative stereotyping in mainstream American culture. Such stereotypes include the myth of the angry Black woman that characterizes these women as aggressive, ill tempered, illogical, overbearing, hostile, and ignorant without provocation.¹⁶⁶

The utilization and pervasiveness of the racist "Angry Black Woman" stereotype causes significant negative impact to the physical and mental health of Black women in the United States, including physical stress and inducing feelings of guilt, lowered self-esteem, and shame.¹⁶⁷ Resulting symptoms can include rapid breathing, upset

¹⁶⁶ Wendy Ashley, *The Angry Black Woman: The Impact Of Pejorative Stereotypes on Psychotherapy With Black Women*, 29 Soc Work Public Health (2014), available at: <https://pubmed.ncbi.nlm.nih.gov/24188294/#full-view-affiliation-1>.

¹⁶⁷ Francis, Jenelle, *You Have Every Right to be Angry: Impacts of the Angry Black Woman Stereotype and Counseling Considerations for Helping Black Women Honor Their Anger*, JMU Scholarly Commons (2023). Available at: <https://commons.lib.jmu.edu/edspec202029/77https://commons.lib.jmu.edu/cgi/viewcontent.cgi?article=1065&context=edspec202029>.

stomach, tension headaches, constant anxiety, ulcers, insomnia, rapid mood swings, difficulty thinking or speaking, and social withdrawal.¹⁶⁸

At no point during the investigative phase or on the day of their announcement did the DOJ offer Lezley access to social, psychological, or other support that she is entitled to as a victim of serious human rights violations. Instead the DOJ line attorney in charge of the investigation subjected Lezley to racist stereotyping that only exacerbated the harm caused by the State.

In the Hearing on the Merits, Lezley also testified to how the DOJ's one-sided narrative in the Brown Report and public relations campaign negatively impacted her, her family, and the reputation of Mike Brown.

Backed by the full force of the federal government, the State used its Brown Report to disparage the character of Mike Brown and bolster the credibility of Mike's murderer. In doing so, not only did the State shield the public from the truth, but it also violated Lezley and her family's right to truth, and subjected her to additional psychological harm.

D. Former St. Louis Prosecutor Wesley Bell Fails to Conduct a New Investigation, Prioritizing His Own Political Ambitions Over His Duty to Seek Justice and Establish the Truth

The State has erroneously argued that Petitioners find no flaws in the current St. Louis Prosecutor Wesley Bell's failure to conduct a fresh, serious, thorough, and impartial investigation into Mike Brown's murder.

At the outset, it is important to recognize that Wesley Bell noted that his review "did not exonerate Darren Wilson."¹⁶⁹ Prosecutors have wide discretion to bring criminal charges. In an attempt to defend his decision not to indict Officer Wilson, Bell explained that there is a difference between proving a case during trial and "clearing [Wilson] of any and all wrongdoing."¹⁷⁰ Bell went on to say that legislators need to take a hard look at laws that offer protection against prosecution for police officers that regular citizens aren't afforded:

¹⁶⁸ *Id.*

¹⁶⁹ Further Observations, *supra* n.14, at 9.

¹⁷⁰ Raja Razek, *Missouri Police Officer Who Killed Michael Brown Faces No Charges*, CNN (July 30, 2020), <https://www.cnn.com/2020/07/30/us/ferguson-missouri-michael-brown-darren-wilson-no-charges/index.html> (hereinafter "Razek").

We see those types of laws throughout the country, and it is something that handcuffs prosecutors in numerous ways when you are going about prosecuting officers who have committed unlawful use of force or police shootings.¹⁷¹

At minimum, this indicates an acknowledgment of the insufficiencies of the State's own laws to be able to properly hold Officer Wilson accountable and is sufficient to give rise to a violation of articles I, XVIII, and XXVI of the American Declaration. However, just like FPD, Bob McCulloch, and the DOJ before him, Bell also failed to conduct a serious, thorough, and impartial investigation.

Before he became the St. Louis County Prosecutor, Bell was a municipal court judge in the small St. Louis suburb of Velda City four miles north of Ferguson. In 2015, human rights organizations filed a civil rights lawsuit against Velda City municipal courts, because Bell was enforcing an illegal money bail system that jailed predominantly Black residents who were too poor to pay for their freedom. As a result of the lawsuit, Velda City abolished the discriminatory bail system that Bell administered.¹⁷² The lawsuit was bolstered by the DOJ's position that bail schemes, like those in Velda City, that mandate "payment of pre-fixed amounts for different offenses in order to gain pre-trial release, without any regard for indigence" violate the 14th Amendment's equal protection clause.¹⁷³

In 2018, Bell decided to capitalize on the community's outrage over Bob McCulloch's failure to hold Officer Wilson accountable for murdering Mike Brown, and ran against McCulloch for St. Louis County Prosecutor on a platform of criminal justice reform. During his campaign Bell proposed appointing special prosecutors to hold police accountable. Once elected, Bell quickly changed his tune. A coalition of local civil society organizations recently released their findings of Bell's tenure as St. Louis County Prosecutor documenting his failure to live up to the promises of his "progressive" campaign:

¹⁷¹ Associated Press, *Change Laws That Shield Police, Wesley Bell Says*, Fox2 Now (July 31, 2020), https://www.stltoday.com/news/local/crime-courts/settlement-in-federal-lawsuit-abolishes-cash-bail-for-velda-city/article_00e68a2a-5edd-5423-abac-1af69ae2f018.html (hereinafter "Wesley Bell Police Shield").

¹⁷² Valerie Schremp Hahn, *Settlement in Federal Lawsuit Abolishes Cash Bail for Velda City Offenses*, St. Louis Post-Dispatch (June 3, 2015), https://www.stltoday.com/news/local/crime-courts/settlement-in-federal-lawsuit-abolishes-cash-bail-for-velda-city/article_00e68a2a-5edd-5423-abac-1af69ae2f018.html.

¹⁷³ Ryan J. Reilly & Mariah Stewart, *Judge in Tiny City Facing Lawsuit Over Its 'Illegal' Bail System Is Running For Ferguson City Council*, Huffpost (Apr. 6, 2015), https://www.huffpost.com/entry/velda-city-ferguson-wesley-bell-st-louis-county-municipal-courts_n_7012100.

After early progress, the St. Louis County jail population has steadily climbed under Bell's leadership. It has increased 23% in the past year and 46% in the past two years. There are 60% more Black women behind bars today than there were a year ago. As of early July 2024, following an increase of nearly 50 people in less than ten days, the jail population has reached the exact same levels we saw at the end of Bob McCulloch's term.

Meanwhile, the nation's overall jail and prison population has fallen by over 10%. Many people were excited for new leadership in 2019 and remained hopeful after early change, only to see a return to the policies of mass incarceration. On this score, the disappointing reality is that the nation overall has decarcerated in the past five years while St. Louis County has regressed to the status quo.

While failing to reduce the jail population long-term, Bell's office has succeeded in securing a \$1.8 million budget expansion and a \$700,000 ARPA grant to hire new attorneys and build out satellite offices with the police. This risks inflating the office's budget for years to come, creating even more power to put our neighbors behind bars.¹⁷⁴

In the end, Bell abdicated his duty to investigate and prosecute Mike Brown's murderer. At the Hearing on the Merits, Lezley testified that Bell's decision was motivated by political ambition:

[Bell] and I have had several conversations. We've met more than a handful of times to talk about him running for city council... He used Mike's situation to be put into office. And I was given broken promises throughout that time... He said that this guy [Wilson] had not been exonerated and that was the best he could do for us... I felt betrayed by Wesley Bell. Not only did he use my son's situation to get into office for prosecutor, he's using it again for his Congress campaign. Very hurtful.¹⁷⁵

First, instead of conducting a fresh investigation into the case, Bell ordered an underfunded and overworked unit within his department to simply review Bob

¹⁷⁴ Prosecuting Organizing Table, *Prosecutor Watch* (July 2024), https://static1.squarespace.com/static/65d8b532d7be7b012d432d16/t/66974d639ea1aa225e1e678c/1721191788670/07162024_FullProsecutorWatchCountyFinal.pdf

¹⁷⁵ Merits Hearing Testimony, *supra* n.21, at 12:00.

McCulloch's old tainted case file, even though Bell was fully aware of the fatal bias embedded in McCulloch's initial handling of the case, stating:

There are some protections that Darren Wilson received that no other defendant received, and the grand jury process would be an example of that. He was invited to come into the grand jury, there was no vigorous cross-examination, he was able to tell his story without that hard questioning that we would expect from a prosecutor in any case like this, and that's what the grand jury was able to see.¹⁷⁶

Second, Bell admitted that, "[t]here are so many points in which Darren Wilson could have handled the situation differently, and if he had, Mike Brown might still be alive."¹⁷⁷

Third, in a cursory meeting with Lezley, minutes before Bell would hold a press conference to control the narrative of his decision and prevent Lezley and her family from preparing an adequate response, Bell confessed that he decided not to conduct a fresh investigation or charge Officer Wilson, *because he feared political backlash*. When pressed on why, Bell told Lezley:

You see what they're doing to Kim Gardner? I don't want that type of backlash.¹⁷⁸

Kim Gardner was the head prosecutor (Circuit Attorney) for the city of St. Louis, who faced vicious attacks by police and police unions over her attempts to reform racially discriminatory police and prosecutorial practices. St. Louis police even refused to testify at Gardner's murder trials, letting likely killers go free, in attempts to undermine Gardner's credibility.¹⁷⁹ Bell had reason to fear similar opposition from local police and police unions, as attorneys in his office, who were so angry over Bell's campaign promises for reform, left the prosecutors union to join the local police union.¹⁸⁰

In prioritizing his political ambition, Bell joined the FPD, McCulloch, and the DOJ in denying Lezley her rights to a serious, thorough, and impartial investigation into Officer

¹⁷⁶ Wesley Bell Police Shield, *supra* n.171.

¹⁷⁷ Razeq, *supra* n.170.

¹⁷⁸ Merits Hearing Testimony, *supra* n.21, at 15:38.

¹⁷⁹ Jeremy Kohler et al., *A Detective Sabotaged His Own Cases Because He Didn't Like the Prosecutor. The Police Department Did Nothing to Stop Him*, ProPublica (Oct. 10, 2023), <https://www.propublica.org/article/homicide-detective-st-louis-refused-testify-roger-murphey-kim-gardner>.

¹⁸⁰ Akela Lacy, *Before Criminal Justice Reformer Is Even Sworn In, St. Louis Prosecutors Have Joined a Police Union*, The Intercept (Dec. 20, 2018), <https://theintercept.com/2018/12/20/wesley-bell-st-louis-prosecutor-police-union/>.

Wilson's murder of Mike Brown, and ensuring that Wilson enjoys blanket impunity to this day.

V. The State's Alleged Remedies and Piecemeal Reforms Are Inadequate and Ineffective

A. Financial Compensation Alone is Not a Sufficient Remedy for a Violation of Article I of the American Declaration

A financial settlement between the victim and the government does not relieve the State of its duty to investigate and hold the perpetrator accountable. In brazen defiance of settled international law,¹⁸¹ the State claims that the 2017 financial settlement reached between the City of Ferguson and Mike Brown's family "renders this Petition procedurally out of order" and that the Petitioners have somehow "waived their ability to bring additional claims."¹⁸² The State's attempt to undermine *stare decisis* and relitigate the Commission's admissibility decision aside, it strains the imagination to believe that a civil settlement alone could waive the right of victims to bring claims of the State's international responsibility.

A more feasible interpretation of the State's position is that the financial settlement somehow satisfies its international obligation to remedy the violations they have inflicted upon Mike Brown and his family. On the one hand, Petitioners welcome the admission that there are, in fact, violations to be remedied. On the other hand, the jurisprudence of this Commission, recognizing the State's universally accepted international legal obligations, is clear in stating that financial compensation alone is not sufficient to remedy human rights violations of this nature.¹⁸³

B. The State Did Not Grant Lezley McSpadden Access to Mental Rehabilitation Services

The Commission explained that "the State must take measures to grant reparations to victims and their family members" which includes measures of rehabilitation, such as free medical and mental health care for victims and their next of kin.¹⁸⁴ Here, the State did not offer Lezley or her children any mental health services. According to Lezley, "I

¹⁸¹ Report on Admissibility ¶ 20; *See also*, Amicus Brief submitted by the ACLU and MAPB.

¹⁸² Further Observations, *supra* n.14, at 14.

¹⁸³ Report on Admissibility ¶ 20; *See also*, Amicus Brief submitted by the ACLU and MAPB.

¹⁸⁴ IACHR Police Violence, *supra* n.2, para 303.

had to navigate finding community, healing, and counseling by myself. It is a lonely and isolated place.”¹⁸⁵ During the Hearing on the Merits, Lezley testified that she and her family still suffer from overwhelming PTSD.¹⁸⁶

The State has a duty to ensure that victims of police violence, like Lezley and her children, have access to free mental health services. By not providing this remedy, the State has abdicated its responsibilities.

C. The State’s Reforms Do Not Constitute Effective Measures of Non-Repetition

Over the course of its arguments, the State takes great pains to include a laundry list of “efforts, initiatives, and developments in Ferguson and around the United States.”¹⁸⁷ However, the gap between the purported success of these reforms is in sharp contrast to reality, both in Ferguson and the country at large. As outlined in Thomas Harvey’s expert witness testimony, reforms, such as Civilian Review Boards and consent decrees, have garnered mixed reviews and criticism in terms of effectiveness.¹⁸⁸ The State argues that Petitioners are merely “frustrated with the pace of reform” and that “changing systemic failures takes time.”¹⁸⁹ While the State moves at a glacial pace to implement its reforms, police are killing people at a higher rate in 2024 than they did in 2023, which was the deadliest year on record for extrajudicial killings.¹⁹⁰

1. Lack of Transparency and Oversight

Lack of data, tracking, and research fuels the State’s inability to be transparent about police killings. The full scope of police killings is unknown as local states and police departments are not required to report this information to the federal government.¹⁹¹ Publicly available data about the rate of extrajudicial killings is collected and disseminated by non-profit organizations, such as Mapping Police Violence.¹⁹²

¹⁸⁵ Lezley McSpadden Victim Impact Statement 3.

¹⁸⁶ Merits Hearing Testimony, *supra* n.21, at 12:45.

¹⁸⁷ Further Observations, *supra* n.14, at 3.

¹⁸⁸ Thomas Harvey Expert Witness Test. 2-3, 9-12, July 24, 2024.

¹⁸⁹ Further Observations, *supra* n.14, at 20.

¹⁹⁰ Police Violence Map, Mapping Police Violence, available at: <https://mappingpoliceviolence.us/> (hereinafter “Mapping Police Violence”); Levin, *supra* n.1.

¹⁹¹ Andrew Ba Tran et al., *As Fatal Police Shootings Increase, More Go Unreported*, Washington Post (Dec. 6, 2022),

<https://www.washingtonpost.com/investigations/interactive/2022/fatal-police-shootings-unreported/>

¹⁹² About this Project, Mapping Police Violence, available at: <https://mappingpoliceviolence.org/about>.

Additionally, there are no publicly accessible databases tracking officers who commit misconduct. The State touted the National Law Enforcement Accountability Database (NLEAD) as one of the tools it utilizes to combat police violence.¹⁹³ But referring to the system as an “accountability database” is highly misleading. The database is not publicly accessible, so it is unclear who it is accountable to.¹⁹⁴ Furthermore, NLEAD is currently not even available to state and local agencies who could use the information to screen potential employees.¹⁹⁵ Police officers with histories of misconduct are free to move from one department to another—to abuse time and time again before they eventually kill—as there is no local or federal oversight of these officers.

VI. U.S. Domestic Legal Frameworks Fail to Protect Civilians from Police Violence

The State argues that if a person is subjected to racial discrimination, “U.S. law provides for remedies such as criminal investigations and civil actions under federal anti-discrimination laws, and tort actions.”¹⁹⁶ However, those purported remedies are often inaccessible to civilians and rarely repair the harm. If a person is brutalized or killed by the police in the U.S., there are few meaningful options for recourse. Victims may seek accountability through the criminal legal system or civil suits, but access to justice often proves to be elusive. The laws meant to redress police brutality often favor the officers responsible for the incidents.

A. The Intent Requirement of 18 U.S.C. § 242 is Too Burdensome for Federal Prosecutors to Overcome

The Commission explained, “The general existence of criminal laws is not sufficient to ensure accountability of State officials—special measures are needed in order to ensure that officers are held responsible.”¹⁹⁷ Local state prosecutors have the power to charge law enforcement officers who kill civilians under the state’s criminal statutes, such as

¹⁹³ Further Observations, *supra* n.14, at 28.

¹⁹⁴ Strengthening Trust Between Law Enforcement Officers And The Communities They Serve, National Law Enforcement Accountability Database, <https://www.nlead.gov/> “To protect the safety, privacy, and due process rights of law enforcement officers who may be identified, the NLEAD cannot be searched by the public. Access to the NLEAD is limited to authorized users from federal law enforcement agencies for use in the hiring, job assignment, and promotion of law enforcement officers.”

¹⁹⁵ *Id.* “In the future, NLEAD aims to offer data access to state and local agencies to support hiring and workforce practices.”

¹⁹⁶ Further Observations, *supra* n.14, at 19.

¹⁹⁷ IACHR Police Violence, *supra* n.2, para 276.

manslaughter or murder, but rarely do so.¹⁹⁸ State prosecutors and police work intimately together, which in turn creates a clear conflict of interest.¹⁹⁹ Local prosecutors have enormous discretion in deciding who to charge and are reluctant to bring cases against the police officers they work with everyday.²⁰⁰

For the vast majority of extrajudicial killings, federal prosecutors use Section 242 of Title 18 of the United States Code.²⁰¹ During the Hearing on the Merits, the State argued that since 2021, the DOJ has prosecuted 180 defendants under § 242 for violating civil rights while under the color of law.²⁰² This statistic is misleading, and does not paint the whole picture. For one, the State failed to mention how many of those prosecutions were for extrajudicial *killings*. In 2023, one report noted that only 10 officers were criminally charged for extrajudicial killings, one percent of all killings by police that year.²⁰³

The language of § 242, namely the intent requirement, creates a high threshold for prosecutors to overcome. To convict an officer under § 242, prosecutors must prove that an officer acted 1) willfully; 2) under the color of law; 3) to deprive a person of rights guaranteed by the Constitution or laws of the United States.²⁰⁴ While it is not hard to prove that an officer was acting “under color of law” in his official capacity as a law enforcement officer, proving that an officer acted “willfully” to deprive a person of their constitutionally protected rights can be difficult. That is, not only do federal prosecutors have to prove that an officer caused a person’s death, they must also prove that an officer purposely engaged in conduct that violated the Constitution, which resulted in a person’s death. “This intent standard requires a jury to evaluate the defendant’s subjective specific intent, although a defendant’s state of mind can rarely be proved by direct evidence.”²⁰⁵ If all three elements are not met, an officer will be acquitted. The heightened intent requirement hinders prosecutors from successfully securing convictions in these cases.

¹⁹⁸ Taryn A. Merkl, *Protecting Against Police Brutality and Official Misconduct* 6 (2021) (hereinafter “Merkl Brennan Center”).

¹⁹⁹ Alexandra Hodson, *The American Injustice System: The Inherent Conflict of Interest in Police-Prosecutor Relationships & How Immunity Lets Them ‘Get Away with Murder’*, 54 Idaho L. Rev. 563, 588 (2018). Available at: <https://digitalcommons.law.uidaho.edu/idaho-law-review/vol54/iss3/1>

²⁰⁰ *Id.*

²⁰¹ Merkl Brennan Center, *supra* n.198, at 6.

²⁰² Comisión Interamericana de Derechos Humanos, *CIDH - 21 - US - Case 15.169 Michael Brown Jr. and Lesley Mcfadden*, YouTube (July 10, 2024), <https://www.youtube.com/watch?v=AMljDExv6E8>, (starting at 59:25).

²⁰³ 2023 Police Violent Report, Mapping Police Violence, available at: <https://policeviolencereport.org/>

²⁰⁴ Merkl Brennan Center, *supra* n.198, at 6; 18 U.S.C. § 242.

²⁰⁵ Merkl Brennan Center, *supra* n.198, at 8.

In 1945, in *Screws v. United States*, the Supreme Court reversed the convictions of multiple police officers who beat a Black man to death while he was handcuffed.²⁰⁶ The Court held that to act willfully, an officer must act “in open defiance or in reckless disregard of a constitutional requirement that has been made specific and definite.”²⁰⁷ This intent requirement creates an incredibly high bar for prosecutors to meet. One U.S. Attorney noted that Section 242’s “willfully” intent standard is “the highest standard of intent imposed by law . . . different from and higher than the intent standard under the relevant state statutes.”²⁰⁸

To more readily hold police officers accountable, the intent element of § 242 could be lowered from “willfully” to “knowingly” or “recklessly.”²⁰⁹ Furthermore, the intent element would focus on an officer’s intent to commit the act that resulted in death, not the officer’s intent to deprive a person of their rights. These changes would alleviate the high bar to federally prosecute officers for extrajudicial killings.

Former U.S. Attorney General Eric H. Holder noted that “due to Section 242’s vague wording and a series of Supreme Court decisions that raised the standard of proof needed for a civil rights violation, it’s often difficult for federal prosecutors to hold law enforcement accountable using this statute.”²¹⁰ The DOJ prosecutor in charge of the Brown Report acknowledged this dynamic stating, “a decision not to prosecute doesn’t mean there wasn’t something wrong, it just means the law does not address it.”²¹¹

Only a small number of cases can overcome the high legal standard set forth in § 242. This falls short of the authority that international law would require for the law to be an effective remedy. Because charges brought under 18 U.S.C. § 242 rarely meet the threshold to secure a conviction, it is not a sufficient cure for impunity resulting from flawed state and local investigations. As one legal expert noted, “[i]n their current form, our federal civil rights laws let cops pull the trigger with near-total impunity.”²¹²

Even with amendments to the law, it can still be difficult to secure convictions, as jurors may be reluctant to second-guess officers who claimed to be in fear of their lives while

²⁰⁶ *Screws v. United States*, 325 U.S. 91 (1945).

²⁰⁷ *Screws*, 325 U.S. at 105.

²⁰⁸ Merkl Brennan Center, *supra* n.198, at 6.

²⁰⁹ *Id.* at 8.

²¹⁰ *Id.* at 3.

²¹¹ Ferguson Conference, *supra* n.71, at 6:13:00.

²¹² Mark J. Stern, *Why the Feds Can’t Charge Darren Wilson*, Slate (Mar. 14, 2015), <https://slate.com/news-and-politics/2015/03/justice-department-wont-charge-darren-wilson-with-michael-browns-death-supreme-court-gutted-civil-rights-law.html>.

on duty.²¹³ The Commission explained that to bring charges “the facts must be exceptional” and even under exceptional circumstances, “convictions are rare.”²¹⁴ Calvin Lai, one of the world’s most renowned experts on implicit bias explained that unconscious bias can cause some jurors to trust a police officer more than others.²¹⁵ In conjunction with prosecutors who intentionally seek to absolve these officers, as was the case here, the criminal legal system fails to deter officers from violent behavior. The onerous intent requirements of § 242 illustrates how ill-equipped U.S. laws are to protect the public from extrajudicial killings by police.

B. The “Reasonableness” Standard Offers Police Officers Too Much Deference in Civil Suits

Families of victims may elect to pursue civil wrongful death suits, in addition to criminal charges. The civil counterpart to § 242 is Section 1983 of Title 42 of the United States Code. Section 1983 originates from the 1871 Ku Klux Klan Act, which gave people the right to sue state actors in federal court for civil rights violations.²¹⁶ The statute reads in part that “Every person who, under color of any statute... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law...”²¹⁷

“The Fourth Amendment, which protects against unreasonable searches and seizures, provides the primary vehicle for civil rights claims against police officers who use non-lethal excessive or deadly force while effectuating a ‘seizure’ of an individual.”²¹⁸ In *Tennessee v. Garner*, the first Supreme Court case to address deadly force, the Court ruled that deadly force may not be used against an individual, unless it is (1) necessary to

²¹³ Daniel Arkin & Ron Allen, *It's Very Difficult to Convict Officers in Police Shootings*, Experts Say, NBC News (June 27, 2017),

<https://www.nbcnews.com/news/us-news/it-s-very-difficult-convict-officers-police-shootings-experts-say-n776901>.

²¹⁴ IACHR Police Violence, *supra* n.2, para 105.

²¹⁵ Mark Curnutte, *Why Juries Have a Hard Time Convicting Cops*, Cincinnati Enquirer (July 24, 2017), <https://www.cincinnati.com/story/news/2017/07/24/possible-convict-police-officer-because-whites-reluctance-do-so/492380001/>.

²¹⁶ Nicholas Mosvick, Looking back at the Ku Klux Klan Act, National Constitution Center (April 20, 2021), <https://constitutioncenter.org/blog/looking-back-at-the-ku-klux-klan-act>.

²¹⁷ 42 U.S.C. § 1983.

²¹⁸ Alec Soghomonian, Rethinking Hindsight: The Failed Interpretation Of Graham V. Connor, 47 N.Y.U. Review Of Law & Social Change 455, 457 (2024). Available at: <https://socialchangenyu.com/wp-content/uploads/2024/03/7-Soghomonian.pdf> (hereinafter “Soghomonian”)

prevent the individual's escape; and (2) the officer has probable cause to believe that the suspect poses a threat of death or serious physical injury to the officer or others.²¹⁹

Later, in *Graham v. Conner*, the Supreme Court ruled that all claims related to excessive and lethal force were to be analyzed under the Fourth Amendment's "reasonableness" standard.²²⁰ To determine whether an officer's actions were reasonable, courts assess the facts and circumstances of each particular case.²²¹ These circumstances include: 1) the severity of the crime at issue; 2) whether the suspect poses an immediate threat to the safety of the officers or others; and 3) whether he is actively resisting arrest or attempting to evade arrest by flight.²²² The *Graham* court also gave police officers deference, stating "reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."²²³ The Commission rightly noted that these legal precedents do not meaningfully take proportionality into account, as required by the U.N. Basic principles.²²⁴ The leeway given to officers in assessing reasonableness "has created a regime that continuously precludes victims of police abuse and violence from obtaining justice."²²⁵

Deferring to police officers' beliefs about *who* is threatening is especially troublesome given discriminatory attitudes towards Black people in the United States. For example, a wealth of data collected over the years shows that police officers often hold implicit and explicit biases against Black people, especially Black men, when it comes to perceived dangerousness and criminality.²²⁶ Black men are routinely viewed as larger and more threatening than they actually are.²²⁷ Officer Wilson, who had a well-documented history of anti-Black racist animus, described Mike Brown as a less-than-human "demon" deploying subjective and racist "Black brute" stereotypes to justify Wilson's "reasonable" fear of Mike.²²⁸ The DOJ found that Ferguson police had a pattern and practice of racial

²¹⁹ *Tennessee v. Garner*, 471 U.S. 1, 3 (1985).

²²⁰ *Graham v. Connor*, 490 U.S. 386, 395 (1989).

²²¹ *Graham*, 490 U.S. at 396.

²²² *Id.*

²²³ *Id.*

²²⁴ IACHR Police Violence, *supra* n.2, para 211.

²²⁵ Soghomonian, *supra* n.218, at 463.

²²⁶ Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, Brennan Center (Aug. 27, 2020), <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law?ref=levelman.com>; German Lopez, *Why Police So Often See Unarmed Black Men As Threats*, Vox (Sept. 20, 2016), <https://www.vox.com/2014/8/28/6051971/police-implicit-bias-michael-brown-ferguson-missouri>

²²⁷ John Paul Wilson et al., *Racial Bias in Judgments of Physical Size and Formidability: From Size to Threat*, American Psychological Association (Mar. 13, 2017), <https://www.apa.org/news/press/releases/2017/03/black-men-threatening>.

²²⁸ Bouie Demon, *supra* n.115.

discrimination targeting Black Americans.²²⁹ To defer to police officers as to what is “reasonable” during a police-civilian encounter puts Black people, like Mike Brown, at risk. The “objective” reasonableness standard articulated by the courts, in practice becomes subjective when it allows an officer’s *unreasonable* racial bias to give rise to “reasonable” fear. In effect, racially biased officers may use excessive force, lethal or otherwise, so long as a “reasonable officer” would have done the same. Giving racist officers the latitude to claim that they feared for their life creates fertile ground for impunity.

C. International Law Calls For Exhaustion Of Non-Lethal Force Before Resorting To Use of Deadly Force

“International bodies have repeatedly noted that the United States’ legal framework for use of force does not comply with international law, and have called for compliance with the U.N. Basic Principles.”²³⁰

Under international law, law enforcement officers are required to exhaust non-violent means before resorting to deadly force. According to the United Nations’s 2020 “Guidance on Less Lethal Weapons in Law Enforcement”, while carrying out their duties “law enforcement officials shall, as far as possible, make use of non-violent means before resorting to the use of force or firearms. They may use force only if other means appear ineffective or without any promise of achieving the intended result.”²³¹

Under U.S. domestic law, there are no requirements that officers exhaust non-violent means before resorting to any amount of force, use lethal force as a last resort, or issue a verbal warning prior to using lethal force.²³² Per *Graham*, a court will assess various circumstances such as the severity of the crime at hand and whether an individual was fleeing in determining whether an officer’s use of force was reasonable. But most federal courts do not look to what actions an officer took prior to the use of force.²³³ Because officers are not legally required to employ non-violent means when engaging with civilians, a “shoot first, ask questions later” culture thrives amongst U.S. police forces.

²²⁹ Ferguson Report, *supra* n.19.

²³⁰ IACHR Police Violence, *supra* n.2, para 210.

²³¹ United Nations, *Guidance on Less-Lethal Weapons in Law Enforcement*, page 5, para 2.2. Available at: <https://policehumanrightsresources.org/united-nations-human-rights-guidance-on-less-lethal-weapons-in-law-enforcement-2>.

²³² IACHR police violence 2018, page 115, para 212; Amnesty International, *Deadly Force: Police Use of Lethal Force In The United States*, 18 (2015)

²³³ Soghomonian, *supra* n.218, at 465.

Here, Officer Wilson came in hot. He almost immediately resorted to lethal force against Mike Brown, even though Wilson had ample opportunity to use less lethal measures, such as his flashlight, baton, or mace. Wilson ordered Brown onto the (non-existent) sidewalk, hurled expletives at Mike, hit Mike with the door of his police vehicle, fought Mike, then chased and shot Mike while the teenager's hands were raised in surrender. Officer Wilson immediately resorted to deadly force, and U.S. laws permit officers to do so.

VII. Conclusion

The Commission, as well as international law more broadly, makes clear that the State has a legal obligation to prevent and refrain from acts of state violence and racial discrimination, to act with due diligence to investigate all acts of state violence that do occur, and to remedy these violations by holding perpetrators accountable and issuing reparations to victims. "The Commission notes that impunity in cases of police killings has a deep impact on the families of victims, contributes to mistrust between communities and police departments, and ultimately works to undermine the rule of law."²³⁴ On this account the United States has resoundingly failed Mike Brown, Lezley McSpadden, their family, their community, and the entire country.

August 9, 2024 marks the ten-year anniversary of Mike's death. In the last decade, police violence has only gotten worse in the U.S.²³⁵ Black people are three times more likely to be killed by police than white people.²³⁶ Black people are also more likely to be unarmed when killed by police, similar to Mike's case.²³⁷ Since 2014, the police have killed over 12,000 people.²³⁸ This number does not reflect the thousands more whose lives were upturned from losing a loved one to extrajudicial killings. This includes mothers like Lezley McSpadden, who have suffered immense grief both due to the loss itself and the State's refusal to hold the murderer accountable.

Based on the facts and arguments submitted in our pleadings and the arguments presented during the hearing, Petitioners respectfully ask that the Commission determine that the

²³⁴ IACHR Police Violence, *supra* n.2, para 108.

²³⁵ Levin, *supra* n.1.

²³⁶ Mapping Police Violence, *supra* n.190.

²³⁷ 2023 Police Violent Report, Mapping Police Violence, available at: <https://policeviolencereport.org/>

²³⁸ Mapping Police Violence, *supra* n.190.

State has violated Petitioners' rights enshrined in Articles I, II, V, XVIII, XXV, and XXVI the American Declaration, and grant any relief it deems just and proper, including but not limited to:

1. Find that the United States is responsible for violating the American Declaration of the Rights and Duties of Man Articles I, II, V, XVIII, XXV, and XXVI in regards to it's disposition of this case;
2. Demand that the U.S. Department of Justice and/or the state of Missouri appoint a special prosecutor to carry out a prompt, serious, thorough and impartial investigation into the shooting death of Mike Brown and bring charges to prosecute those responsible;
3. Demand that U.S. Department of Justice and/or the state of Missouri appoint a special prosecutor to conduct a full investigation of the St. Louis County Prosecuting Attorney's Office 2014 grand jury process and 2020 decision not to re-open the Mike Brown Case;
4. Demand public acknowledgment accepting responsibility and a public apology to the family of Mike Brown on behalf of the U.S. government for its failures to protect Mike and Lezley's human rights as recognized in the American Declaration;
5. Mandate creation of a "Mike Brown Fund" on the local, state, and federal level that subsidizes the costs of mental health counseling to family members of victims who have been killed by police officers in the United States using existing police budgets;
6. Express concern that notwithstanding the commission's report issued in 2019 which detailed targeting of police violence against Afro-Descendant communities in the United States, that the Mike Brown Case and the example of the Ferguson Police department's actions demonstrate that U.S. police forces have a widespread, systemic problem with the excessive and lethal use of force as well as the disproportionate targeting of people of color, and authorities are promulgating a system of impunity for those law enforcement mechanisms.
7. Demand the U.S. government fulfill its international obligation to provide all other appropriate restitution, compensation, rehabilitation, and satisfaction to Lezley McSpadden.

We further ask the Commission to urge the the U.S. Congress to implement these changes:

1. Enact the Helping Families Heal Act, H.R. 8470 (2024), designed to create greater accountability for police killings and provide funding for victims and their families to access mental health services, including:
 - a. establish a Helping Families Heal Program under the Health and Human Services to implement community-based mental health programs and services to victims and families of victims who have experienced law enforcement violence;
 - b. establish the Healing for Students Program under the Department of Education to increase mental health resources for students and school personnel impacted by law enforcement violence;
 - c. allocate \$100 million to support mental health resources and improve access to mental health services for communities harmed by police violence.
2. Amend 42 U.S.C § 1983 and criminal 18 U.S.C. § 242 to adjust the standard of proof for such claims, as the statutory standard currently fails intentional standards for police accountability.
3. Bring the United States' legal framework authorizing the use of force by law enforcement into compliance with international law.
4. Enact the BREATHE Act, H.R. 585 (2019), a comprehensive invest/divest piece of legislation designed to divest federal resources from incarceration and policing in order to end harms caused by the criminal legal system, including prohibiting the type of “broken windows” over policing and policing for profit which led to the interaction between Mike Brown and Officer Wilson;
5. Enact the End Racial and Religious Profiling Act, S. 2355 (2019), which would prohibit federal, state, or local law enforcement from targeting a person based on actual or perceived race or ethnicity, similar to the way Mike Brown was targeted in this case.