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## The Legal and Constitutional Consequences of U.S. Police Departments Collaborating with Israeli Security Forces

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## The Legal and Constitutional Consequences of U.S. Police Departments Collaborating with Israeli Security Forces

Cruz Rodriguez

The murder of George Floyd, an unarmed Black man, by the Minneapolis Police Department (MPD) shocked the world, setting off protests across the United States and globally.<sup>1</sup> The viral video of his murder showed how Derek Chauvin, the MPD officer conducting an arrest, nonchalantly pressed his knee onto Mr. Floyd's neck for over eight straight minutes.<sup>2</sup> An independent medical examiner found that the cause of Mr. Floyd's death was from "asphyxiation from sustained pressure" from the MPD officer's knee-to-neck maneuver.<sup>3</sup> As many Black Americans painfully know, this murder was a result of the anti-Black racism that is engrained into the American conscious and policing system.<sup>4</sup> Throughout American history and up to this day, anti-Black racism has prevented non-Black people from recognizing the value of Black lives and their humanity.<sup>5</sup>

This police practice of putting a knee to a suspect's neck is not new to many U.S. police departments.<sup>6</sup> The knee-to-neck maneuver is banned in many metropolitan police departments, however, MPD permits its use on suspects who are deemed aggressive or to be resisting arrest.<sup>7</sup> The U.S. police departments that have banned this training have done so because of the high risk of serious or deadly injury that exists for a suspect.<sup>8</sup> Despite this ban, Montgomery County Police Captain Sonia Pruitt has still questioned U.S. po-

<sup>1</sup> *International reaction to George Floyd killing*, Al Jazeera (June 02, 2020), <https://www.aljazeera.com/news/2020/06/international-reaction-george-floyd-killing-200602075231946.html>

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

<sup>3</sup> Scott Neuman, *Medical Examiner's Autopsy Reveals George Floyd Has Positive Test for Coronavirus*, National Public Radio (June 4, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/04/869278494/medical-examiners-autopsy-reveals-george-floyd-had-positive-test-for-coronavirus>

<sup>4</sup> Kihana Miraya Ross, *Call It What It Is: Anti-Blackness*, Opinion - The New York Times (June 04, 2020), <https://www.nytimes.com/2020/06/04/opinion/george-floyd-anti-blackness.html>

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

<sup>6</sup> Scottie Andrew, *The move used to restrain George Floyd is discouraged by most police. Here's why*, CNN (May 29, 2020), <https://www.cnn.com/2020/05/28/us/george-floyd-knee-to-neck-excessive-force-trnd/index.html>

<sup>7</sup> *Id.*

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

lice departments on the use or training of this maneuver because she has seen it repeatedly used on Black suspects.<sup>9</sup> Where are police officers getting this deadly training from and why is it being used as an arresting technique?

After the murder of Mr. Floyd, many Palestinian solidarity activists began to bring to light the connections between the MPD, including other U.S. police departments, and the Israeli security forces.<sup>10</sup> In 2012, over 100 Minnesota police officers attended a security exchange conference at the Israeli Consulate in Chicago and received counterterrorism training from Israeli law enforcement and military officials.<sup>11</sup> These activists have claimed that the knee-to-neck restraint that was used on Mr. Floyd was learned from the Israeli security forces at this security exchange conference.<sup>12</sup> To Palestinians, this knee-to-neck arresting technique is not new or uncommon from the Israeli security forces.<sup>13</sup> It has been seen used multiple times on Palestinians residing within Israel and the military occupied Palestinian territories.<sup>14</sup> Such as in the arrest of Khairi Hanoon, a 61 year-old Palestinian activist, who had a knee placed on his neck for fifty seconds by an IDF soldier during a peaceful protest.<sup>15</sup> Neta Golan, an Israeli anti-occupation activist living in the West Bank said:

“When I saw the picture of killer cop Derek Chauvin murdering George Floyd by leaning in on his neck with his knee as he cried for help and other cops watched, I remembered noticing when many Israeli soldiers began using this technique of leaning in on our chest and necks when we were protesting in the West Bank sometime in 2006.”<sup>16</sup>

Despite what seems to be a glaring connection, it has been difficult to find a direct link that demonstrates that the knee-to-neck technique used on Mr. Floyd was learned and implemented into officer trainings by the Minnesota

<sup>9</sup> Andrew, *supra* note 6.

<sup>10</sup> Alison Weir, *Minn cops trained by Israeli police, who often use knee-on-neck restraint*, Israel-Palestine News (June 02, 2020), <https://israelpalestineneeds.org/minn-cops-trained-by-israeli-police-who-often-use-knee-on-neck-restraint/>.

<sup>11</sup> Jon Collins, *Minn. police learn from Israeli counter-terrorism conference*, MPR News (June 26, 2021), <https://www.mprnews.org/story/2012/06/25/minn-police-learn-from-israeli-counter-terrorism-conference>.

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

<sup>13</sup> Weir, *supra* note 10.

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

<sup>15</sup> Gideon Levy and Alex Levac, *With an Israeli Soldier's Knee on His Neck, This 61-year-old Palestinian Remembered George Floyd*, Haaretz (October 09, 2020), [https://www.haaretz.com/israel-news/premium.MAGAZINE-with-an-israeli-soldier-s-knee-on-his-neck-he-remembered-george-floyd-1.9146865](https://www.haaretz.com/israel-news/premium/MAGAZINE-with-an-israeli-soldier-s-knee-on-his-neck-he-remembered-george-floyd-1.9146865)

<sup>16</sup> *Id.*

police officers after the 2012 security exchange conference.<sup>17</sup> Additionally, archived copies of the MPD's "Use of Force Policy" has shown that neck restraints and choke holds in training for MPD officers have been included since early as October 16, 2002.<sup>18</sup> However, a missing link between the two does not necessarily mean that there is no connection at all. Activists have made an accurate assumption that is based on the fact that U.S. police departments have indeed been participating in both trainings and exchange programs with Israeli security forces after the events of 9/11.<sup>19</sup> Over 1,000 senior U.S. law enforcement officials have been to the state of Israel for counterterrorism training, roughly representing the leadership of the 18,000 U.S. police departments.<sup>20</sup> Additionally, thousands more have participated in conferences and trainings held in United States by Israeli security officials.<sup>21</sup> What are the consequences of having U.S. police officers participating in trainings and exchange programs from a security force that has a record of human rights violations,<sup>22</sup> maintains a brutal military occupation over a population,<sup>23</sup> and enforces apartheid?<sup>24</sup>

This article will examine the American legal and constitutional consequences of having U.S. police departments training with and exchanging information, resources, and weapons with a state that has a record of human

<sup>17</sup> Georgina Lee, *Did Israeli security service teach Floyd police to kneel on neck*, Channel 4 (June 26, 2020), <https://www.channel4.com/news/factcheck/factcheck-did-israeli-secret-service-teach-floyd-police-to-kneel-on-neck>

<sup>18</sup> Georgina Lee, *Did Israeli security service teach Floyd police to kneel on neck*, Channel 4 (June 26, 2020), <https://www.channel4.com/news/factcheck/factcheck-did-israeli-secret-service-teach-floyd-police-to-kneel-on-neck>

<sup>19</sup> Ben Sales, *More than 1,000 senior US police officers have visited Israel. Here's what they learn from Israel's police force – and why it's controversial.*, Jewish Telegraphic Agency (July 20, 2020), <https://www.jta.org/2020/07/20/united-states/more-than-1000-senior-us-police-officers-have-visited-israel-heres-what-they-learn-from-israels-police-force-and-why-its-controversial>

<sup>20</sup> *Id.*

<sup>21</sup> Nasim Ahmed, *It is time for the US to end its deadly exchange programmes with Israel*, Middle East Monitor (May 28, 2020), <https://www.middleeastmonitor.com/20200528-it-is-time-for-the-us-to-end-its-deadly-exchange-programmes-with-israel/>

<sup>22</sup> *Israel: 50 Years of Occupation Abuses*, Human Rights Watch (June 04, 2017, 1:01 AM) <https://www.hrw.org/news/2017/06/04/israel-50-years-occupation-abuses>

<sup>23</sup> *Id.*

<sup>24</sup> United Nations Economic and Social Commission for Western Asia, *Israeli Practices towards the Palestinian People and the Question of Apartheid*, Middle East Monitor, 51 (last visited Nov. 15, 2020), [https://www.middleeastmonitor.com/wp-content/uploads/downloads/201703\\_UN\\_ESCWA-israeli-practices-palestinian-people-apartheid-occupation-english.pdf](https://www.middleeastmonitor.com/wp-content/uploads/downloads/201703_UN_ESCWA-israeli-practices-palestinian-people-apartheid-occupation-english.pdf)

rights violations.<sup>25</sup> It is important to note that this article *does not* argue that police brutality, racist policing tactics, and suppression of social justice movements in the U.S. began after collaborations with the Israeli security forces.<sup>26</sup> The U.S. has a long racist history of anti-Blackness, police brutality, and injustice for Black and brown communities,<sup>27</sup> and so does Israel.<sup>28</sup>

After the events of 9/11, the War on Terror has broadened the implementation of military-style policing, increased surveillance, and technology in the name of U.S. national security.<sup>29</sup> U.S. police departments have looked to the nation's ally, Israel, to learn from because of its system of national security, which disregards the civil and human rights of Palestinians and Jewish ethnic minorities.<sup>30</sup> Further, both the U.S. and Israel have declared a common enemy and national security threat: the Arab and Muslim community.<sup>31</sup>

The argument of this article is that U.S. departments training and collaborating with Israel's military and police forces results in illegal and unconstitutional policing practices and tactics in America and Israel. Israeli security trainings provide training for U.S. police departments to make their current tactics more sophisticated and provide inspiration for new ones, which exacerbates the issues of surveillance, racial profiling, and police brutality in the U.S.<sup>32</sup> As has been true throughout American history, Black and brown communities, social justice movements, and activists experience the most severe legal and constitutional consequences.<sup>33</sup>

## I. ISRAELI APARTHEID

To have an understanding as to why collaborations with Israeli security forces are so dangerous, we must look at Israel's legal foundation and its treat-

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<sup>25</sup> Edith Garwood, *With Whom Are Many U.S. Police Departments Training? With a Chronic Human Rights Violator – Israel*, Amnesty International (August 25, 2016), available at <https://www.amnestyusa.org/with-whom-are-many-u-s-police-departments-training-with-a-chronic-human-rights-violator-israel/>

<sup>26</sup> *Id.*

<sup>27</sup> *Deadly Exchange. The Dangerous Consequences of American Law Enforcement Trainings in Israel*, Researching the American-Israeli Alliance, 1 (last visited Nov. 15, 2020) available at <https://deadlyexchange.org/wp-content/uploads/2019/07/Deadly-Exchange-Report.pdf>

<sup>28</sup> Noura Erakat, *The Nakba and Anti-Blackness*, Jadaliyya (May 19, 2016), <https://www.jadaliyya.com/Details/33280>

<sup>29</sup> *Deadly Exchange*, *supra* note 27.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 2.

<sup>32</sup> *Id.* at 26.

<sup>33</sup> *Id.* at 15.

ment of Palestinians and non-white ethnic minorities.<sup>34</sup> An important difference for the context of this argument is within the constitutional laws of the United States and Israeli law.<sup>35</sup> Israel does not have a formally written constitution, but it does have laws and basic rules that have laid out the foundation of the Israeli government and the individual rights of residents.<sup>36</sup> Within this foundation, there are over 65 Israeli laws that directly and indirectly discriminate against Palestinians within Israel, and the Palestinian territories under military occupation.<sup>37</sup> Some examples of these discriminatory laws are the Basic Law: Israel Lands, the Absentees' Property Law, the Residency Revocation Law, the Ban on Family Unification Law, and the Nakba Law.<sup>38</sup>

Additionally, Israel's parliament, the Knesset, has discriminatory legislation and regulation that targets democratically-elected Palestinian members, preventing Palestinians from having fair political representation.<sup>39</sup> These elected members represent roughly the 20% Palestinian population within Israel, who are subject to widespread discrimination in citizenship, housing, education, and healthcare.<sup>40</sup> While on the other side, the Palestinians under

<sup>34</sup> *Deadly Exchange*, *supra* note 27.

<sup>35</sup> Yuli Tamir, *Why the U.S. Constitution Is Everything the Jewish Nation-state Bill Is Not*, Haaretz (Nov. 25, 2014), <https://www.haaretz.com/opinion/.premium-u-s-constitution-vs-the-jewish-nation-state-bill-1.5334784>

<sup>36</sup> *Constitution for Israel*, The Knesset (last visited Nov. 15, 2020), [https://knesset.gov.il/constitution/ConstIntro\\_eng.htm](https://knesset.gov.il/constitution/ConstIntro_eng.htm)

<sup>37</sup> *Five ways Israeli law discriminates against Palestinians*, Al Jazeera (July 19, 2018), <https://www.aljazeera.com/news/2018/7/19/five-ways-israeli-law-discriminates-against-palestinians>

<sup>38</sup> *Id.* (The Basic Law: Israel Lands establishes 93% of the land in Israel as public, owned by the state of Israel, the Jewish National Fund (JNF), and the Development Authority. Only these entities are permitted to transfer land and lease it out to residents. The JNF controlling 13% of the land and leasing it only to Jews. Palestinians are banned from leasing about 80% of the land controlled by the state of Israel. The Law of Return gives Jews only, anywhere in the world, automatic Israeli citizenship, while Palestinian refugees are barred to return to their land under the Absentees' Property Law. The Residency Revocation Law establish "permanent" residency for Palestinians in occupied East Jerusalem, making their residency a revocable privilege rather than an inherent right. Nearly 15,000 Palestinians have been deported from East Jerusalem after having their residency revoked. The Ban on Family Unification Law bans family reunification between Israeli citizens and residents of an occupied territory. The Nakba Law financially punishes institutions that commemorate Israel's Independence Day as a day of the mourning of the 700,000 Palestinians who were expelled after the establishment of Israel in 1958).

<sup>39</sup> *Israel Discriminatory measures undermine Palestinian representation in Knesset*, Amnesty International (Sept. 04, 2019), <https://www.amnesty.org/en/latest/news/2019/09/israel-discriminatory-measures-undermine-palestinian-representation-in-knesset/>

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

military occupation in the West Bank, Gaza, and East Jerusalem, are given no political rights or representation within the Knesset.<sup>41</sup>

In 2018, the Israeli government formalized apartheid through its enactment of the Nation-State Law.<sup>42</sup> This law declared the Jewish people as the only national group that has a right to self-determination within the country.<sup>43</sup> This law established Hebrew as Israel's official language and axed Arabic into a "special status."<sup>44</sup> This law also established Jewish settlements as a "national value," referring to the illegal settlements (under international law) in the West Bank.<sup>45</sup> While the system of Israeli apartheid aims to target Palestinians, racism and discrimination has also reached Jewish ethnic minorities within Israel.<sup>46</sup>

The Jewish ethnic minorities, specifically Arab and Black Jews, who are given automatic Israeli citizenship under the Law of Return,<sup>47</sup> continue to suffer from systematic racism and widespread discrimination in Israel.<sup>48</sup> Israeli Mizrahi Jews, descendants from Arab and Muslim countries, have faced anti-Arab discrimination and have felt as if they were second-class Israeli citizens.<sup>49</sup> Since the state of Israel's establishment in 1948, Israeli Mizrahi Jews have suffered through Israeli authorities suppressing their Arab identity, Arabic language, and culture.<sup>50</sup> Israel has had official government policy that discriminated against Israeli Mizrahi Jews, for example the policy that forced them into underdeveloped towns, which created social and economic inequali-

<sup>41</sup> Diana B. Greenwald, *Military Rule in the West Bank*, City College of New York (last visited Nov. 20, 2020), <https://pomeps.org/military-rule-in-the-west-bank>

<sup>42</sup> Ryan Fahey, *The Nation-State Law puts in black and white Israel's version of apartheid*, Middle East Monitor (May 07, 2019, 12:34 PM), <https://www.middleeastmonitor.com/20190507-the-nation-state-law-puts-in-black-and-white-israels-version-of-apartheid/>

<sup>43</sup> Miriam Berger, *Israel's hugely controversial "nation-state" law*, explained, Vox (July 31, 2018, 8:57 AM), <https://www.vox.com/world/2018/7/31/17623978/israel-jewish-nation-state-law-bill-explained-apartheid-netanyahu-democracy>

<sup>44</sup> Berger, *supra* note 43.

<sup>45</sup> *Id.*

<sup>46</sup> *Deadly Exchange*, *supra* note 27, at 17.

<sup>47</sup> *Law of Return*, Adalah the Legal Center for Arab Minority Rights in Israel (last visited Nov. 22, 2020), <https://www.adalah.org/en/law/view/537>

<sup>48</sup> *Deadly Exchange*, *supra* note 27, at 17.

<sup>49</sup> *Mizrahi Culture Gains a Voice, Experiences Revival in Israel*, Haaretz (May 11, 2015), <https://www.haaretz.com/israel-news/culture/must-reads-on-the-mizrahi-revival-1.5417849>

<sup>50</sup> Orly Noy, *Israel's Nation-State Law also discriminates against Mizrahi Jews*, +972 Magazine (Jan. 02, 2019), <https://www.972mag.com/israels-nation-state-law-also-discriminates-against-mizrahi-jews/>

ties that are still present today.<sup>51</sup> Mizrahi immigrants in the 1940s and 1950s were not permitted to settle into the central cities, they were forced to stay in these under resourced towns as an effort of Israel's expansion of state territory and to prevent Palestinians from returning after their forced expulsion.<sup>52</sup> Currently, Israeli Mizrahi Jews continue to be subject to systematic discrimination and subject to disproportionate policing and incarceration.<sup>53</sup>

The other Israeli ethnic minority are Ethiopian Jews, a more recent arrival to Israel, who face anti-Black racism and discrimination from the Israeli establishment.<sup>54</sup> This ethnic Jewish minority is regularly questioned by Israeli politicians and Ashkenazi Israelis on the authenticity of their heritage and Jewishness because of their Blackness, despite being recognized by the Chief Rabbinate, the highest Israeli religious authority.<sup>55</sup> They are not treated as equal Israeli citizens nor as full members of the Jewish community of Israel.<sup>56</sup> Ethiopian Israelis are subjected to a government sponsored, two-year assimilation process where they are removed from Israeli society in order to assimilate.<sup>57</sup> The result has been a failed assimilation process that has created a socioeconomic gap between Ethiopian Israelis and other Israelis, with 70% of adult Ethiopian Israelis unemployed. The Israeli government has also pushed Ethiopian Israelis into illegal settlements in the West Bank, using their bodies to expand the state's settlement project.<sup>58</sup> While placing the other Ethiopian Israelis, who do not move into these settlements, into communities in large cities that have been likened to ghettos.<sup>59</sup> Ethiopian Israelis, like the Mizrahi Jews, continue to be subject to systematic discrimination, with heavy policing of their neighborhoods and are subject to disproportionate incarceration.<sup>60</sup>

Throughout Israeli history, both of these ethnic minorities have suffered systematic racism and are constantly viewed by Israeli police as prone to crimi-

<sup>51</sup> Mossi Raz, *Anti-Mizrahi discrimination was official Israeli policy*, 972 Magazine (Nov. 26, 2017), <https://www.972mag.com/israels-nation-state-law-also-discriminates-against-mizrahi-jews/>

<sup>52</sup> *Deadly Exchange*, *supra* note 27, at 17.

<sup>53</sup> *Id.*

<sup>54</sup> Sam Sokol, *As world roils, Ethiopian-born minister leads 'wake up' call on racism in Israel*, The Times of Israel (June 11, 2020, 6:38 am), <https://www.timesofisrael.com/as-world-roils-ethiopian-born-minister-leads-wake-up-call-on-racism-in-israel/>

<sup>55</sup> Holly Jordan, *Black, Poor and Jewish: The Ostracism of Ethiopian Jews in Modern Israel*, Migration Policy and Practice, 177 (2016).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 180.

<sup>58</sup> *Id.* at 183.

<sup>59</sup> *Id.*

<sup>60</sup> *Deadly Exchange*, *supra* note 27, at 18.



nality.<sup>61</sup> Because of this, Jewish ethnic minorities are subject to criminalization, over policing, police brutality, and disproportionate incarceration.<sup>62</sup> Despite this institutionalized racism, Palestinians are subject to an even worse system of racism and discrimination because of their racial and religious difference from Israeli Jews.<sup>63</sup>

Palestinians, who live within the same territory as Israeli Jews, are policed, prosecuted, and punished under a different legal system than Israeli Jews, which is defined under international law as apartheid.<sup>64</sup> There are roughly 1.7 million Palestinian citizens of Israel who effectively live under martial law.<sup>65</sup> Israeli police forces are given different instructions on how to handle Palestinian citizens.<sup>66</sup> Then there's roughly 5 million Palestinians who live under military occupation in East Jerusalem, the West Bank, and Gaza, while Israeli settlers are subject to Israeli civil law within the same territory.<sup>67</sup> Israeli apartheid is even openly embraced by Israeli government leadership with the current Israeli prime minister, Benjamin Netanyahu, stating in 2019 that "Israel is not a state of all its citizens. . . Israel is the nation state of the Jewish people – and them alone."<sup>68</sup>

Israel's security system is an apartheid regime that has subjected Palestinians to a brutal military occupation and to systematic racism, discrimination, and unequal treatment under Israeli law.<sup>69</sup> The Israeli justification for their security model is based on their classification of the entire Palestinian population as a national security threat, both because of the demographic threat they pose to the Jewish-only state and Palestinian resistance.<sup>70</sup> Israel and pro-Israeli lobbies, such as the Jewish Institute National Security of America and the Anti-Defamation League, continue to uphold and promote the Israeli security

<sup>61</sup> *Deadly Exchange*, *supra* note 27, at 18.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 15.

<sup>64</sup> *Id.*

<sup>65</sup> Ruth Eglash, *Is Israel an 'apartheid' state? This U.N. report says yes.*, Washington Post (March 16, 2017, 10:22 AM), <https://www.washingtonpost.com/news/worldviews/wp/2017/03/16/is-israel-an-apartheid-state-this-u-n-report-says-yes/>

<sup>66</sup> Abby Kirshbaum and Heli Mishael, *Palestinians will never be equal in Israel*, May 28, 2018, 3:10 PM), <https://www.timesofisrael.com/palestinians-will-never-be-equal-in-israel/>

<sup>67</sup> Eglash, *supra* note 63.

<sup>68</sup> Ronnie Kasrils, *I fought South African apartheid. I see the same brutal policies in Israel*, The Guardian Opinion (Apr. 03, 2019, 5:00 AM), <https://www.theguardian.com/commentisfree/2019/apr/03/israel-treatment-palestinians-apartheid-south-africa>

<sup>69</sup> *Deadly Exchange*, *supra* note 27, at 15.

<sup>70</sup> Eglash, *supra* note 63.

system to U.S. police departments.<sup>71</sup> This is dangerous because the Israeli policing and legal systems are rooted in apartheid, which is based on the racial and religious differentiation of Palestinians.<sup>72</sup> Similarly, the U.S. has a history of subjecting Black and brown communities to a policing system that has resulted in disproportionate policing, racial profiling, police brutality, and high rates of incarceration.<sup>73</sup> Ultimately, U.S. collaborations and trainings with Israeli security forces, whose legal system promotes apartheid and disregards civil and human rights, will only exacerbate the policing and racial injustice issues that already exist in America, and open up new constitutional challenges to policing.<sup>74</sup>

## II. POLICE SURVEILLANCE

Israel is regarded as a global leader of technologies and tactics of surveillance because of its effective system in monitoring all Palestinians in all places within the state of Israel and the occupied territories.<sup>75</sup> Israeli military and police officials monitor and control the entire Palestinian population because they're deemed a security threat to Israelis and the state.<sup>76</sup> Palestinians are often profiled and presumed to be suspects of terrorism.<sup>77</sup> Collaborations and trainings between Israeli security forces and U.S. police departments have contributed to the expansion of large-scale surveillance of residents in the U.S., particularly communities of color and individuals involved in social justice movements.<sup>78</sup> These Israeli surveillance tactics and technologies, whether borrowed or learned, have brought up constitutional challenges in the context of the U.S. legal system.<sup>79</sup>

### A. Police Surveillance of Political Expression & Affiliation on Social Media

Israeli surveillance of Palestinians began after Zionist-settler arrival to Palestine when Zionist paramilitary groups, such as the Haganah, began to gather

<sup>71</sup> *Deadly Exchange*, *supra* note 27, at 26.

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

<sup>73</sup> Wenci Philimon, *Not just George Floyd: Police departments have 400-year history of racism*, USA Today (June 07, 2020, 3:12 AM), <https://www.usatoday.com/story/news/nation/2020/06/07/black-lives-matters-police-departments-have-long-history-racism/3128167001/>

<sup>74</sup> *Deadly Exchange*, *supra* note 27, at viii.

<sup>75</sup> *Deadly Exchange*, *supra* note 27 at 7.

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

<sup>77</sup> *Id.*

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

<sup>79</sup> *Id.* at viii.

information on Palestinian residents in villages and cities.<sup>80</sup> Since then, Israel has become a country with more private surveillance companies per capita than any other country as a result of its efforts to control and monitor Palestinians.<sup>81</sup> To expand Israel's surveillance of Palestinians, Israel increased its monitoring of social media accounts after attacks from Palestinian teenagers began in October of 2015.<sup>82</sup> Anger from Palestinians arose during this time after Israeli police entered Al Aqsa Mosque, resulting in violent clashes between Israeli security forces and Palestinians.<sup>83</sup> Israeli security officials realized that the Palestinian teenagers did not act on behalf of a Palestinian political faction or military wing, rather they organized on social media.<sup>84</sup> As a result, Israeli police created a social media system that uses algorithms to monitor Palestinian youth's Facebook accounts.<sup>85</sup> The purpose of this system is to flag words such as "martyr, Zionist state, Jerusalem, and Al Aqsa" in efforts of flagging potential suspects. This system has contributed to 800 Palestinians being arrested solely for their social media posts.<sup>86</sup> The suspicion on Palestinian youth is based on the prediction of violence rather than an actual organized attack or plan to commit one.<sup>87</sup> These arrests and surveillance bring up concerns regarding people's rights to freedom of online expression, privacy and censorship.<sup>88</sup>

Consequently, U.S. police departments are collaborating with and receiving training from a policing system that disregards freedom of expression and privacy online in the name of security.<sup>89</sup> Public Security Minister Gilad Erdan has claimed Israel has successfully lowered attacks from Palestinians by preemptively arresting them for their social media posts through the use of social media algorithms and other technologies.<sup>90</sup> He shared Israel's technological knowledge in an international security conference in 2018, which included U.S. security officials in attendance.<sup>91</sup> In efforts to follow the practices of Is-

<sup>80</sup> Nadim Nashif and Marwa Fatafta, *Surveillance of Palestinians and the Fight for Digital Rights*, Al Shabaka (Oct. 23, 2017), <https://al-shabaka.org/briefs/surveillance-palestinians-fight-digital-rights/>

<sup>81</sup> *Deadly Exchange*, *supra* note 27, at 11.

<sup>82</sup> Nashif and Fatafta, *supra* note 30.

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

<sup>84</sup> *Id.*

<sup>85</sup> Nashif and Fatafta, *supra* note 30.

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

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Deadly Exchange*, *supra* note 27, at 11.

<sup>90</sup> Josef Federman, *Israel: Social media monitoring nabs would-be attackers*, AP News (June 12, 2018), <https://apnews.com/article/c573e9c93d8544209a52baed19be7984>

<sup>91</sup> *Id.*

raeli security forces, U.S. police departments have begun to use similar surveillance techniques, albeit on a smaller scale due to concerns about civil liberties.<sup>92</sup>

Despite U.S. police departments using these surveillance tactics on a smaller scale, there has still been a significant increase in social media surveillance and the disproportionate targeting of communities of color and activists.<sup>93</sup> The ACLU of Northern California has criticized police departments across the U.S. for contracting with tech companies, such as Geofeedia, to conduct surveillance based on race, religion, and political affiliation on social media.<sup>94</sup> Collectively, U.S. police departments have spent approximately \$4.75 million on software tools to surveil protestors, activists, and social media hashtags.<sup>95</sup> Mainly communities of color and activists have faced the consequences of these surveillance programs.<sup>96</sup> Such as in cases of the activists in the Black Lives Matter movement<sup>97</sup> and those involved in the efforts of stopping the Dakota Access Pipeline,<sup>98</sup> who have been surveilled, questioned, and arrested for political expressions and affiliations on social media.<sup>99</sup> These practices and tactics of surveillance have roots in Israeli security intelligence, which is shared with U.S. police departments through wide scale collaborations with Israel.<sup>100</sup>

The U.S. police's practice of surveilling political expressions, opinions, and affiliations on social media brings up serious questions regarding its constitutionality, specifically in regard to the First, Fourth, and Fourteenth Amend-

<sup>92</sup> Federman, *supra* note 90.

<sup>93</sup> Matt Cagle, *Facebook, Instagram, and Twitter Provided Data Access for a Surveillance Product Marketed to Target Activists of Color*, ACLU Northern California Blog (Oct. 11, 2016), <https://www.aclunc.org/blog/facebook-instagram-and-twitter-provided-data-access-surveillance-product-marketed-target>

<sup>94</sup> *Id.*

<sup>95</sup> Elizabeth Dwoskin, *Police are spending millions of dollars to monitor the social media of protesters and suspects*, The Washington Post (Nov. 18, 2016, 5:00 AM), <https://www.washingtonpost.com/news/the-switch/wp/2016/11/18/police-are-spending-millions-to-monitor-the-social-media-of-protesters-and-suspects/>

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

<sup>97</sup> Sam Biddle, *Police Surveilled George Floyd Protests With Help From Twitter-Affiliated Startup Dataminr*, The Intercept\_ (July 9, 2020, 1:00 PM), <https://theintercept.com/2020/07/09/twitter-dataminr-police-spy-surveillance-black-lives-matter-protests/>

<sup>98</sup> *ACLU Challenges Warrant to Search Data of Facebook Page for Group Protesting Dakota Access Pipeline*, ACLU (Mar. 8, 2017), <https://www.aclu.org/press-releases/aclu-challenges-warrant-search-data-facebook-page-group-protesting-dakota-access>

<sup>99</sup> *Deadly Exchange*, *supra* note 27, at 11.

<sup>100</sup> *Id.*

ments.<sup>101</sup> The Fourth Amendment guarantees the right of a person to be free from unreasonable searches and seizures.<sup>102</sup> In other words, one of the aspects of the Fourth Amendment doctrine rests on the concept of a right to privacy.<sup>103</sup> However, in *United States v. Knotts*<sup>104</sup> the Supreme Court held that police officers were not in violation of the Fourth Amendment after using a tracking device to track a suspect's car without a warrant because anyone could have publicly seen the driver.<sup>105</sup> In *Knotts*, the police officers had to physically follow the suspect's car to remain in range of the tracking device on the car, putting them at risk of being seen and exposing their surveillance.<sup>106</sup> Theoretically, under the standard set in *Knotts*, courts are likely to find that what is posted on *public* social media accounts is not to be considered *private* simply because it is available to the public.<sup>107</sup> However, in contrast to the *Knotts* case, the surveillance of social media does not require police officers to physically surveil a suspect and risk being detected by the suspect, thus making the surveillance much easier.<sup>108</sup>

There have been no courts to consider the Fourth Amendment application under *Knotts* to police surveillance of public social media.<sup>109</sup> However, a majority of the Supreme Court has been embracing the idea that if surveillance is easier and requires less resources for police officers, then constitutional obligations may prevent the practice.<sup>110</sup> Importantly, a district court in *United States v. Chavez* held that any content on *private* social media accounts are protected by a person's right to privacy under the Fourth Amendment.<sup>111</sup> Therefore, depending on whether a social media post is public or private and whether the surveillance practice is easier for police departments, it can be reasonably concluded that the surveillance of public social media accounts for political expres-

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<sup>101</sup> Rachel Levinson-Waldman, *Government Access to and Manipulation of Social Media: Legal and Policy Challenges*, 61 *Howard L.J.* 523, 531 (2018) (discussing the constitutional and policy considerations of law enforcement's use of technological tools to surveil and collect information about American citizens and residents)

<sup>102</sup> *Id.* at 532.

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

<sup>104</sup> *Id.* at 533.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 534.

<sup>107</sup> Levinson-Waldman, *supra* note 101.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

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

<sup>111</sup> *United States v. Chavez*, 423 F.Supp.3d 194, 195 (W.D.N.C. 2019) (holding that the defendant had a legitimate expectation to privacy of his non-public social media content as protected by the Fourth Amendment).

sions and affiliations is likely to be held as a violation of the Fourth Amendment.<sup>112</sup>

Additionally, the surveillance of social media is a violation of the First and Fourteenth Amendment when the surveillance is based on a person's political expression and affiliation, or based on other protected categories such as race.<sup>113</sup> The First Amendment guarantees a person's right to freedom of expression and speech.<sup>114</sup> In *Brandenburg v. Ohio*, the Supreme Court set the standard for measuring when a court could limit freedom of expression and speech, which is only when the speech is intended and likely to produce imminent lawless action.<sup>115</sup> U.S. police departments have been using social media to surveil certain political speech, they have not been using it for speech that is intended or likely to produce immediate illegal action.<sup>116</sup> Additionally, the information that is collected by the social media surveillance programs results in further surveillance, watch listing, and unnecessary interactions with law enforcement.<sup>117</sup> All of these consequences from these surveillance programs infringe on a person's First Amendment rights, unconstitutionally preventing future expression and speech.<sup>118</sup>

The Fourteenth Amendment provides equal protection of the law for all people.<sup>119</sup> When social media surveillance disproportionately targets protected speech or a protected class of people, it becomes unconstitutional under the protections of the Fourteenth Amendment.<sup>120</sup> In *Hassan v. City of New York*, the Third Circuit court held that when discriminatory surveillance prevents people from exercising their constitutional rights, those people may challenge the constitutionality of the surveillance practice.<sup>121</sup> In *Hassan*, the New York

<sup>112</sup> Levinson-Waldman, *supra* note 50, at 534.

<sup>113</sup> Rachel Levinson-Waldman and Angel Diaz, *How to reform policy monitoring of social media*, Brookings (July 9, 2020), <https://www.brookings.edu/techstream/how-to-reform-police-monitoring-of-social-media/>

<sup>114</sup> *Freedom of Expression – ACLU Position Paper*, ACLU (last visited Nov. 15, 2020), <https://www.aclu.org/other/freedom-expression-aclu-position-paper>

<sup>115</sup> *Id.*

<sup>116</sup> *Statement of Civil Rights Concerns About Monitoring of Social Media by Law Enforcement*, Brennan Center (Nov. 6, 2019), <https://www.brennancenter.org/our-work/research-reports/statement-civil-rights-concerns-about-monitoring-social-media-law>

<sup>117</sup> *Statement of Civil Rights Concerns About Monitoring of Social Media by Law Enforcement*, Brennan Center (Nov. 6, 2019), <https://www.brennancenter.org/our-work/research-reports/statement-civil-rights-concerns-about-monitoring-social-media-law>

<sup>118</sup> *Id.*

<sup>119</sup> Levinson-Waldman and Diaz, *supra* note 61.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

Police Department (NYPD) targeted Muslim communities in the state of New York and New Jersey by surveilling their mosques, schools, and stores, in direct inspiration from an Israeli surveillance program.<sup>122</sup> The Third Circuit held that because the surveillance was racially and religiously biased, or in retaliation to Muslim American's exercising their First Amendment rights, the plaintiffs had constitutional standing to challenge the surveillance.<sup>123</sup> Through the standard set in *Hassan*, further targeted surveillance of social media for political expressions and affiliations may be a violation of the First and Fourteenth Amendment when it disproportionately targets communities of color and activists' protected speech.<sup>124</sup>

Further, the collaborations and exchanges between the U.S. police departments and Israeli security forces have contributed to the expansion of surveillance of communities of color and activists in the United States.<sup>125</sup> These practices and programs have resulted in legal and constitutional consequences for communities of color, activists, and civil rights organizations, when they have been targeted for surveillance because of their race, religion, or their protected political speech.<sup>126</sup> Israeli security forces have created a system of social media surveillance that is racially and religiously biased.<sup>127</sup> Their social media surveillance programs target Palestinian and Ethiopian Jewish activists who organize and criticize the Israeli government.<sup>128</sup> A continuation of these security exchange programs between Israel and the United States will result in more violations of the constitutionally protected rights of people's political expressions and affiliations.<sup>129</sup>

#### B. Police Surveillance Through Infiltration of Political Groups & Minority Communities

As part of Israel's advanced surveillance programs, Israeli security forces have developed infiltration units known as the Mista'rvim ("Arabized" in Hebrew).<sup>130</sup> The unit's name is derived from the Arabic word *Musta'arabi*, which

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<sup>122</sup> *Deadly Exchange*, *supra* note 27, at 9.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 14.

<sup>130</sup> *Id.* at 12.

means “those who live among the Arabs.”<sup>131</sup> Since the creation of the unit in 1952, Israeli agents undergo a 15-month training where they learn to speak Arabic at a native level and learn Palestinian cultural mannerisms and behaviors.<sup>132</sup> The Israeli agents are chosen based on whether or not they have similar physical features to those of Palestinians.<sup>133</sup> The purpose of these units are to pose as Palestinians for infiltration of Palestinian communities.<sup>134</sup> The Mista’rvm are deployed into different Palestinian communities to gather information on protests and political activity.<sup>135</sup> They are also known to be used as inciters of violence during protests, and are used to carry out arrests<sup>136</sup> and extra-judicial killings.<sup>137</sup> Adalah, the Legal Center for Arab Minority Rights in Israel, has challenged the legality of the Mista’rvm, stating that the existence of a policing unit that only targets Palestinians is responsible for encouraging discriminatory and racist policing.<sup>138</sup>

The American police officers who participate in Israeli trainings are frequently shown the Mista’rvm in action.<sup>139</sup> The NYPD’s Demographics Unit, which resulted in the litigation *Hassan v. City of New York*, was one of the American surveillance programs directly inspired by the Israeli Mista’rvm.<sup>140</sup> The Demographics Unit was a surveillance program created to surveil Muslim Americans within in the Northeastern U.S. region after the events of 9/11.<sup>141</sup> The NYPD surveilled Muslim communities without any reasonable suspicion.<sup>142</sup> This program recruited “mosque crawlers,” who acted as infiltrators to gather information on mosques and Muslim communities, much like the

<sup>131</sup> Annet David, *The Mista’rvm — Israel’s Notorious Death Squads or Elite Undercover Units?*, Medium (Jan. 11, 2018) <https://medium.com/@annetdavid/the-mistaarvim-israel-s-notorious-death-squads-or-elite-undercover-units-18aa1f37c657>

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Deadly Exchange*, *supra* note 27, at 3

<sup>136</sup> Ari Feldman, *Intense Photos Show Undercover Israeli Agents Infiltrating Protest*, Forward (Dec. 14, 2017), <https://forward.com/fast-forward/390074/intense-photos-show-undercover-israeli-agents-infiltrating-protest/>

<sup>137</sup> Jack Moore, *Video Shows Undercover Israeli Commandos in Deadly West Bank Hospital Raid*, Newsweek (Nov. 12, 2015, 4:12 pm), <https://www.newsweek.com/undercover-israeli-commandos-kill-palestinian-hospital-raid-393531>

<sup>138</sup> *Deadly Exchange*, *supra* note 27, at 12.

<sup>139</sup> *Deadly Exchange*, *supra* note 27, at 12.

<sup>140</sup> *Id.*

<sup>141</sup> *Factsheet: The NYPD Muslim Surveillance Program*, ACLU (last visited Nov 15, 2020), <https://www.aclu.org/other/factsheet-nypd-muslim-surveillance-program>

<sup>142</sup> *Id.*



Mista'rvim.<sup>143</sup> NYPD also created other programs where they sent infiltrators into Black Lives Matter protests to gather information on protestors and the movement.<sup>144</sup> CIA Officer Laurence Sanchez, who helped establish the Demographics Unit, admitted that the founding team was inspired by the Israeli Mista'rvim in an interview.<sup>145</sup> The Israeli media were also quick to draw the connection between the two and referred to the Demographics Unit as the New York version of the Mista'rvim.<sup>146</sup> The Demographics Unit brought the lawsuit *Hassan v. City of New York*, which resulted in a settlement where NYPD agreed to prohibit racially motivated surveillance and infiltration by the police department.<sup>147</sup>

Despite this infamous litigation, U.S. police departments continue to train and collaborate with Israeli security forces, learning from their racist programs of surveillance and infiltration.<sup>148</sup> Police officials across the United States continue to appreciate the Israeli method of policing and surveillance, such as the police officers from the St. Louis area who praised the Israeli exchange program after having participated in it.<sup>149</sup>

There is evidence to show that U.S. police departments continue to use infiltration as a tool for surveillance of social justice movements.<sup>150</sup> Such as in the case of a North Dakota police officer who pretended to be a protestor at a Black Lives Matter rally in Fargo, but instead inspected for guns.<sup>151</sup> Or in the case of the police officers who disguised themselves as Orthodox Jews and infiltrated an anti-racism protest in New Jersey.<sup>152</sup> Or in the case of the Washington D.C.'s police officers who infiltrated multiple private meetings between the activists of the Disrupt J20 group.<sup>153</sup> Their infiltration resulted in over 200

<sup>143</sup> *Id.*

<sup>144</sup> George Joseph, *NYPD sent undercover officers to Black Lives Matter protest, records reveal*, *The Guardian* (Sept. 29, 2016, 7:00 AM), <https://www.theguardian.com/us-news/2016/sep/29/nypd-black-lives-matter-undercover-protests>

<sup>145</sup> *Deadly Exchange*, *supra* note 27, at 12.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 13.

<sup>148</sup> *Id.*

<sup>149</sup> Eric Berger, *Local police praise Israel program*, *STL Jewish Light* (Nov. 23, 2017), [https://www.stljewishlight.com/news/local/local-police-praise-israel-program/article\\_698dc1f4-cfa3-11e7-bc36-37ac80010616.html](https://www.stljewishlight.com/news/local/local-police-praise-israel-program/article_698dc1f4-cfa3-11e7-bc36-37ac80010616.html)

<sup>150</sup> Sahil Singhvi, *Police Infiltration of Protests Undermines the First Amendment*, *Brennan Center for Justice* (Aug. 4, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/police-infiltration-protests-undermines-first-amendment>

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

arrests of activists, journalists, and legal observers with the arrest justification being they were in the vicinity of property damage.<sup>154</sup>

In 2017, the Federal Bureau of Investigations and the Department of Homeland Security referred to Black Lives Matter activists as “Black identity extremists” and “domestic terrorists.”<sup>155</sup> This rhetoric has been used to justify the surveillance and infiltration of Black Lives Matter activists by labeling them as a national security threat that exists within the domestic borders.<sup>156</sup> This justification for surveillance is also used by Israeli security forces who have declared all Palestinians a threat to national security and suspects of terrorism.<sup>157</sup> Israeli security forces also use this racist rhetoric to justify their surveillance and monitoring of Palestinians.<sup>158</sup>

The U.S. police’s infiltration programs used to surveil social justice movements and target communities undermines the First Amendment in dangerous ways.<sup>159</sup> The First Amendment guarantees that a person has the right to freedom of speech and assembly without inference and surveillance from law enforcement.<sup>160</sup> Fear is created in protestors, especially those of vulnerable communities such as the undocumented, with the knowledge that police infiltrators could be or are present in a demonstration or private meeting.<sup>161</sup> This type of infiltration deters these protestors and organizers from expressing their First Amendment rights to freedom of speech and assembly.<sup>162</sup>

Infiltration of political groups and minority communities chills the very type of speech that is protected by the First Amendment.<sup>163</sup> The Supreme Court has set the standard for when infiltration surveillance programs violate the First Amendment in *Laird v. Tatum*.<sup>164</sup> In *Laird*, the U.S. Army put a surveillance programs in place after the 1967 Detroit uprisings and after the assassination of Martin Luther King, Jr. in 1968.<sup>165</sup> The plaintiffs in *Laird* alleged first amendment rights violations after the U.S. Army’s established

<sup>154</sup> *Deadly Exchange*, *supra* note 27, at 13.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Deadly Exchange*, *supra* note 27, at 13.

<sup>163</sup> David Berry, *The First Amendment and Law Enforcement Infiltration of Political Groups*, 56 S. Cal. L. Rev. 207, 210 (1982).

<sup>164</sup> *Id.* at 220.

<sup>165</sup> *Id.*

“surveillance of lawful and peaceful civilian political activity.”<sup>166</sup> The Court held that for a plaintiff to have standing in bringing an action for a constitutional First Amendment infraction, they must show a claim of specific, present, and objective harm, effectively chilling their protected speech.<sup>167</sup> The Court held that a mere subjective perception of a chilling effect on protected speech was not sufficient to amount to a First Amendment violation.<sup>168</sup> The Court explained that some examples of specific harms would be a job loss due to inappropriate dissemination of gathered information after surveillance or in cases of active harassment.<sup>169</sup>

Similarly, in *Panagacos v. Towery*, the Ninth Circuit court held that an infiltrator did not violate the First Amendment when he infiltrated as part of a surreptitious investigation and because of a plaintiff’s failure to produce evidence showing a constitutional infraction.<sup>170</sup> In *Panagacos*, a civilian army employee infiltrated a non-violent protest organization that dedicated to protesting the shipment of arms from ports in the Washington state to Afghanistan and Iraq.<sup>171</sup> The infiltrator relayed his gathered information to local police departments in Tacoma and Olympia of the protestor’s plans.<sup>172</sup> The protestors were arrested in Tacoma and allege that it was due to the infiltrator’s relay of information to the local police departments.<sup>173</sup> In *Panagacos*, the Ninth Circuit held that no First Amendment violation occurred because the infiltrator conducted the investigation in good faith and not for the purposes of infringing First Amendment freedoms.<sup>174</sup> The Ninth Circuit found that the protestors failed to show that the infiltrator’s and the police department’s actions deterred or chilled their political speech and that such deterrence was a substantial or motivating factor for their conduct.<sup>175</sup>

<sup>166</sup> Berry, *supra* note 163, at 221.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Panagacos v. Towery*, 692 Fed.Appx 330, 331 (9th Cir. 2017)

<sup>171</sup> *Id.* at 332.

<sup>172</sup> *Id.*

<sup>173</sup> *Panagacos*, 692 Fed.Appx at 332.

<sup>174</sup> *Id.* at 333.

<sup>175</sup> *Id.* (citing *Mendocino Env'tl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999) (holding that in order to demonstrate a First Amendment free speech violation, plaintiff’s must show evidence that the actions of the defendants deterred or chilled their political speech and that the deterrence was a substantial or motivating factor)).

There is substantial case law that provides First Amendment protections from military and police infiltration.<sup>176</sup> However, those who are being subject to infiltration through police surveillance programs must provide evidence that the infiltration directly deterred or chilled their political speech, with specific harms, and that such deterrence was a substantial or motivating factor in order to prove a violation of the First Amendment.<sup>177</sup>

When the NYPD infiltrated the Black Lives Matter movement, Michael Price, counsel at the Brennan Center for Justice, questioned the constitutionality for the presence of police infiltrators at the protests.<sup>178</sup> Price stated that there was no unlawful activity for police to have reasonable suspicion to be there in secret.<sup>179</sup> Black Lives Matter organizers have expressed that it becomes difficult to organize when people cannot trust each other because of surveillance and infiltration.<sup>180</sup> However, a constitutional infraction may be difficult to prove in court because police are able to create legal justifications around it and make sure to bypass constitutional standards in not directly harming protestors or organizers.<sup>181</sup>

When U.S. police departments train and collaborate with Israeli security forces, they see examples of successful surveillance and infiltration, such as the unit of the Mista'rvim.<sup>182</sup> The Mista'rvim is successful in thwarting Palestinian political activity, but it is at the cost of the civil and human rights of Palestinians.<sup>183</sup> Olivette Police Chief Rick Knox stated "there are a lot of things we can't do because of our constitution" in reference to what he saw in an Israeli police training program.<sup>184</sup> After policing officers train with Israeli security forces, they get inspirations for using the learned tactics and applying them to policing in the U.S., while meeting constitutional standards.<sup>185</sup> But ultimately, the infiltration programs rest on a thin line of legality that could easily become illegal and unconstitutional.<sup>186</sup> The NYPD's Demographics Unit, a direct in-

<sup>176</sup> Berry, *supra* note 163, at 220.

<sup>177</sup> *Id.*

<sup>178</sup> George Joseph, *NYPD officers accessed Black Lives Matter activists' texts, documents show*, *The Guardian* (Apr. 4, 2017, 6:00 AM), <https://www.theguardian.com/us-news/2017/apr/04/nypd-police-black-lives-matter-surveillance-undercover>

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 12.

<sup>183</sup> Joseph, *supra* note 178, at 12.

<sup>184</sup> Berger, *supra* note 90.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

spiration from the Israeli infiltration program, has brought up serious legal and constitutional consequences for Arab and Muslim communities in the New York City area.<sup>187</sup> Further collaborations between these Israeli security forces and U.S. police departments will inspire more infiltration programs.<sup>188</sup> Some of these programs will bypass constitutional tests, but still have serious community consequences, while others will directly chill protected speech and prevent assembly on a wide scale.<sup>189</sup>

### III. RACIAL PROFILING AS A NATIONAL SECURITY MEASURE

Throughout the international community, Israel is known for its ability to keep its citizens safe from external and internal threats through their military and national police.<sup>190</sup> Despite Israel branding itself a democracy, this success comes at the cost of Palestinian human and civil rights, with Jewish ethnic minorities experiencing violent systematic racism as well.<sup>191</sup> Israel's policing system is part of a wider apartheid system that subjects Palestinians to racial and religious discrimination, human rights violations, and expulsion from their land.<sup>192</sup> Israel has two different legal systems under which one is held accountable depending on racial and religious identity, constituting apartheid under international law.<sup>193</sup>

Under the Israeli law of occupation, any type of opposition to the Israel is considered a threat to the security of Israel, or in other words terrorism.<sup>194</sup> These laws of occupation have resulted in well documented civil rights violations of Palestinians because of the systematic targeted policing, arrests, and incarceration by Israeli security forces.<sup>195</sup> Israel's military "Order Concerning Security Provisions" permits Israeli security forces to search, arrest, seize property, and enter a home without a warrant, of any Palestinian the soldier or officer believes to be harmful to public order and safety.<sup>196</sup> Because Israel has

<sup>187</sup> Levinson-Waldman and Diaz, *supra* note 61.

<sup>188</sup> *Deadly Exchange*, *supra* note 27, at 9.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* at 15.

<sup>191</sup> Ilan Pappé, *No, Israel is Not a Democracy*, Jacobin Magazine (last visited Nov. 27, 2020), available at <https://www.jacobinmag.com/2017/05/israel-palestine-democracy-apartheid-discrimination-settler-colonialism>

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Born Without Civil Rights*, Human Rights Watch (Dec. 17, 2019), <https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress>

<sup>195</sup> *Deadly Exchange*, *supra* note 27, at 16.

<sup>196</sup> *Id.*

operated under system of apartheid since its inception, racist policing tactics have reached the Palestinian citizens of Israel and Jewish ethnic minorities within Israeli borders.<sup>197</sup> The results are Palestinians being subject to racist policing tactics, Palestinians being policed and tried under different legal systems than Israeli Jews, and Israeli ethnic minorities experiencing over-policing and racial profiling by Israeli military and police.<sup>198</sup>

As a part of the Israeli security trainings, Israeli officials provide U.S. police officers with training on counterterrorism policing practices and tactics.<sup>199</sup> Counterterrorism by definition requires racial profiling.<sup>200</sup> In Israel, racial profiling is part of the daily policing activity for the Israeli security forces, it is very commonly used.<sup>201</sup> Palestinians are given different color-coded identification cards and different colored license plates than Israeli citizens to identify Palestinians easier.<sup>202</sup> Palestinians in East Jerusalem, Gaza, and the West Bank are all given different colored identification cards, in which each carry different freedoms and privileges.<sup>203</sup> Even Palestinians with Israeli citizenship are given a different colored identification card than Jewish Israelis, dictating where they may live within Israel and when they can vote in Israeli parliament.<sup>204</sup> These identification cards are part of Israel's counterterrorism efforts in identifying and tracking Palestinians at all times, making the identification of a Palestinian easier from other ethnic minorities when needed.<sup>205</sup>

These counterterrorism trainings dangerously normalize and legitimize U.S. police departments targeting of Black and brown communities, and activists of racial justice movements, who police deem to be enemies of the state.<sup>206</sup> In these trainings, U.S. police officials are trained to think of Black and brown community members and social justice activists as a national security risk, in direct parallel to how the Israeli security forces see Palestinians.<sup>207</sup> The U.S.

<sup>197</sup> *Deadly Exchange*, *supra* note 27, at 16.

<sup>198</sup> *Id.* at 18.

<sup>199</sup> *Id.* at 15.

<sup>200</sup> *Id.*

<sup>201</sup> Jeffrey A. Larsen and Tasha L. Pravecsek, *Comparative U.S.-Israeli Homeland Security*, US Air Force 1-99 (June 2006), available at <https://media.defense.gov/2019/Apr/11/2002115500/-1/-1/0/34COMPARITIVEUSISRAELI.PDF>

<sup>202</sup> *Id.*

<sup>203</sup> *Israeli Identification and Segregation*, Promised Land Museum (Nov. 08, 2017), <https://visualizingpalestine.org/visuals/identity-crisis-the-israeli-id-system>

<sup>204</sup> *Israeli Identification and Segregation*, Promised Land Museum (Nov. 08, 2017), <https://visualizingpalestine.org/visuals/identity-crisis-the-israeli-id-system>.

<sup>205</sup> *Id.*

<sup>206</sup> *Deadly Exchange*, *supra* note 27, at 21.

<sup>207</sup> *Id.*

police officials who participate in these trainings are repeatedly told that racial profiling as a counterterrorism tactic is effective and justified.<sup>208</sup>

Proponents of racial profiling say that the tactic can be effective as the profiling is based on statistics and probability, and in the context of counterterrorism, it would increase the detection of potential terrorist attacks.<sup>209</sup> However, there is no empirical evidence to prove its effectiveness in practice.<sup>210</sup> Additionally, sacrificing the constitutional and civil rights of minority communities in the U.S., particularly Arab and Muslims, is not worth the mere potential detection of terrorism.<sup>211</sup> Israeli security forces use counterterrorism as a policing tactic because that is the foundation of the Israeli policing system, which has designated Palestinians as the enemy and suspects of terrorism.<sup>212</sup> U.S. police departments are receiving trainings from an apartheid regime where racial profiling is central to their security system.<sup>213</sup>

U.S. police officers return from their training with Israeli security forces with a notion that normalizes the idea of mixing military war practices with community policing.<sup>214</sup> Israeli security officials promote to U.S. police departments the effectiveness of their security system because of their interagency cooperation amongst different factions of their security forces.<sup>215</sup> In Israel, major Israeli military and policing organizations, such as the Mossad, Shin Bet, and local police units, all share with each other and have access to the same information each has gathered.<sup>216</sup> They are also likely to work closely with each other when it is in regards to national security.<sup>217</sup> Because of this interagency cooperation at all levels of Israeli military and police, the training constantly switches between Israeli civilian policing tactics and counterterrorism tactics because they're so intertwined.<sup>218</sup> The Israeli success in combating

<sup>208</sup> *Deadly Exchange*, *supra* note 27, at 15.

<sup>209</sup> Bernard E. Harcourt, *Muslim Profiles Post 9/11: Is Racial Profiling an Effective Counterterrorist Measure and Does It Violate the Right to Be Free from Discrimination?*, Coase-Sandor Institute for Law and Economics, 1-28 (March 2006), available at [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1328&context=law\\_and\\_economics](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1328&context=law_and_economics)

<sup>210</sup> *Id.* at 4.

<sup>211</sup> *Id.*

<sup>212</sup> *Deadly Exchange*, *supra* note 27, at 15.

<sup>213</sup> Anshel Pfeffer, *In Israel, Racial Profiling Doesn't Warrant Debate or Apologies*, Haaretz (Sept. 20, 2016), <https://www.haaretz.com/israel-news/in-israel-racial-profiling-doesn-t-warrant-debate-or-apologies-1.5439830>

<sup>214</sup> *Deadly Exchange*, *supra* note 27, at 22.

<sup>215</sup> Larsen and Pravecsek, *supra* note 201.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Deadly Exchange*, *supra* note 27, at 21.

crime and suppressing Palestinian resistance through their interagency cooperation encourages U.S. police officers to integrate policing efforts at both federal and state level, while also integrating counterterrorism tactics into community policing.<sup>219</sup>

Israel does not have constitutional constraints to their policing tactics in the way the U.S. police officers do.<sup>220</sup> The U.S. Constitution provides protections for all residents from race-based law enforcement.<sup>221</sup> That is because the policing tactic of racial profiling, even as a counterterrorism defense measure, brings up constitutional challenges under the Fourth and Fourteenth Amendments.<sup>222</sup>

The Fourth Amendment guarantees the right of a person to be free from unreasonable searches and seizures.<sup>223</sup> Under *Terry v. Ohio*, the Supreme Court held that a police officer must have a reasonable and articulable suspicion in order to briefly stop and question someone.<sup>224</sup> The suspicion must be based on a specific reasonable inference and not an “inchoate and unparticularized suspicion or hunch.”<sup>225</sup> However, the Supreme Court made the mistake of not defining what a constitutional stop was under *Terry*, leading to greater abuses of the Fourth Amendment by police departments and courts on Black and brown communities in the years since.<sup>226</sup>

Although there have been a few U.S. courts that have held that some searches and seizures are reasonable under the Fourth Amendment when they are based on race.<sup>227</sup> Once such case includes *United States v. Martin-Fuerte*, where the Supreme Court held that border patrol officers who relied on Mexican ancestry at the checkpoint was reasonable under the Fourth Amendment

<sup>219</sup> *Deadly Exchange*, *supra* note 27, at 22.

<sup>220</sup> Larsen and Pravecsek, *supra* note 201.

<sup>221</sup> Jody Feder, *Racial Profiling: Legal and Constitutional Issues*, Congressional Research Service, 1-13, 1 (April 16, 2012), available at <https://fas.org/sgp/crs/misc/RL31130.pdf>

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* at 2; See also *Terry v. Ohio*, 392 U.S. , 88 S.Ct. 1868, 1869 (1968)(In *Terry v. Ohio*, a plainclothes police officer stopped and frisked three men, under the suspicion they were about to commit a crime, and found weapons on two of them. Terry was one of those who was armed and was convicted for carrying a concealed weapon. The Supreme Court held that the search was reasonable under the Fourth Amendment because a reasonably prudent man would have suspected Terry was armed and a safety concern).

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> Russell L. Jones, *Terry v. Ohio: Its Failure, Immoral Progeny, and Racial Profiling*, 54 Idaho L. Rev. 511 (2018), available at <https://digitalcommons.law.uidaho.edu/idaho-law-review/vol54/iss2/8>

<sup>227</sup> Feder, *supra* note 221, at 2.



because it is “relevant to the law enforcement needed to be served.”<sup>228</sup> Another case is *United States v. Weaver*, where the Eighth Circuit held that federal drug enforcement agents could rely on racial characteristics when stopping a Black suspect, when the racial characteristic was a risk factor in predicting criminal behavior in the area.<sup>229</sup>

However, there have been courts that have held that race-based law enforcement is unconstitutional under the Fourth Amendment.<sup>230</sup> In *United States v. Brignoni-Ponce*, the Supreme Court held that using race as a single factor for a stop is not reasonable under the Fourth Amendment. In *Brignoni-Ponce*, police officers stopped the respondent’s car under the suspicion of illegal immigration status based solely on their own subjective belief and the Mexican ancestral appearance of the driver and occupants.<sup>231</sup> Similarly in *United States v. Montero-Camargo*, the Ninth Circuit held that using Hispanic appearance for a reasonable suspicion for a traffic stop is unreasonable under the Fourth Amendment.<sup>232</sup> The Ninth Circuit also noted that precluding consideration of race in this case was due to “changes in the law restricting the use of race as a criterion in government decision-making.”<sup>233</sup>

The Fourteenth Amendment provides equal protection of the law for all people.<sup>234</sup> People with a constitutional violation claim under the Equal Protection Clause have two ways of challenging police practices.<sup>235</sup> The person may argue that the police officer had a racially motivation for the search or seizure or they may argue that they were targeted by selective enforcement under a police departments policy or practice.<sup>236</sup> However, the Supreme Court has a record of disregarding claims from people of color alleging unconstitutional policing under the Fourteenth Amendment.<sup>237</sup> This enablement of racial profiling by law enforcement has permitted other courts to interpret policing tactics under a reasonable standard, which is still unclear.<sup>238</sup> However, there are

<sup>228</sup> Feder, *supra* note 221, at 2.

<sup>229</sup> *Id.* at 3.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.* at 4.

<sup>235</sup> *Id.*

<sup>236</sup> Feder, *supra* note 221, at 4.

<sup>237</sup> David H. Gans, *The 14th Amendment Was Meant to Be a Protection Against State Violence*, *The Atlantic* (July 19, 2020), <https://www.theatlantic.com/ideas/archive/2020/07/14th-amendment-protection-against-state-violence/614317/>

<sup>238</sup> *Id.*

several federal statutes that are to provide relief for individuals who are victims of race-based law enforcement.<sup>239</sup> These include 42 U.S.C. § 1983, Title VI of the 1964 Civil Rights Act, and the Violent Crime Control and Law Enforcement Act of 1994.<sup>240</sup>

The federal government attempted to take action to end racial profiling within federal law enforcement prior to the events of 9/11.<sup>241</sup> President Bush directed the Attorney General to develop a guidance to end racial profiling in federal enforcement agencies.<sup>242</sup> However, the directive did not include any law enforcement activity that was involved in defense and national security.<sup>243</sup> This directive didn't do much because it did not apply to local law enforcement and the exceptions permitted racial profiling of Arabs and Muslims after the events of 9/11, and the profiling of Brown people at the border.<sup>244</sup>

While the U.S. does have a history of using racial profiling as a tactic for policing Black and brown communities, trainings with Israeli security forces only normalize and encourage these practices on a sophisticated scale.<sup>245</sup> Central to the Israeli security system is racial profiling.<sup>246</sup> They stop, search, and arrest Palestinians solely for their racial differentiation from Jewish Israelis.<sup>247</sup> Israel does has a successful system in counterterrorism, however, it comes at the cost of Palestinians' and Jewish ethnic minorities' human and civil rights.<sup>248</sup> U.S. police officers leave Israeli trainings with the impression that racial profiling is effective and necessary to combat crime by reframing their approach to policing by thinking of crime as a national security necessity.<sup>249</sup> This leads to U.S. police departments implementing military-style policing tactics with racial profiling as a central aspect to reducing or combatting crime.<sup>250</sup> These advanced profiling tactics that are learned from Israeli security forces are bound to bring up legal and constitutional consequences for communities and individuals, the majority of them being Black and brown.<sup>251</sup>

<sup>239</sup> Feder, *supra* note 221 at 10.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* at 12.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Deadly Exchange*, *supra* note 27, at 15.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Deadly Exchange*, *supra* note 27, at 16.

<sup>249</sup> *Deadly Exchange*, *supra* note 27, at 16.

<sup>250</sup> *Id.* at 21.

<sup>251</sup> *Id.*

## IV. POLICE PRACTICE OF EXCESSIVE USE OF FORCE

Israeli security forces are notoriously known for their violent and lethal policing tactics on Palestinians.<sup>252</sup> As an apartheid regime, Israel does not tolerate any opposition or dissent of any kind from Palestinians.<sup>253</sup> Israeli security forces are quick to meet Palestinian resistance, whether it be a demonstration or a general strike, with indiscriminate excessive use of force.<sup>254</sup> Under Israeli apartheid, Palestinians are not permitted to express themselves politically nor are they permitted to vote, as the Israeli democracy is reserved for only Israeli Jewish citizens.<sup>255</sup> Through Military Order 101, Israel has prohibited Palestinians from engaging any activity or publication that is “a political matter or one liable to be interpreted as political.”<sup>256</sup> Israeli security officials are given the discretion to use “the required degree of force” to enforce Military Order 101,<sup>257</sup> which has resulted in violent police suppression and deadly consequences for Palestinians who express themselves politically in opposition to Israel.<sup>258</sup> Military Order 101 gives Israeli security forces permission to meet political expression with excessive use of force to thwart it.<sup>259</sup> This violent political repression reaches Palestinian citizens of Israel and Jewish ethnic minorities who express themselves politically.<sup>260</sup> One example of such repression occurred on October 03, 2001, when Israeli police killed 13 Palestinian citizens of Israel engaging in a political demonstration.<sup>261</sup>

With Israeli security forces being highly militarized on all levels, Black Jewish Israelis experience these excessive uses of force from Israeli police.<sup>262</sup> In 2015, more than 5,000 Ethiopian Israelis protested police brutality and discrimination in Tel Aviv, Israel for the first time.<sup>263</sup> The demonstrations were in response to a video of an Ethiopian Israeli soldier being attacked and beaten by

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<sup>252</sup> *Deadly Exchange*, *supra* note 27, at 27.

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Military Order 101*, B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories (Sept. 08, 2011), [https://www.btselem.org/demonstrations/military\\_order\\_101](https://www.btselem.org/demonstrations/military_order_101)

<sup>257</sup> *Id.*

<sup>258</sup> *Deadly Exchange*, *supra* note 27, at 28.

<sup>259</sup> *Military Order 101*, *supra* note 256.

<sup>260</sup> *Id.* at 29.

<sup>261</sup> *Military Order 101*, *supra* note 256, at 29.

<sup>262</sup> *Id.*

<sup>263</sup> Sarah Levy, *Do Black lives matter in Israel?*, Social Worker (May 13, 2015), <https://socialistworker.org/2015/05/13/do-black-lives-matter-in-israel>

Israeli police officers for no reason.<sup>264</sup> These protestors were met by Israeli police deploying stun grenades, shooting water cannons, and using horses to ride into crowds.<sup>265</sup> Since then, Ethiopian Israelis created their Black Lives Matter movement in Israel, protesting the excessive uses of force by police, which have led to many deaths of Black Israelis.<sup>266</sup> Most recently has been the case of Solomon Teka, an 18-year-old Ethiopian Israeli Jew, who was shot and killed in the back of the head by an off-duty police officer in 2019.<sup>267</sup>

U.S. police officers who participate in these Israeli trainings are shown successful policing tactics that use excessive force for the purpose of suppressing political activity.<sup>268</sup> Israeli security forces use this method of policing because it is within their government's interest to repress any political resistance.<sup>269</sup> This approach demonstrates to U.S. police officers that protesting and political expression is a security threat that must be addressed and suppressed, rather than a civil right that must be protected.<sup>270</sup> The U.S. itself has a history of repressing social justice movements in Black and brown communities, and anything contrary to the U.S. government's interests, such as anti-war movements.<sup>271</sup> These Israeli trainings further normalize the use of these violent tactics for U.S. police officers.<sup>272</sup> They also sophisticate already existing policing tactics and introduce new practices for police officers who are responding to protests with crowd-control methods.<sup>273</sup>

In the summer of 2020, police departments across the U.S. responded to national Black Lives Matter protests with excessive use of force.<sup>274</sup> Amnesty International USA alone recorded 125 incidents across the United States of police violence against demonstrators, media personnel, and legal observers.<sup>275</sup>

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<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> Moran Nakar, *Black Lives Matter: Ethiopian Israelis compare and contrast struggle with US*, Middle East Eye (June 11, 2020, 7:55 AM), <https://www.middleeasteye.net/news/black-lives-matter-israel-ethiopian-police-brutality>

<sup>267</sup> *Id.*

<sup>268</sup> *Deadly Exchange*, *supra* note 27, at 30.

<sup>269</sup> *Id.*

<sup>270</sup> *Id.* at 31.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Deadly Exchange*, *supra* note 27, at 31.

<sup>274</sup> *USA: Law enforcement violated Black Lives Matter protesters' human rights, documents acts of police violence and excessive force*, Amnesty International (Aug. 04, 2020, 10:00 AM), <https://www.amnesty.org/en/latest/news/2020/08/usa-law-enforcement-violated-black-lives-matter-protesters-human-rights/>

<sup>275</sup> *Id.*

Amongst these several cases, police officers used different crowd-control tactics, such as flash grenades, pepper spray, tear gas, and the violent use of batons.<sup>276</sup> While these incidents do not come by surprise, nor are they solely caused by Israeli training, U.S. police departments should not be training with a security force that uses advanced techniques and practices of excessive force purposely to repress political resistance.<sup>277</sup> There are legal and constitutional consequences in the U.S. when police officers use excessive force when policing communities.<sup>278</sup> These policing tactics severely harm Black and brown communities who are already overpoliced and targeted.<sup>279</sup>

Excessive use of force is constitutionally prohibited under the Fourth and Fourteenth Amendment.<sup>280</sup> The Fourth Amendment guarantees the right to a person to be free from “unreasonable searches and seizures.”<sup>281</sup> Part of the Fourteenth Amendment guarantees a person a right to not be deprived of “life or liberty. . . without due process of the law.”<sup>282</sup> However, despite constitutional protections, the Supreme Court has afforded law enforcement with much impunity through the doctrine of qualified immunity.<sup>283</sup> Qualified immunity provides financial protections for police officers from litigation resulting from their unconstitutional policing actions if the police officer acted “reasonably.”<sup>284</sup>

In *Tennessee v. Garner*, the Supreme Court held that a police officer may use deadly force only when a suspect is attempting to get away and the officer has probable cause to believe that the suspect poses a safety risk to others or the officers.<sup>285</sup> Further, in *Graham v. Connor*, the Supreme Court held that all police use of force, even if deadly, is to be governed by an objective reasonableness standard of the officer’s actions.<sup>286</sup> This led to the *Scott v. Harris* case, where the Supreme Court held that a police officer could use deadly force

<sup>276</sup> *Id.*

<sup>277</sup> *Deadly Exchange*, *supra* note 27, at 36.

<sup>278</sup> Kathryn R. Urbonya, *Establishing a Deprivation of a Constitutional Right to Personal Security under Section 1983: The Use of Unjustified Force by State Officials in Violation of the Fourth, Eighth, and Fourteenth Amendments*, 51 Albany L.Rev. 173, 173 (1987)

<sup>279</sup> *Deadly Exchange*, *supra* note 27, at 18.

<sup>280</sup> Urbonya, *supra* note 278, at 174.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> Martin A. Schwartz, *How the Supreme Court Enables Police Excessive Force*, New York Law Journal, (June 05, 2020, 12:30 PM), <https://www.law.com/newyorklawjournal/2020/06/05/how-the-supreme-court-enables-police-excessive-force/>

<sup>284</sup> Schwartz, *supra* note 283.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

under the reasonableness test if it was done in order to keep innocent bystanders or drivers safe from a suspect.<sup>287</sup> Ultimately, whether or not a police officer's use of force is a Fourth Amendment infraction is determined by the reasonableness standard of the officer's actions.<sup>288</sup> In contrast, Israeli security forces use excessive force without constitutional constraints that U.S. police officers are held to.<sup>289</sup>

Despite the Court holding in *Graham* that substantive due process was not the applicable constitutional standard after *Graham* was severely beat by police officers who incorrectly suspected he shoplifted,<sup>290</sup> the Fourteenth Amendment is still considered in cases of excessive police force.<sup>291</sup> In *Rochin v. California*, the Supreme Court held that the due process clause provides protections for suspects from police excessive force that would "shock the conscience."<sup>292</sup> In *Rochin*, police officers forced a vomiting inducing medication into a suspect's stomach in order to retrieve evidence that had been consumed.<sup>293</sup> After this case, the Second Circuit court set the standard in *Johnson v. Glick* for cases of excessive use of force and the Fourteenth Amendment, which is widely used in many courts.<sup>294</sup> The Second Circuit in *Glick* held that when analyzing an excessive force claim, the court must look at the need for the application of the force, the relation between the need and amount of force used, the extent of the injury that was inflicted, and whether it was applied in a good faith effort by the officer.<sup>295</sup> U.S. police officers are held to constitutional standards when they are applying excessive force on suspects.<sup>296</sup> In contrast, Israeli security forces are permitted to use excessive force on Palestinians without constitutional consequences because Palestinians are governed under an Israeli apartheid legal system.<sup>297</sup>

<sup>287</sup> Travis Yates, *Scott v. Harris: The Supreme Court decision and its impact on police*, Police1 (May 2, 2007), <https://www.police1.com/law-enforcement-policies/articles/scott-v-harris-the-supreme-court-decision-and-its-impact-on-police-T7zkAcneP9zJzopF/>

<sup>288</sup> *Id.*

<sup>289</sup> Larsen and Pravecsek, *supra* note 200.

<sup>290</sup> Osagie K. Obasogie, *The Bad-Apple Myth of Policing*, *The Atlantic* (Aug. 02, 2019), <https://www.theatlantic.com/politics/archive/2019/08/how-courts-judge-police-use-force/594832/>

<sup>291</sup> Bradley M. Campbell, *Excessive Force Claims: Removing the Double Standard*, 53 *U. Chi. L. Rev.* 1369, 1370 (1986).

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> *Id.* at 1371.

<sup>295</sup> Campbell, *supra* note 291, at 1371.

<sup>296</sup> Schwartz, *supra* note 283.

<sup>297</sup> *Deadly Exchange*, *supra* note 27, at 15.

Israeli trainings normalize for U.S. police officers the already existing policing tactics that result in excessive use of force.<sup>298</sup> The trainings also provide U.S. police departments with new policing tactics and technologies that have been practiced on Palestinians, without constitutional or legal consequences under Israeli law.<sup>299</sup> For example, in 2008 Israel developed Skunk, a crowd-control technology that's a foul-smelling liquid that causes nausea, and lingers for days on clothes, the skin, and in the air.<sup>300</sup> Israeli security forces use Skunk to disperse Palestinian crowds during demonstrations.<sup>301</sup> They also use the Skunk as a tool for collective punishment of the Palestinians by spraying it purposely into schools, houses, and stores.<sup>302</sup> After U.S. police officers watched Israeli live trainings of Skunk being used on Palestinians and how successfully they dispersed crowds, it began to sell to police departments across the U.S.<sup>303</sup> Skunk is advertised to buyers as being usable for "border crossings, correctional facilities, demonstrations, and sit-ins."<sup>304</sup>

U.S. police officers should be addressing issues of excessive use of force when interacting with U.S. residents, rather than training with Israeli security forces who are developing new techniques to successfully harm and suppress Palestinians.<sup>305</sup> Israeli security forces have a record of using excessive force that has resulted in extrajudicial killings and serious injury of Palestinians who resist the Israeli military occupation or its apartheid system.<sup>306</sup> Most recently in 2018, the peaceful protests of the Great Return March in Gaza left 166 Palestinian demonstrators shot dead with 16,000 others injured or maimed.<sup>307</sup> While this is a small representation of the deadly consequences for Palestinians of the Israeli security forces, it demonstrates the repressive and dangerous nature of Israeli policing practices and tactics.<sup>308</sup> U.S. police officers' current tactics are being legitimized by Israeli collaborations and they are learning new techniques that will have serious and deadly consequences for U.S. re-

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<sup>298</sup> *Deadly Exchange*, *supra* note 27, at 31.

<sup>299</sup> *Id.*

<sup>300</sup> *Id.* at 32.

<sup>301</sup> *Id.*

<sup>302</sup> *Id.*

<sup>303</sup> Patrick Tucker, *America's Police Will Fight the Next Riot With These Stink Bombs*, *Defense One* (Apr. 28, 2015), <https://www.defenseone.com/technology/2015/04/americas-police-will-fight-next-riot-these-stink-bombs/111430/>

<sup>304</sup> *Deadly Exchange*, *supra* note 27, at 32.

<sup>305</sup> *Id.*

<sup>306</sup> *Deadly Exchange*, *supra* note 27, at 32.

<sup>307</sup> *Id.* at 30.

<sup>308</sup> *Id.*

sidents.<sup>309</sup> Excessive use of force is prohibited by the U.S. Constitution, so U.S. police officers training to become more sophisticated in these practices will inevitably result in negative legal and constitutional consequences.<sup>310</sup> Especially for Black and brown residents who have been subject to over-policing since the institution of policing was invented.<sup>311</sup>

### CONCLUSION

While there is no direct connection between the knee-to-neck restraining technique used on George Floyd by MPD to the Israeli trainings MPD participated in, that doesn't mean U.S. police practices and tactics are not being influenced by Israeli security forces in dangerous ways.<sup>312</sup> Further trainings and collaborations with Israeli security forces will result in more violent police interactions and killings of residents, such as the killing of Mr. Floyd.<sup>313</sup> There are serious legal and constitutional consequences for U.S. police departments when they implement Israeli practices and tactics to policing in the U.S.<sup>314</sup> Therefore, trainings and collaborations with Israeli security forces must be ended.<sup>315</sup>

U.S. police officers should not be training with an apartheid security force that constantly violates international law and human and civil rights.<sup>316</sup> Israel is an apartheid regime that subjugates Palestinians to racial and racialized religious discrimination, deprivation of human and civil rights, and expulsion from their lands.<sup>317</sup> Israel subjects Palestinians to a different legal system than what is given to Israeli Jews because of racial and religious differentiation.<sup>318</sup> While Israeli Jews of color have citizenship privileges over Palestinians, they are also subject to systematic racism, police violence, and civil rights violations because of the Israeli system that is based in racism and apartheid.<sup>319</sup> Israel has effectively declared the entire Palestinian population as a national security threat.<sup>320</sup>

<sup>309</sup> *Deadly Exchange*, *supra* note 27, at 30.

<sup>310</sup> *Id.* at 36.

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

<sup>316</sup> *Deadly Exchange*, *supra* note 27, at 36.

<sup>317</sup> Fahey, *supra* note 42.

<sup>318</sup> *Id.*

<sup>319</sup> *Deadly Exchange*, *supra* note 27, at 17.

<sup>320</sup> *Id.* at 15.



This informs their policing practices and tactics, which are brutally enforced on Palestinians.<sup>321</sup>

U.S. police departments training and collaborating with Israel will result in legal and constitutional consequences for Black and brown communities, activists of social justice movements, and other vulnerable communities in the U.S.<sup>322</sup> Israeli security forces do not have constitutional constraints and they disobey international law when they police the Palestinian people.<sup>323</sup> The majority of their practices and tactics are rooted in disenfranchising Palestinians, repressing their political resistance, and expulsing them from the land.<sup>324</sup> As a result, these Israeli trainings only serve as inspiration for new ideas, legitimization of racist narratives, and the normalization of unconstitutional policing in America.<sup>325</sup> U.S. police departments learn how to effectively surveil communities and social justice movements, which chills and limits freedom of expression and speech.<sup>326</sup> They learn how to reframe their approach to crime, reinforcing the national security narrative, which results in targeted policing, racial profiling, and serious community consequences. Additionally, they legitimize existing practices of excessive use of force, while introducing dangerous new crowd-control tactics in response to protestors and demonstrations.<sup>327</sup> In order to begin the demilitarization of police, reduce police brutality and the use of racist policing tactics, and to limit illegal and unconstitutional policing, U.S. police departments should be prohibited from training and collaborating with Israeli security forces.<sup>328</sup>

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<sup>321</sup> *Deadly Exchange*, *supra* note 27, at 15.

<sup>322</sup> *Id.* at 36.

<sup>323</sup> Larsen and Pravecsek, *supra* note 201.

<sup>324</sup> *Deadly Exchange*, *supra* note 27, at 1.

<sup>325</sup> *Id.* at 7.

<sup>326</sup> *Id.* at 16.

<sup>327</sup> *Deadly Exchange*, *supra* note 27, at 27.

<sup>328</sup> *Id.* at 36.