

OVERSIGHT HEARING ON POLICING PRACTICES
AND LAW ENFORCEMENT ACCOUNTABILITY

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

WEDNESDAY, JUNE 10, 2020

Serial No. 116–80

Printed for the use of the Committee on the Judiciary



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OVERSIGHT HEARING ON POLICING PRACTICES AND LAW ENFORCEMENT ACCOUNTABILITY

Wednesday, June 10, 2020

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to call, at 10:08 a.m., in Room CVC-200, Capitol Visitor Center, Hon. Jerrold Nadler [Chair of the Committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Cohen, Johnson of Georgia, Deutch, Bass, Richmond, Jeffries, Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa, Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Mucarsel-Powell, Escobar, Jordan, Sensenbrenner, Chabot, Gohmert, Collins, Buck, Roby, Gaetz, Johnson of Louisiana, McClintock, Lesko, Reschenthaler, Cline, Armstrong, Steube, and McCarthy.

Staff Present: Aaron Hiller, Deputy Chief Counsel; Amy Rutkin, Chief of Staff; David Greengrass, Senior Counsel; John Doty, Senior Advisor; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Advisor; Priyanka Mara, Professional Staff Member; Jordan Dashow, Professional Staff Member; Anthony Valdez, Staff Assistant; John Williams, Parliamentarian; Keenan Keller, Senior Counsel, Constitution; Will Emmons, Professional Staff Member, Constitution; Christopher Hixon, Minority Staff Director; Kathy Rother, Minority Deputy General Counsel and Parliamentarian; Jason Cervenak, Minority Chief Counsel for Crime; Ken David, Minority Counsel; Betsy Ferguson, Minority Senior Counsel; Ella Yates, Minority Director of Member Services and Coalitions; and Kiley Bidelman, Minority Clerk.

Chair NADLER. The House Committee on the Judiciary will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time.

We welcome everyone to this morning's hearing on "Policing Practices and Law Enforcement Accountability." I thank all our Members and Witnesses for participating today, both in person and remotely. I appreciate all the work that went into making use of this room and the technology we are using possible.

Before we begin, I would like to remind the Members that we've established an email address and distribution list dedicated to circulating exhibits, motions, or other written materials that Mem-

bers might want to offer as part of our hearing today. If you would like to submit materials, please send them to the email address that has been previously distributed to your offices, and we will circulate the materials to Members and staff as quickly as we can.

In light of what's going on in the world today, I ask that everyone in the room wear a mask at all times except, if you wish, when you're speaking. Other than if you are a speaker when you're speaking, a Witness when you're speaking, a Member when he or she is speaking, please wear a mask at all times. This is for public health.

I will now recognize myself for an opening statement.

We are all familiar with the terrifying words, "I can't breathe." They were uttered in Minneapolis by George Floyd while a police officer pinned a knee to his neck for a chilling 8 minutes and 46 seconds, taking from him the final breath of life.

Six years ago, Eric Garner uttered those exact same fateful words while locked in a chokehold in New York City. He too died at the hands of law enforcement.

Millions of Americans now call out "I can't breathe" as a rallying cry in streets all across our country, demanding a fundamental change in the culture of law enforcement and meaningful accountability for officers who commit misconduct. Today, we answer their call.

Our hearts ache for the loss of George Floyd and Eric Garner. They ache for Breonna Taylor, Amadou Diallo, Tamir Rice, Laquan McDonald, Freddie Gray, Walter Scott, and for so many other victims of police violence in all parts of America. Their shocking deaths sparked momentary outrage but no fundamental change. For every incident of excessive force that makes headlines, the ugly truth is that there are countless others that we never hear about.

Every day African Americans and other people of color live in fear of harassment and violence at the hands of some law enforcement officers. This is their reality. Our country's history of racism and racially motivated violence, rooted in the original sin of slavery, continues to haunt our Nation.

To those who do not believe it, please look at the tragic statistics. African Americans are more than twice as likely to be shot and killed by police each year. Black men between the ages of 15-34 are approximately 10 times more likely to be killed by police than other Americans. This outrage is a reality we must change.

Today we examine the State of policing in America, and we look for ways to prevent racist acts of violence by police officers, to hold accountable those who commit such acts, and to strengthen the trust between law enforcement and the communities they serve.

On Monday, I joined Karen Bass, the Chair of the Crime Subcommittee, as well as the Congressional Black Caucus, in introducing the Justice in Policing Act, which would further that cause. The bill now has over 200 cosponsors in the House and 36 cosponsors in the Senate.

I want to make clear at the outset that the bill is not an indictment of all police officers. We must always remember that most law enforcement officers do their jobs with dignity, selflessness, and honor, and they are deserving of our respect and gratitude for all they do to keep us safe.

We owe a debt that can never be paid to the too many officers killed in the line of duty every year. It is clear that there are many officers, including some local police chiefs, who marched arm in arm with their communities who want to separate themselves from the dangerous behavior of others in the profession.

There are too many officers who abuse their authority, and we cannot be blind to the racism and injustice that pervades far too many of our law enforcement agencies. The Nation is demanding that we enact meaningful change.

This is a systemic problem that requires a comprehensive solution. That is why the Justice in Policing Act takes a holistic approach that includes a variety of front-end reforms to change the culture of law enforcement while also holding bad police officers accountable to separate them from those with a true ethic to protect and serve.

Among other things, the bill would make it easier for the Federal Government to successfully prosecute police misconduct cases. It would ban chokeholds. It would end racial and religious profiling. It would encourage prosecutions independent from local police. It would eliminate the dubious court-made doctrine of qualified immunity for law enforcement.

At the same time, the bill encourages departments to meet a gold standard in training, hiring, de-escalation strategies, bystander duty, and use of body cameras and other best practices. It also creates a new grant program for community-based organizations to create local task forces on policing innovation that would reimagine public safety so that it is just as equitable for all Americans.

The goal of this legislation is to achieve a guardian, not warrior, model of policing.

The Justice in Policing Act is at once bold and transformative to meet the moment that calls out for sweeping reform, while also taking a responsible and balanced approach to the many complicated issues associated with policing. I look forward to bringing it before our Committee in short order.

To the activists who have been sounding the alarm for years only to be ignored or greeted with half-measures, it is because of your persistence and your determination that we are here today.

If there is one thing I have taken away from the tragic events of the last month, it is that the Nation demands and deserves meaningful change. We can and should debate the specifics, but at the end of the day it is the responsibility and the obligation of the House Judiciary Committee to do everything in our power to help deliver that change for the American people.

I look forward to hearing from our Witnesses, who bring a wealth of knowledge and experience on the many issues we are examining today and will help guide us in that process. First, I want to address just one Witness, Philonise Floyd, the brother of George Floyd.

We are all very sorry for your loss, and we appreciate your being here today to discuss your brother's life. We must remember that he is not just a cause, a name to be chanted in the streets. He was a man. He had a family. He was known as a gentle giant. He had a rich life that was taken away from him far too early, and we mourn his loss.

This is a very difficult time for our Nation. We have lost more than 110,000 people to COVID-19, a toll that has fallen disproportionately on people of color. We have lost brave police officers and other frontline workers, who risked their lives to serve their communities. We have lost George Floyd, Breonna Taylor, and the many, many other victims of excessive force by law enforcement. We must Act today to honor their memory.

I now recognize the Ranking Member of the Judiciary Committee, the gentleman from Ohio, Mr. Jordan, for his opening statement.

Mr. JORDAN. Thank you, Mr. Chair.

I want to thank all our Witnesses for being here today and extend our sympathy to Mr. Floyd and Ms. Underwood Jacobs. We are, as the Chair said, all so sorry for your loss and for what your families have had to live through and had to endure.

Mr. Floyd, the murder of your brother in the custody of the Minneapolis police is a tragedy, never should have happened. It's as wrong as wrong can be. Your brother's killers will face justice.

Ms. Underwood Jacobs, the murder of your brother by the rioters in Oakland is a tragedy. It never should have happened. It's as wrong as wrong can be. Your brother's killers will face justice.

There are 330 million people in this great country, the greatest Nation ever, not perfect but the best Nation ever, and they understand, they understand, the American people understand it's time for a real discussion, real debate, real solutions about police treatment of African Americans.

Americans also understand that peaceful protest, exercising their First Amendment liberties, honors George Floyd's memory and it helps that discussion, that debate, and those solutions actually happen.

The people of this great country, you know what else they understand? You know what else they get? They understand that there is a big difference, a big difference between peaceful protest and rioting. There is a big difference between peaceful protest and looting. There is a big difference between peaceful protest and violence and attacking innocent people. There is certainly a big difference between peaceful protest and killing police officers.

You know what else they get? You know what else the American people fully understand? They know, as the Chair said, the vast majority of law enforcement officers are responsible, hardworking, heroic first responders. They're the officers who protect the Capitol, who protect us every single day. They're the officers who rushed into the Twin Towers on 9/11. They're the officers in every one of our neighborhoods, in every one of our communities, every day, every night, and every shift they work, who put their lives on the line to keep our communities safe.

Guess what Americans also get? Guess what else they understand? They know it is pure insanity to defund the police. The fact that my Democrat colleagues won't speak out against this crazy policy is just that: Frightening.

Think about what we've heard in the last few weeks. We've heard the mayors of our two largest cities, Mayor Garcetti said he wants to defund the police. The mayor of New York says he wants to defund the police. The city council in Minneapolis, a veto-proof

majority says they want to defund the police and abolish the department.

This Congress started off with the Democrats, folks on the left saying, we should abolish ICE, then moved for us to abolish the entire Department of Homeland Security, and now they're talking about abolishing the police. This is wrong and the American people know it's wrong.

We should honor the memory of George Floyd and work hard so that nothing like it ever happens again. We should honor the memory of Dave Patrick Underwood and work hard so that nothing like that ever happens again.

A week and a half ago, our mission was clearly stated. Eleven days ago in Florida, the President of the United States clearly stated what our mission should be. President Trump said this: "I stand before you as a friend, an ally to every American seeking justice and peace, and I stand before you in firm opposition to anyone exploiting tragedy to loot, rob, attack, and menace. Healing, not hatred, justice, not chaos are the mission at hand."

Well said, Mr. President. Healing, not hatred. Justice, not chaos. That is our mission. The President is right, and I appreciate his leadership.

This is the House Judiciary Committee, with its storied history of defending the Constitution and the rule of law. Let's adopt that mission. Healing, not hatred. Justice, not chaos. Let's work together to make America the great place, to continue to make America the greatest Nation ever.

With that, I yield back, Mr. Chair.

Chair NADLER. Thank you, Mr. Jordan.

I now recognize the Chair of the Subcommittee on Crime, Terrorism, and Homeland Security, the gentlelady from California, Ms. Bass, for her opening statement.

Ms. BASS. Thank you, Mr. Chair. I want to thank you for your years of leadership on this issue. I know you've been involved for many years supporting police reform, and I want to thank you for convening this hearing today.

What we saw in Minnesota, the slow, tortuous murder of George Floyd by a uniformed officer, was an outrage and a tragedy. What we have seen since then, millions of Americans marching in the street to demand justice and call for reforms, it has been an inspiration. Minus a few days of violence, it has been peaceful and it has been in the American tradition.

What we have here today is a hearing in the U.S. Congress to examine policing practices in America and paths to reform, and so we have an opportunity. What we have seen since then is an opportunity to rethink the nature of policing, an opportunity for meaningful accountability in policing, and it is an opportunity to show the Nation and the world that we are listening and that we will act.

Too often this debate is framed in terms of citizens versus the police, us versus them. This is really about the kind of America we all want to see. We all want to be safe in our communities. We all want the police to come to our rescue when we're in trouble. We all want to support the brave men and women who put their lives on the line for us every day.

When we interact with police, we all want to be treated with respect, not suspicion. Nobody should be subjected to harassment or excessive force just because of the color of their skin, and no one should suffer the indignities of racial profiling or be on the end of a deadly chokehold. We should all want for ourselves and for our children and for our neighbors the same.

On Monday, I introduced, along with Chair Nadler and more than 200 Members of Congress, H.R. 7120, the Justice in Policing Act. This bold, transformative legislation would help reimagine the culture of policing while holding accountable those officers who fail to uphold the ethic of serving and protecting their communities. I know later when we do a markup, we will entertain an amendment to change the name of the legislation in honor of George Floyd.

If this had been a law last year, George Floyd would be alive, because chokeholds would be banned. Breonna Taylor would be alive, because no-knock warrants for drugs would be banned. Tamir Rice would have graduated high school this May because the officer that killed him had been fired from a nearby department and he lied on his application. This legislation calls for a national registry, so that would not have happened and Tamir Rice would have graduated high school.

I understand that change is difficult, but I am certain that police officers are professionals who risk their lives every day, and they're just as interested in building a strong relationship with the communities that they serve, based on mutual trust and respect, as those who rely on their protection are. They want to increase and upgrade the profession, and so having national standards. It should never be that you can do a chokehold in one city and not in another. There should be basic standards, there should be basic accreditation, there should be continuing education, just as there are in so many other professions.

When I was at the service yesterday, and when I was there, I looked up at the picture of George Floyd and I saw the year that he was born. He was born in 1973. That was an important year in my life, because that was the year in Los Angeles that I joined an organization called the Coalition Against Police Abuse.

That was 47 years ago. Our police chief at the time, we were suffering from a number of victims who had died because of chokeholds. Our police chief held a press conference where he told Los Angeles that the reason why Black people died of chokeholds was because our neck veins were different, they didn't open up as rapidly as normal people. That's where we were 47 years ago.

The question remains for us, though—it was 29 years ago that we saw the Rodney King beating, and as an activist at the time I was sad at the tragedy. It was horrific to see him beat like that. Most of the activists said, finally we know we'll have justice, there's no way these police officers are going to get off because the whole world saw what happened.

In the civil rights movement what led to the great change and the end of legal segregation, aside from the tens of thousands of people that protested, it was the fact that there were cameras there. The beatings, the treatment of Black people in the South had gone on for, frankly, hundreds of years, but it wasn't until those cameras exposed that then things began to change.

So, what has happened in the 29 years since Rodney King, with the advent of cell phone cameras? We have seen example after example after example. Twenty-nine years since Rodney King, 20 years since Amadou Diallo, 6 years since Eric Garner, just weeks since the death of George Floyd. His death cannot be in vain.

I told his brother that his name will live on in history because the tragedy that he suffered has been the catalyst for what I believe will be profound change, and not just change that helps to professionalize police departments, not just change that prevents further abuse and deaths, but an opportunity for communities, through receiving grants, to take a look at their community and say, well, there's all these issues that we face, why should police officers have to address homelessness and mental illness?

Police officers complain all the time they're not social workers. That's right. So, with these grants, maybe communities can take an opportunity to re-envision what public safety is and come up with models, better models to work with police, better models to reduce the problems that wind up needing a police officer.

So, that's what we have an opportunity to do in this Congress with this piece of legislation. I hope that we work for passage of this legislation in the House, it gets through the Senate, the President signs it, and in the year 2020 we never, ever see again what we saw a few weeks ago.

It wasn't just a tragedy for our country and our Nation, but it really was an embarrassment of our Nation in front of the entire world. While we hold up human rights in the world, we obviously have to hold them up in our country.

With that, I yield.

Chair NADLER. Thank you.

Since Mr. Ratcliffe, the former Ranking Member of the Crime Subcommittee, has left the Committee to serve as Director of National Intelligence, I now recognize the Ranking Member of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, the gentleman from Louisiana, Mr. Johnson, for an opening statement.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chair.

I want to join all my colleagues today in thanking all our Witnesses sincerely for being here, and especially Mr. Floyd and Ms. Underwood Jacobs for making the trip in the midst of such tragedy and difficult circumstances to share your experiences with us. It's very valuable to us, and we're grateful.

Of course, you have our condolences and our profound sadness for your losses. I and my family and the community of faith that I represent have been praying for you and will continue to do that.

We're going to talk about policing practices and reforms today, and that's a really important topic. Since this is the first Full Committee hearing that we've had in Judiciary since the tragic death of Mr. Floyd, I think it's also important for us to acknowledge here in the beginning what's believed by so many to be a root cause of the persistent challenges we face together as a country, and that is the need for authentic reconciliation in our communities.

Everyone here understands the plain and simple truth that racism in any form violates the most fundamental principles of our great Nation and the rules of our Creator. The central idea of

America, let's not forget, is the idea that we boldly declare the self-evident truth that all men are created equal and that they're thus endowed by God with the same inalienable rights.

Because each of us is made in the image of God, there are very serious implications that come from that. Among them is the idea that every single person has an estimable dignity and value, and our value is not related in any way to the color of our skin or what ZIP Code we live in or what we contribute to society or anything else. Our value is inherent because it comes to us by our Creator.

Any fool who contends he has some sort of natural right of supremacy over his neighbor violates not only the foundational creed of America but the greatest commandments of the God who made him. If we can ever learn to see one another as God does, I think it will solve a lot of our problems.

This unspeakable Act of cruelty that America witnessed in Minneapolis has opened an important new dialogue on reform. While policing has always been regarded as an inherently local function, we do agree that Congress has a key role to play in ensuring that abuses are not tolerated and can never happen again. Justice has to be swift and bad police officers have to be held accountable for their actions.

At the same time, we want to be careful to recognize, as all my colleagues have this morning, that officers like the ones involved in the death of George Floyd are not representative of the vast majority of America's law enforcement officers. Most are faithful, self-sacrificing public servants who put their lives on the line every single day to protect and serve our communities.

We need to honor that, and we need to recognize and empower those law enforcement officers, which is precisely the opposite of the radical, dangerous proposals we're seeing right now to defund them.

A government of, by, and for the people must be a Nation of law and order, and public safety, of course, is the key to maintaining our Republic. Without that, things like the rioting, looting, and violence that has led to the destruction of cities and minority-owned businesses, ironically, would prevail over the valuable peaceful protests that are intended to bring about meaningful change.

There's a consensus among every Member of this Committee, Democrat and Republican, that there are solutions we can work towards that will restore faith in our institutions and build trust in our communities. From where we sit right now, we believe the most actionable reforms must focus around three core concepts, to simplify it: Transparency, training, and termination of those rare bad apples in law enforcement who violate the law and the legitimacy that upholds the character of our legal system.

This common ground is key if we're going to accomplish the goal of keeping our communities safe, upholding the civil liberties of individuals, and protecting the legitimacy of law enforcement.

None of these goals that I've outlined today are mutually exclusive, of course. We can and should clearly condemn the senseless violence we've seen and all causes of it, from a few bad apples wearing a badge to the bad apples and anarchists sparking riots and destruction in our streets.

At the same time, we can work together on meaningful reforms and real results while upholding the respect and appreciation that is due to every American patriot who faithfully serves us on the Thin Blue Line.

I have faith that we can work together as a Committee. This is a bipartisan concern, and we'll have bipartisan solutions, I hope. For the future of our country and for generations of Americans to come, we have to do that.

I urge my colleagues in this moment, all of us, to hear and to listen to our Witnesses and work with each other as friends and fellow Americans to understand the need in our communities and foster our discussions on a foundation of civility and mutual respect. We've started that and I hope we can continue it.

With that, I yield back.

Chair NADLER. Thank you.

Without objection, all other opening statements will be included in the record.

We have an unusually large panel today but given the broad range of issues that we will be discussing, we have invited a broad range of Witnesses.

As is customary, the minority was given the opportunity to invite Witnesses as well, and they have selected Mr. Bongino, Pastor Scott, and Ms. Underwood Jacobs.

We welcome everyone and thank them for their participation.

Now, if the Witnesses would please rise, I will begin by swearing you in.

Do you swear or affirm, under penalty of perjury, that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record show the Witnesses answered in the affirmative.

Thank you, and please be seated.

Please note that each of your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 5 minutes.

To help you stay within that time, for those Witnesses testifying in person, there is a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, it signals your 5 minutes have expired. For our remote participants, there is a timer on your screen to help you keep track of time.

Given the large number of Witnesses, I will introduce each Witness and then invite him or her to give his or her testimony before introducing the next Witness.

We will begin with Mr. Floyd. Philonise Floyd is the brother of George Floyd, who was killed by Minneapolis police officers on May 25th. Mr. Floyd has spoken eloquently about his brother's life, and we appreciate his being with us today, having flown to Washington to testify before us today directly from his brother's funeral in Houston yesterday.

We are all so sorry for your loss.

Mr. Floyd, you may begin.

STATEMENT OF PHILONISE FLOYD

Mr. FLOYD. Thank you. Chair Jerrold Nadler and the Members of the Committee, thank you for the invitation here today to talk about my big brother, George. The world knows him as George, but I called him Perry. Yesterday, we laid him to rest. It was the hardest thing I ever had to do.

I'm the big brother now. So, it's my job to comfort my brothers and my sisters, Perry's kids, and everyone who loved him, and that's a lot of people. I have to be the strong one now, because George is gone.

Me, being the big brother now and is why I'm here today, to do what Perry always would have done, to take care of the family and others. I couldn't take care of George that day he was killed, but maybe by speaking with you today I can make sure that his death will not be in vain, to make sure that he is more than another face on a tee shirt, more than another name on a list that won't stop growing.

George always made sacrifices for our family, and he made sacrifices for complete strangers. He gave the little that he had to help others. He was our gentle giant.

I was reminded of that when I watched the video of his murder. He called all the officers "sir." He was mild-mannered. He didn't fight back. He listened to all the officers. The man who took his life, who suffocated him for 8 minutes and 46 seconds, he still called him "sir" as he begged for his life.

I can't tell you the kind of pain you feel when you watch something like that, when you watch your big brother who you looked up to your whole entire life die, die begging for his mom.

I'm tired. I'm tired of pain, pain you feel when you watch something like that, when you watch your big brother, who you looked up to for your whole life, die, die begging for his mom.

I'm here to ask you to make it stop. Stop the pain. Stop us from being tired. George called for help, and he was ignored. Please listen to the call I'm making to you now, to the calls of our family and the calls ringing out in the streets across the world.

People of all backgrounds, genders and races have come together to demand change. Honor them, honor George, and make the necessary changes that make law enforcement the solution and not the problem. Hold them accountable when they do something wrong. Teach them what it means to treat people with empathy and respect. Teach them what necessary force is. Teach them that deadly force should be used rarely and only when life is at risk.

George wasn't hurting anyone that day. He didn't deserve to die over \$20. I'm asking you, is that what a Black man is worth, \$20? This is 2020.

Enough is enough. The people marching in the streets are telling you enough is enough. Be the leaders that our country, the world, needs. Do the right thing.

The people elected you to speak for them, to make positive change. George's name means something. You have the opportunity here today to make your names mean something, too.

If his death ends up changing the world for the better, and I think it will, then he died as he lived. It is on you to make sure his death is not in vain.

I didn't get the chance to say good-bye to Perry while he was here. I was robbed of that. I know he's looking down at us now.

Perry, look up at what you did, big brother. You changed the world. Thank you for everything, for taking care of us while on Earth, for taking care of us now. I hope you found Mama and you can rest in peace with power.

Thank you.

[The statement of Mr. Floyd follows:]

Testimony of Philonise Floyd, Houston, TX

“Oversight Hearing on Policing Practices and Law Enforcement Accountability”

Chairman Jerrold Nadler and members of the Committee:

Thank you for the invitation to be here today to talk about my big brother, George. The world knows him as George, but I called him Perry. Yesterday, we laid him to rest. It was the hardest thing I've ever had to do. I'm the big brother now. So it was my job to comfort our brothers and sisters, Perry's kids, and everyone who loved him. And that's a lot of people. I have to be the strong one now, because it's what George would have done.

And me being the big brother now is why I'm here today. To do what Perry always did for us – to take care of the family and others. I couldn't take care of George the day he was killed, but maybe by speaking with you today, I can help make sure that his death isn't in vain. To make sure that he is more than another face on a t-shirt. More than another name on a list that won't stop growing.

George always made sacrifices for his family. And he made sacrifices for complete strangers. He gave the little that he had to help others. He was our gentle giant. I was reminded of that when I watched the video of his murder. He was mild mannered; he didn't fight back. He listened to the officers. He called them 'sir.' The men who took his life, who suffocated him for eight minutes and 46 seconds. He still called them 'sir' as he begged for his life.

I can't tell you the kind of pain you feel when you watch something like that. When you watch your big brother, who you've looked up to your whole life, die. Die begging for your mom.

I'm tired. I'm tired of the pain I'm feeling now and I'm tired of the pain I feel every time another black person is killed for no reason. I'm here today to ask you to make it stop. Stop the pain. Stop us from being tired.

George's calls for help were ignored. Please listen to the call I'm making to you now, to the calls of our family, and to the calls ringing out in the streets across the world. People of all backgrounds, genders and race have come together to demand change. Honor them, honor George, and make the necessary changes that make law enforcement the solution – and not the problem. Hold them accountable when they do something wrong. Teach them what it means to treat people with empathy and respect. Teach them what necessary force is. Teach them that deadly force should be used rarely and only when life is at risk.

George wasn't hurting anyone that day. He didn't deserve to die over twenty dollars. I am asking you, is that what a black man's life is worth? Twenty dollars? This is 2020. Enough is enough. The people marching in the streets are telling you enough is enough. Be the leaders that this country, this world, needs. Do the right thing.

The people elected you to speak for them, to make positive change. George's name means something. You have the opportunity here to make your names mean something, too.

If his death ends up changing the world for the better. And I think it will. I think it has. Then he died as he lived. It is on you to make sure his death isn't in vain.

I didn't get the chance to say goodbye to Perry while he was here. I was robbed of that. But, I know he's looking down on us now. Perry, look at what you did, big brother. You're changing the world. Thank you for everything. For taking care of us when you were on Earth, and for taking care of all of us now. I hope you found mama and can rest in peace and power.

Chair NADLER. Thank you, Mr. Floyd.

Vanita Gupta is the President and CEO of The Leadership Conference on Civil and Human Rights. Ms. Gupta previously served as Acting Assistant Attorney General at the Department of Justice and led the Department's Civil Rights Division. She received her J.D. from New York University School of Law and her B.A. from Yale University.

Ms. Gupta, you may begin.

STATEMENT OF VANITA GUPTA

Ms. GUPTA. Thank you, Chair Nadler.

Mr. Floyd, thank you for being here today and for those incredibly powerful words, and we are so sorry.

Chair Nadler, Ranking Member Collins, and the Members of the Committee, thank you for the opportunity to testify today. Thank you, Chair Nadler, for calling this hearing on policing practices and the need for transformative policies that promote accountability, begin to reimagine public safety, and respect the dignity of all people.

While the recent murder of George Floyd at the hands of four Minneapolis police officers put the issue of police brutality in the national spotlight, the outpouring of pain and anger is anything but a reaction to one isolated incident or the misconduct of a few bad apples. Instead, the outcry is a response to the long cycle of stolen lives and violence with impunity toward Black people in our Nation.

We are now at a turning point. There is no returning to normal. We have to create a new way forward, one that does more than tinker at the edges, that promotes data and training. We need something that truly transforms policing and leads to more accountability for communities.

It is imperative that we get this right and that Congress' response in this moment appropriately reflects and acknowledges the important work of Black Lives Matter, the Movement for Black Lives, and so many people that are bringing us to this tipping point.

My tenure as head of the Justice Department's Civil Rights Division began two months after 18-year-old Michael Brown was killed by a police officer in Ferguson. The Justice Department was hardly perfect, but we understood our mandate: To promote accountability and constitutional policing to build community trust.

During the Obama Administration, we opened 25 pattern or practice investigations to help realize greater structural and community-centered change, often at the request of police chiefs and mayors who needed Federal leadership.

After making findings, we negotiated consent decrees, with extensive engagement and input from community advocates, who not only identified unjust and unlawful policing practices, but also helped develop sustainable mechanisms for accountability and systemic change.

That is not the Justice Department that we have today. Under both Attorneys General Jeff Sessions and Bill Barr, the Department has abdicated its responsibility and abandoned the use of tools like pattern or practice investigations and consent decrees. In-

stead, it is focused on dismantling police accountability efforts and halting any new investigations.

The disruption of crucial work in the Civil Rights Division and throughout the Department of Justice to bring forth accountability and transparency in policing is deeply concerning. In the absence of Federal leadership, The Leadership Conference Education Fund launched the New Era of Public Safety Initiative, a comprehensive guide and toolkit outlining proposals to build trust between communities and police departments, restore confidence, and imagine a new paradigm of public safety.

While much of these changes must happen at the State and local level, success is going to require the leadership, support, and commitment of the Federal Government, including Congress.

Last week, The Leadership Conference and more than 400 civil rights organizations sent a letter to Congress to move us forward on a path of true accountability.

The recommendations included the following:

- (1) Create a national necessary standard on the use of force;
- (2) prohibit racial profiling, including robust data collection;
- (3) ban the use of chokeholds and other restraint maneuvers;
- (4) end the militarization of policing;
- (5) prohibit the use of no-knock warrants, especially in drug cases;
- (6) strengthen Federal accountability systems and increase the Justice Department's authority to prosecute officers that engage in misconduct;
- (7) create a national police misconduct registry; and
- (8) end qualified immunity.

The Leadership Conference was pleased to learn that the Justice in Policing Act introduced Monday by both Members of the House of Representatives and the Senate reflects much of this accountability framework. This is Congress' most comprehensive effort in decades to substantially address police misconduct by taking on issues, critical issues affecting Black and brown communities. As the bill advances toward passage, we will continue to work on it and to ensure that real change is achieved.

Let me just say in closing that policing reform alone is not going to solve the crisis that we're in today. This moment of reckoning requires leaders, together with communities, to envision a new paradigm of public safety that respects the human rights of all people. That means not just changing policing practices and culture, but ultimately shrinking the footprint of the criminal legal system in Black and brown peoples' lives.

It means shifting our approach to public safety from exclusively focusing on criminalization and policing towards investments in economic opportunity, education, healthcare, and other public benefits.

Police chiefs and officers talk about the same thing. This approach will not only further equity but also constitute effective policy. When we stop using criminal justice policy as social policy, we will make communities safer and more prosperous.

Now, is the time for Congress to pass lasting accountability measures, and we look forward to working with you until the day that these reforms are signed into law.

George Floyd's death has impacted the world, and now it is on us to change it. Thank you.

[The statement of Ms. Gupta follows:]

The Leadership Conference
on Civil and Human Rights

1620 L Street, NW
Suite 1100
Washington, DC
20036
202.466.3311 voice
202.466.3435 fax
www.civilrights.org



**STATEMENT OF VANITA GUPTA, PRESIDENT AND CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**U.S. HOUSE COMMITTEE ON THE JUDICIARY
OVERSIGHT HEARING ON POLICING PRACTICES AND LAW ENFORCEMENT
ACCOUNTABILITY**

JUNE 10, 2020

Chairman Nadler, Ranking Member Collins, and members of the Committee: Thank you for holding this timely and important oversight hearing today on policing practices and law enforcement accountability. My name is Vanita Gupta, and I am the President and CEO of The Leadership Conference on Civil and Human Rights. The Leadership Conference is a coalition of more than 200 national organizations working to build an America as good as its ideals. Founded in 1950, The Leadership Conference has coordinated national advocacy efforts on behalf of every major civil rights law since 1957. Before joining The Leadership Conference, I served as Acting Assistant Attorney General of the Civil Rights Division of the U.S. Department of Justice. In that role, I oversaw the Division's enforcement of 34 U.S.C. §12601 to address systemic constitutional violations by law enforcement agencies through pattern or practice investigations and the enforcement of consent decrees.

Thank you for the opportunity to address your committee about recent — and less-recent — incidents involving state-sanctioned violence, especially against Black people, and the need for transformative policy solutions that promote accountability, reimagine public safety, and respect the dignity of all people.

We present this statement with a heavy heart. While the recent murder of George Floyd at the hands of four Minneapolis police officers has put the issue of police brutality in the spotlight and enraged our country in a way not seen since the marches and uprisings of the Civil Rights era, the nationwide outcry in recent weeks is anything but a reaction to one isolated incident or the misconduct of a few “bad apples.”

The outcry is a response to the horrific other killings of Black people by police in recent months. Breonna Taylor was shot and killed in her own home by police officers executing a no-knock drug warrant in a military-style raid. We have also witnessed the killings of Dreasjon “Sean” Reed and Tony McDade, who join the all too long list of Black people who have died at the hands of police, including Michael Brown, Freddie Gray, Eric Garner, Alton Sterling, Philando Castile, Sandra Bland, Laquan McDonald, Tamir Rice, and too many more. Every day that people take to the streets, they do so to honor their lives. The outpourings of pain are also a response to the heavy-handed enforcement of low-level offenses and “broken windows” policing, and decades of inadequate reform efforts that undermine trust in law enforcement, especially in communities of color.



Black communities deserve real justice: structural change to eradicate white supremacy, freedom from unjust and targeted policing, and the space and resources to grieve and heal. The same structural racism that permeates our justice system and sanctions police brutality has also robbed many Black communities of the resources they need and deserve. The confluence of what is now two pandemics — structural racism and COVID-19 — along with a looming election that will define who we are as a nation will make this moment entirely unique.

This moment calls for a reckoning with how we have addressed public safety over the last several decades. We need to look at ourselves and ask the hard questions. And we must confront how we have under-resourced and under-invested in Black and Brown communities, leading to gross inequity and over-criminalization. Now is the time to reimagine a more fair and just society in which all people are safe, regardless of their race, ethnicity, religion, gender, or socioeconomic status. For too long, we have misguidedly tossed the responsibility of answering issues of community health and safety to police. These are problems that require investment in community-based services and programs, including education, housing, health care, and violence interruption — not more police. At the same time, we must continue to pursue police accountability to ensure they fulfill their role to advance public safety while respecting people's civil rights and liberties.

The Justice Department's Role in Constitutional Policing

Following the beating of Rodney King by four white officers in Los Angeles in 1991 and the uprising that ensued, Congress held a series of hearings regarding police misconduct across the country. At the time, no federal mechanism existed for holding law enforcement agencies accountable for civil rights violations. Two years later, Congress passed 42 U.S.C. §14141 (re-codified at 34 U.S.C. §12601), authorizing the attorney general to investigate cases of police misconduct and excessive force involving "a pattern or practice by law enforcement officers" that violate people's constitutional or civil rights.

My tenure as head of the Justice Department's Civil Rights Division began just two months after 18-year-old Michael Brown was shot and killed by a police officer in Ferguson, Missouri. The Justice Department was not perfect, but we understood our mandate: to promote accountability and constitutional policing in order to build community trust. During the Obama administration, we opened 25 pattern or practice investigations practice investigations to help realize greater structural and community centered change. After making findings, we negotiated consent decrees with extensive engagement and input from community advocates who not only identified unjust and unlawful policing practices, but also helped develop sustainable mechanisms for accountability and systemic change.

During my time in the Department of Justice, I had the opportunity to meet with community members and officers alike. I found a simple but profound common interest in every city I visited: safety. And what most impedes public safety is the severe mistrust between communities and police that grows out of broken systems that allow police misconduct to go unaddressed, and that erode the ability of police to effectively address crime.



Consent decrees, and the principles of transparency and accountability they embody, promote fair and unbiased policing practices that equip officers with the tools to do their jobs more effectively, reducing the need to use force and increasing community trust. Congress must ensure that the Department of Justice is fulfilling its duty to investigate systemic police misconduct and that the department has the necessary tools — including consent decrees — to correct constitutional violations.

The current administration has severely curtailed the Department of Justice's use of consent decrees to address police civil rights abuses. It has also abandoned collaborative reform efforts of the Office of Community Oriented Policing Services, under which police departments voluntarily sought audits and recommendations to improve trust between the public and police from the Department of Justice. And it has ignored President Obama's Task Force on 21st Century Policing and the task force's report. This does a disservice both to communities suffering from systemic misconduct and to police officers who are left without the tools to police safely. High-profile police shootings of unarmed Black men and other incidents of police misconduct, coupled with heavy enforcement of low-level offenses, have eroded trust in law enforcement in many communities — and especially in communities of color. This eroded trust strains police-community relationships and undermines public safety. Where people perceive the criminal-legal system to be arbitrary, biased, and unfair, they are less likely to cooperate with police, making us all less safe.

Congress Must Support a Strong Police Accountability Framework and Promote Direct Investments into Social Programs, Services, and Supports

In March of 2019, The Leadership Conference Education Fund, the research and education arm of The Leadership Conference, launched the New Era of Public Safety initiative, as well as a comprehensive report outlining proposals to help build trust between communities and police departments, restore confidence, and reimagine a new paradigm of public safety.

The report, *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, provides communities, police departments, and lawmakers with policy recommendations for best practices to enhance accountability, build trust, and improve public and officer safety. The recommendations are designed to be adaptable to every department, in every community across the nation. The goals are to advance policing practices that respect and protect human life and ensure safety for all. It is critically important that police departments across the country implement policies and practices that are fair, equitable, procedurally just, and increase transparency and accountability — values that build community trust, improve confidence, and ultimately heal wounds. At the same time, state and local leaders must engage and work with communities to develop solutions to the social and public health problems that for so long have fallen to police to answer. While front-end systems changes are important, it is also critical for state and local leaders to heed calls from Black Lives Matter and Movement for Black Lives activists to decrease police budgets and the scope, role, and responsibility of police in our lives.

While many of these changes must be centered at the state and local levels, success will require the leadership, support, and commitment of the federal government, including Congress. Every year, Congress provides millions of dollars to law enforcement agencies through federal grant programs to



support police. This moment requires Congress to conduct oversight and reexamine how those funding streams are supporting discriminatory policing practices and eroding community trust.

Ultimately, it is becoming clear that Congress must redirect government dollars away from policing practices rooted in the criminal-legal system and the carceral state, and toward policy goals that reflect a [vision of public safety](#) that promotes community health and safety. Many crises that currently involve a police response, and which too often lead to mistreatment and increased mistrust, would be better handled through more mental health providers, social workers, victim advocates, drug treatment professionals, educators, gun violence interrupters, and others who can serve community needs in a non-punitive capacity. Providing more federal resources to tackle issues such as homelessness, mental health, unemployment, disabilities, underfunded schools, disparities in health care and nutrition, and the lasting effects of redlining may be beyond the scope of today's hearing, but they will have a far greater and more lasting impact in making communities safer. We urge members of this Committee to step up their efforts in these areas and help reimagine public safety for all communities.

Recommendations

To enhance police accountability and restore public trust, we must transform the way that police interact with communities and emphasize their role as keepers of the peace. Last week, The Leadership Conference and more than 400 civil rights organizations sent a letter to Congress offering eight critical proposals that we believe would move us forward on the path to true transformation. The following recommendations to the Committee are areas where Congress can support local efforts through federal law. I am pleased that many of these accountability measures are included in the newly introduced Justice in Policing Act of 2020, and I look forward to additional discussion about the ways in which we can improve upon the proposed legislation.

Reduce the Use of Excessive Force: Congress should a) impose a federal standard that use of force be applied *only when necessary* and only as a last resort after exhausting reasonable options, and incentivize states through federal funding mechanisms to implement this standard; b) require officers to use de-escalation techniques, and establish a duty to intervene when witnessing the use of excessive force by others; c) ban the use of force as a punitive measure or as a means of retaliation against individuals who only verbally confront officers, or against individuals who pose a danger only to themselves; and, d) require all officers to accurately report all uses of force.

Prohibit Racial Profiling and Require Data Collection: The equal treatment of all people, regardless of background, class, or characteristic, protects and preserves public safety and builds legitimacy in police. Discriminatory policing, which targets people of color more often than others, has serious consequences not only for individuals and communities but also for law enforcement and society, by fostering distrust in law enforcement. Police departments should prohibit profiling based on actual or perceived personal characteristics, including race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, disability, proficiency with the English language, immigration status, and housing status. To this end, Congress should pass legislation that protects against profiling, including the End Racial and Religious Profiling Act of 2019. Through policy, training, and practice, law enforcement agencies can



work to prevent and hold officers accountable for discriminatory policing and reduce and mitigate its disparate impact on marginalized communities.

Ensuring the adequate collection and reporting of data on police-community encounters and law enforcement activities allows communities and departments to analyze the effects of policies and practices, and to change and advocate against them if they are ineffective or disproportionately affect particular communities or groups. It is vital that police departments have accurate data, as you cannot measure what you do not know. Congress should pass legislation that mandates such data collection and reporting, including with respect to officer-involved shootings, use of force incidents, stops, searches, and arrests, and which ensures that data is disaggregated by race, ethnicity, gender, disability, and other demographic factors.

Ban the Use of Chokeholds and Other Restraint Maneuvers: Prohibit all maneuvers that restrict the flow of blood or oxygen to the brain, including neck holds, chokeholds, and similar excessive force, deeming the use of such force a federal civil rights violation. Chokeholds are inherently dangerous, as we have seen in the horrific deaths of George Floyd and Eric Garner before. Recognizing the inherent danger of chokeholds and the threat they pose to human life, police departments in cities such as New York, Atlanta, and Miami prohibit them. Washington, D.C. also bans chokeholds but allows “strangleholds” in some situations.¹

End Militarization of Police: During the protests following the fatal shooting of Michael Brown by a Ferguson police officer in 2014, law enforcement met protesters with a militarized response. The country watched as police used mine-resistant ambush protected vehicles (MRAPs), body armor, and gas masks to confront protesters, and placed snipers on top of tactical vehicles. These kinds of equipment and tactics are designed for combat zones. In response, President Obama issued an order directing a working group to review programs that supply military equipment to local law enforcement agencies. In 2015, the working group concluded that the heavily armed, militarized response was disproportionate to the threat posed by the protestors and had been deployed in a manner that intimidated the community. Its recommendations included prohibiting the acquisition of military equipment, such as tracked armored and weaponized vehicles, bayonets, grenade launchers, and high-caliber firearms and ammunition. But in 2017, the current administration rescinded the order and disavowed the recommendations that serve as a guide for police managing demonstrations. Congress should end federal programs that provide military equipment such as the U.S. Department of Defense 1033 program and pass the Stop Militarizing Law Enforcement Act.

Prohibit the Use of No-Knock Warrants, especially for drug searches. No-knock warrants are inherently dangerous and have not proven to be more effective than search warrants that preserve the Fourth Amendment rule of knock-and-announce. When police burst into people’s houses, unannounced, occupants are more likely to use weapons to try to defend themselves — endangering both the public and officers. We saw this exact scenario play out with Breonna Taylor’s death. Furthermore, the increased risk of death or injury to children, bystanders, or others caught in the crossfire counsels against the use of

¹ See, e.g. D.C. Code §§ 5-125.01-125.03, <https://code.dccouncil.us/dc/council/code/titles/5/chapters/1/subchapters/XIII/>; 720 Ill. Comp. Stat. 5 § 7-5.5, <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=072000050K7-5.5>.



no-knock warrants. Indeed, two states already outlaw no-knock warrants. Congress should likewise pass legislation prohibiting their use.

Strengthen Federal Accountability Systems: Accountability is central to fair, safe, and effective policing. It deters misconduct and heals communities when officers violate constitutional rights, laws, or policies. Indeed, it sends a message to communities that misconduct will not be tolerated; builds public trust and increases police legitimacy; and strengthens departments from within by letting officers know what is expected of them and that they will face swift discipline if they violate policy. Under 18 U.S.C. §242, the federal government can provide this accountability by prosecuting misconduct that violates a person's civil rights. But the statute sets too high a bar that deters many prosecutions, as it requires proof that an officer "willfully" deprived the person of their rights. Congress should amend Section 242 to include a lower *mens rea* of "reckless negligence" to ensure accountability for civil rights violations that result from police misconduct. It should also restrict the qualified immunity defense to Section 1983 claims, as explained below.

Create a National Police Misconduct Registry: Congress should develop a national public database that includes all police agencies in the United States and its territories, similar to the International Association of Directors of Law Enforcement Standards and Training's National Decertification Index. The database should compile the names of officers who have had their licenses revoked due to misconduct, as well as terminations and complaints against the officers.

End Qualified Immunity: Congress should end qualified immunity in Section 1983 claims. Qualified immunity is a court-created rewriting of Section 1983, a Reconstruction-era civil rights law meant to allow enforcement of the 14th Amendment, that shields law enforcement officers from liability even when they violate people's constitutional rights. Under this doctrine, the Supreme Court has held that officers cannot be held accountable unless they violated "clearly established law." In other words, law enforcement agents may have violated a person's constitutional rights, but they escape liability if the unlawfulness of their acts was not sufficiently obvious. This doctrine has rendered the force of Section 1983, the federal civil rights statute that allows individuals to sue officers for violating their civil rights, meaningless.

Invest in Non-Police Responses to Crises and Community Needs: Many factors contribute to crises relating to disabilities and substance use disorders, such as inadequate social services and supports, high rates of poverty, income inequality, housing insecurity, and an ongoing opioid epidemic. Many of these same issues are generally the basis for police encounters that often escalate to the use of force or turn deadly. Society should aim for the least "police-involved" responses to crises and other acts of survival. By providing adequate prevention, support, and referral services, communities and departments can divert people with disabilities from the criminal-legal system. Indeed, these crises should be handled by professionals with expertise in mental health, developmental disability, and substance use disorders — not police officers. Law enforcement officials will tell you that they cannot fill the role of medical health professional no matter how much training they receive. Moreover, investing in community-based services, education, health care, housing, and other services, will improve the health of communities and reduce the criminalization of Black and Brown and low-income people.



The federal government should redirect grant money to public health responses to people with disabilities or who are in crisis, and invest in community services that better promote public safety. This includes creating crisis hotlines, walk-in centers, mobile crisis teams, peer crisis support services, and crisis stabilization units. By investing in community-based support systems to prevent crises and developing the services to respond to crises, Congress can reduce police interventions and reduce entry into the criminal-legal system for people with unmet public health needs.

Conclusion

In policing and in many other areas, the current administration has sadly and drastically retreated from using the tools it has to enforce civil rights laws. But Congress has the power to bring about transformative policing that benefits communities and officers alike. This moment of reckoning requires leaders, together with communities, to envision a new paradigm for public safety that respects the human rights of all people. That means not just changing policing practices, but shrinking the footprint of the criminal legal system, including police, in Black and Brown people's lives. And it means shifting our approach to public safety away from exclusive investments in criminalization and policing, toward investments in economic opportunity, education, health care, and other public benefits. This paradigm not only furthers equity, but also constitutes effective policy: When we stop using criminal "justice" policy as social policy, we make communities safer and more prosperous.

Now is the time for Congress to pass meaningful, lasting accountability and funding measures that protect communities of color from the systemic perils of over-policing, police brutality, misconduct, harassment, and outright murder.

Public safety needs vary across communities large and small; urban, rural, and suburban; homogenous and diverse. Nevertheless, the principles of fairness, equity, procedural justice, legitimacy, transparency, and accountability are, and must always remain, universal.

Thank you for inviting me to testify today. I am pleased to answer any questions you may have.

Chair NADLER. Thank you very much.

Without objection, at the request of the Ranking Member, I will now recognize the distinguished Minority Leader of the House for a brief introduction of his constituent, our next Witness, Angela Underwood Jacobs.

Mr. MCCARTHY. Thank you, Chair Nadler and Ranking Member Jordan, for convening this very important hearing.

Mr. Floyd, thank you for your powerful words. I'll make one promise to you: Your brother will not have died in vain.

I'm here to introduce Angela Underwood Jacobs, her husband, Michael, and her daughter, Trinity. More importantly, I'm here to listen to them and all of you.

Now, I know Angela and I'm proud to call her a friend. She is a mother, a businesswoman, and the first Black woman to become a City Council Member in Lancaster, California.

Angela is here to testify because her brother, Dave Patrick Underwood, he was tragically and senselessly murdered in the line of duty 2 weeks ago in Oakland.

We mourn and pray for Angela and the entire Underwood and Floyd family.

As a member of the Federal Protective Service, Pat was guarding a Federal courthouse, a symbol of equal justice and the rule of law, during the riots in Oakland on the night of his death. It appears his death was part of a targeted attack on Federal law enforcement.

We pray that justice comes swiftly and completely for Pat, for George Floyd, and all victims of violence.

Pat Underwood should be alive today, George Floyd should be alive today, David Dorn should be alive today, and so should countless others. Though we cannot bring them back, we can learn from their lives and deliver the justice and change they deserve.

I hope that every Member of this Committee will listen closely and carefully to what Angela has to say. Our Nation must listen, and it must heal. Like Dr. King, we must reconcile our differences with a renewed sense of love and compassion. Like President Lincoln, we must remember that we are not enemies, but we are friends, friends that have a responsibility to rise above, to make sure we become the more perfect Union we strive to be. I hope at this moment in time, we rise to the occasion.

I yield back.

Chair NADLER. Thank you, Mr. McCarthy.

Ms. Underwood Jacobs, you may begin.

STATEMENT OF ANGELA UNDERWOOD JACOBS

Ms. UNDERWOOD JACOBS. Thank you very much, and I truly appreciate the opportunity to be here today.

As a Nation, as a people, we must come together to defeat fear, hate, prejudice, and violence. I want to ensure the memory of my brother, Patrick, is as a catalyst against injustice, intolerance, and violence of any kind. I want to honor my brother, Dave Patrick Underwood, and our family, and help our Nation think about how to navigate the righteous path to equality, freedom, and nonviolent systemic change.

I want to extend my sympathies and condolences to George Floyd's family. Mr. Floyd's murder was not just cruel and reprehensible, but criminal. The officers involved should be brought to justice and held accountable for their actions or as well as their inaction.

I wish that same justice for my brother, Patrick, who served with distinction and honor as a Federal officer for the Department of Homeland Security until he was murdered anonymously by blind violence on the steps of the Federal courthouse in Oakland, California. As he took his last breath on the cold, hard cement after being shot multiple times, he died.

Fear, hatred, ignorance, and blind violence snatched the life of my brother, Patrick, from all of us. Dr. Martin Luther King, Jr., preached always avoid violence. If you succumb to the temptation of using violence in your struggle, unborn generations will be recipients of a long and desolate night of bitterness and your chief legacy to the future will be an endless reign of meaningless chaos.

I have spoken to many people across this country—in fact, across the world—regarding what is going on in America. America is in pain, and she is crying. Can you hear her?

I am here to seek justice through the chaos for my brother, Patrick, for George Floyd, for citizens of all colors, for communities across America, and for the police officers that protect those communities and their citizens every day.

The actions of a few are dividing us as a Nation at a time when we should be coming together and uniting for the well-being of all people. We will never solve generational systemic injustice with looting, burning, destruction of property, and killing in the name of justice. We must find lawful, peaceful solutions that uplift and benefit everyone.

This, this is greater than a black, white, or blue issue. It is a humanity issue. When those in a position of authority choose to abuse their power, that is the very definition of oppression. When innocent people are harmed in the name of justice, no one prevails. We all lose.

Everyone deserves the opportunity to feel heard, be seen, and feel safe. Police brutality of any kind must not be condoned. However, it is blatantly wrong to create an excuse out of discrimination and disparity to loot and burn our communities, to kill our officers of the law.

It is a ridiculous solution to proclaim that defunding police departments is a solution to police brutality and discrimination, because it's not a solution. It gets us nowhere as a Nation and removes a safety net of protection that every citizen deserves from their community's elected officials.

There is a path to achieving what we desire and deserve as a Nation and as a people: Equality, fairness, justice, peace, and freedom from oppression. It is the same path we started on during the civil rights movement.

The solution to our Nation's ills is straightforward:

Education. We need to actually invest in education again and make it our Nation's top priority. Through education comes knowledge, through knowledge comes understanding, and through understanding comes opportunity and freedom.

Jobs. If there isn't any chance of making a decent living, there isn't any chance of having a decent, just society. We need to create more jobs that, in turn, will create more economic justice for all Americans.

Housing. There is no way to live a decent life if you can't find or, in America's case, afford shelter.

We need to listen and learn from each other. It's time for everyone to open their ears and listen to what each other has to say. America is the world's melting pot because we have so many people, cultures, beliefs, and points of view. Yet somehow, we've become siloed.

As a single voice in this Chamber attempting to honor my brother and family, I hope I can make a difference today. I America to make a change, I want you, as our Representatives in Congress, to make a change so that no one ever has to wake up to the phone call that I received telling me that my brother was shot dead and murdered.

How my brother died was wrong, and I am praying that we learn something about how he lived. Patrick was the type of man that when our mother fell to the ground as she was dying, he picked her lifeless body up as her spirit was leaving to place her upon her bed, because that's where she wanted to die.

My question is, who will pick up Patrick and carry his legacy? I believe this is a responsibility for all of us. Please do not let my brother Patrick's name go in vain.

Patrick was a good man who only wanted to help others and keep his community safe. He had an infectious laugh and a corny sense of humor. He would go out of his way to help family, friends, and strangers. He did not deserve to die in such a horrendously inhumane way. No one does.

Now, my family is in a State of hollow disarray. We all feel the anxiety of wondering what tomorrow may bring or may not bring, which has struck fear in our hearts.

Nevertheless, I wholeheartedly urge us all, all Americans, not to give in to hate and anger, but to resolve conflict with kindness and love, to lead with a sense of purpose and renewed energy, to create positive change as I have outlined here, through education, jobs, housing, and listening.

Pat didn't tell anyone how to live, but he lived, and what an amazing life it was. I will never forget the way my brother smiled and the way that he loved his family with every piece of his heart.

My wish is for us to live and live without fear and discrimination. Do not simply tolerate your neighbor, but strive to understand one another, and we will be a better, more just society for all.

Thank you.

Chair NADLER. Thank you.

Our next Witness is Art Acevedo, who serves as the Chief of the Houston Police Department and also serves as President of the Major Cities Chiefs Association. Chief Acevedo received his B.S. in public Administration from the University of La Verne.

Chief Acevedo, you may begin.

STATEMENT OF ART ACEVEDO

Chief ACEVEDO. Thank you, Chair.

Ms. Underwood, Mr. Floyd, I want to follow up with our deep condolences. Know that we are lifting you in our prayers.

Chair Nadler, Ranking Member Jordan, and the Members of the Committee, thank you for the opportunity to participate virtually in today's hearing. It's good to be with all of you, and especially my Congresswoman, Sheila Jackson Lee, and Congresswoman Garcia. I want to thank Congressman Sheila Jackson Lee and Congresswoman Bass for their leadership.

As the Major Cities Chiefs Association reviews, the Justice in Policing Act, please know that we support the intent and look forward to working with the Committee.

I appear before you today as the Chief of Police in Houston, Texas, and it is also my privilege to testify on behalf of the Major Cities Chiefs Association as their president.

No matter the circumstance, every time a life is taken, a loved one is taken. George Floyd was a child of God and raised in Houston. His death was deeply disturbing and a shock to the conscience.

Over the past few days, I've had the opportunity to meet with the Floyd family, and I will continue to lift them in prayer.

Mr. Floyd, thank you to you and your family for allowing us to join you on your brother's journey home.

There is no denying that changes in policing must be made. Out of crisis comes opportunity, and this is an opportunity for all of us to have some tough conversations, to listen, learn, and enact meaningful reform that is long overdue.

As a profession, we must learn what is being shared with us. That includes being honest about our history. We must acknowledge that law enforcement's past contains institutional racism, injustices, and brutality. We must acknowledge that policing has had a disparate treatment and impact on disenfranchised communities, especially communities of color and poor communities.

Several topics have risen to the forefront, and all reforms must be vetted to ensure that they are sustainable, effective, and have no unintended consequences.

Law enforcement plays an important role. No two calls for service are the same, and in Houston we respond to an average of 1.2 million calls for service annually. Those calls disproportionately originate from communities of color.

If we are going to talk about better policing, we also need to talk about the root causes behind the need for those calls for service. Some think defunding the police is the answer. I'm here to tell you, on behalf of our mayor and other mayors across the country and police chiefs across this country, and the diverse communities that we serve, this is simply not the answer.

Defunding the police without addressing the socioeconomic reality faced by poor communities and the disenfranchised and how they are riddled with missteps would increase the need for police services. History has shown that underfunding the police can have disastrous consequences and hurt those most in need of our services.

Appropriate police funding is critical to ensure agencies have resources to invest in technology like body-worn cameras, recruit qualified police officers who are service-minded, and training in im-

plicit bias, training in cultural competency, training in de-escalation, and other critical training.

The overwhelming majority of cops are good people. This cannot be lost. They are faithful public servants who put their uniform on every day willing to make the ultimate sacrifice. We can't let, again, the actions of bad cops let us lose sight of the fact that most cops are good. We must all judge each other through the prism and content of our individual hearts and actions and not through the prism of color and the uniform that we wear.

While there is no national use of force standard and previous efforts at establishing one were met with disagreement, several components are ubiquitous throughout the U.S. prioritization of the sanctity of life, duty to intervene, and the use of de-escalation tactics and techniques is a must.

Let me be clear. The actions of the four officers involved in the death of Mr. Floyd are inconsistent, unjustified, and repulsive. They are contrary to the protocols of the policing profession, and they sabotage the law enforcement community's tireless efforts to build trust.

Moving our profession forward begins with a sustained commitment to accountability. From the start of academy training, recruits must understand that they have an absolute duty to put public safety, service, and security first.

In the Houston Police Department, we instill in our men and women the certainty that policy violations regarding truthfulness will lead to termination or, as we put it, if you lie you die.

It is important to note that every chief's administrative authorities are different across the Nation and that not everyone has the legal authority to take immediate action like Chief Arradondo did.

I am encouraged. While there have been eras in America's history when police have found it difficult to speak up, we are speaking up today.

Let it be clear, for many years officers have consistently been holding one another accountable, and complaints about police misconduct overwhelmingly originate from within agencies, not from Members of the community.

Communities have an absolute responsibility as well. We ask citizens to report police misconduct without fail. This will afford us the opportunity to investigate, track, and report those complaints.

We must also address the issue of officers who have been terminated with cause, only to get rehired by another department. Many of us refer to these individuals as gypsy cops. Many gypsy cops have exhibited troubling behavior, and that, in turn, undermines efforts to build trust with the public and efforts in terms of internal department accountability.

Transparency breeds trust, and trust breeds respect. Mutual trust and respect between law enforcement and the public is crucial to good policing. The civil unrest occurring throughout our Nation and throughout this entire country is a sobering reminder of how quickly we will lose public trust and the consequences of that fact.

Ensuring the department looks more like the communities we serve helps build trust and confidence. Unique perspectives and insights help a department lead and serve the communities of color.

I'm happy to report that the Major Cities Chiefs Association has several departments now that are minority majority, like the city of Houston and the Houston Police Department and are reflective of the communities that we serve.

On behalf of the Major Cities Chiefs, I want America to know that we hear you. We will continue to do everything in our power to facilitate your right to peacefully protest. The MCCA will not shy away from this challenge and will continue to be a leader and voice in the national discourse on racial relations, policing, and reform.

To the Floyd family and to the activists across the Nation, our commitment is to be your voice, to join you, and to make sure that Mr. Floyd's death was not in vain.

I yield the remainder of my time and look forward to any questions the Committee may have.

[The statement of Chief Acevedo follows:]



TESTIMONY OF
CHIEF ART ACEVEDO
CHIEF OF POLICE
HOUSTON, TEXAS
PRESIDENT
MAJOR CITIES CHIEFS ASSOCIATION
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF
REPRESENTATIVES
“OVERSIGHT HEARING ON POLICING
PRACTICES AND LAW ENFORCEMENT
ACCOUNTABILITY”
JUNE 10, 2020

Chairman Nadler... Ranking Member Jordan... and distinguished members of the Committee:

Thank you for the opportunity to participate in today's hearing. I appear before you today as the Chief of Police for Houston, Texas, which will soon be the third largest city in the country and is the most ethnically diverse metropolitan area in the United States. It is also my privilege to testify on behalf of the Major Cities Chiefs Association (MCCA), a professional organization of police executives representing the largest cities in the United States and Canada, of which I currently serve as President.

The death of George Floyd – a child of God raised in Houston – is deeply disturbing and rightfully shocks the conscience. By any measure of professional policing, the actions of those officers that led to Mr. Floyd's death while in their custody were criminal and inconsistent with the training and protocols of the law enforcement profession. We continue to extend our deepest sympathies to the Floyd family and will continue to lift them in prayer during this difficult time.

Mr. Floyd is one of far too many African American men and women who have unjustly lost their lives at the hands of police officers. There is no denying that changes must be made. Out of crisis comes opportunity, and we must capitalize on it to institute meaningful reforms that not only enhance public safety, but more importantly, prevent future needless tragedies involving law enforcement and **the people we have sworn to serve and protect**.

Several reform topics have risen to the forefront and for all 18,000 police departments across our nation, the MCCA recommends a comprehensive review of the following: ban the use of techniques that require manipulation of the neck; affirmative requirement for peace officers to immediately intervene and report acts of misconduct; preservation of life standard requirement in response to resistance (use of force) policies; mandate on-going crisis intervention training; mandate de-escalation training on a continual basis; mandate cultural competence and implicit bias training; and standardization of laws and policies governing the release of body worn camera video.

All reforms must be vetted to ensure they are sustainable and will be the meaningful impact our communities are calling for. Reaction without thoughtful deliberation and absolutes are irresponsible, and as we look towards legislation, we need to take care that the needs of our diverse communities are reflected in the policies put forth. Again, this is a time to listen, learn, and to act.

Defunding Police

It is undeniable that law enforcement plays an important role in our communities. Ensuring public safety is no small undertaking as the law enforcement profession remains extremely complex. No two calls for service are the same and each requires a different set of skills to navigate safely and effectively. The call to defund the police in order to address the social and economic ills of our nation, prior to actually addressing our social disparities, is largely a false equivalence. As illustrated in one MCCA member city, police respond to an average of 1.2 million calls for service annually that disproportionately originate from communities of color who are already grappling with the socio-economic challenges plaguing many American communities. To simply defund the police without a concerted effort to address the root causes behind emergency calls for service is wrought with strategic missteps that could ultimately increase the need for police service in the

poorest of communities. Social psychologists have noted calls to defund the police without making strides to improve causal factors would strip away a critical resource. Building healthy communities thereby lessening the need for police presence and intervention must occur prior to any discussion regarding the defunding of American law enforcement¹.

Our communities deserve the highest quality service. History has shown that underfunding police can have disastrous consequences and hurt the communities most in need. Appropriate police funding is more critical now than ever before to ensure that police agencies have the funding for investments in technology that provides accountability (body worn cameras), recruitment (hiring unbiased service minded professionals), and training (cultural competency, implicit bias, de-escalation).

We must balance upholding the law while showing compassion and assisting those in need. We must take actions that are sometimes unpopular while continuing to build and maintain trust with the communities we serve. The overwhelming majority of police are good people and faithful public servants who put their uniform on every day willing to make the ultimate sacrifice. We cannot let the actions of bad cops let us lose sight of that fact. We all must judge each other through the prism and content of our individual hearts, and not through the prism of color or the uniform we wear.

Listen and Learn

Now more than ever is a time for law enforcement to listen and learn from the communities we serve. We must listen to communities of color describe the challenges they face in society every day. We must listen when they tell us their interactions with law enforcement are different than those of white people. We must listen to the officers in our own departments who are part of those communities when they share their experiences of being stopped off duty and confirm their experience is different, even though they have a badge in their pocket.

We must also learn from what is being shared with us. That includes being honest about and learning from our history. We must acknowledge that law enforcement's past contains institutional racism, injustices, and brutality. We must recognize that policing has had a disparate impact on disenfranchised communities, especially communities of color and poor communities. By listening, learning, and then fostering dialogue, we will take the first steps to help effect needed change.

Use of Force

Any time an officer uses force in the line of duty, it is a serious matter. Above all else, use of force policies must prioritize the sanctity of life; of officers, suspects, and bystanders. Agencies need to have comprehensive, updated, and clear use of force policies that contain lawful responses to resistance and promote accountability. It must be said that absolutes in policing are irresponsible and as we look towards legislation, we need to be thoughtful in our approach.

¹Sault, S. "To fix racism we need to start measuring it, says this psychologist."

<https://www.weforum.org/agenda/2020/01/this-psychologist-is-using-science-to-beat-racism/> (2020, January 23).

There is currently no national use of force standard and recent attempts at establishing a national consensus faced disagreement based on the myriad of laws, standards, and community desires and needs. While no national standard exists, several components remain ubiquitous throughout the U.S.; a duty to intervene, and the use of de-escalation tactics and techniques.

As a law enforcement executive, I have personally made it clear to the men and women of the Houston Police Department that unless in a fight for your life, an officer should never use a neck or carotid hold. Officers take an oath to serve and protect, and no matter the situation, if a fellow officer witnesses excessive force, they have a duty to intervene. De-escalation should be employed when safe and feasible, under the totality of the circumstances, in order to gain voluntary compliance. Officers must slow down their decision making in critical moments. It is important to think before acting – analyze all the relevant factors and the tools at their disposal – to ensure the action taken does not unnecessarily endanger members of the community, suspects, and officers. All available efforts should be taken to resolve situations as peacefully and safely, as possible, for all involved parties.

While many MCCA members already have use of force policies with these elements, we encourage law enforcement agencies that do not to adopt them as quickly as possible, and we welcome the opportunity to work with the Committee in this arena.

In the wake of the recent civil unrest, there has been a push to prevent law enforcement from using less than lethal tools. Let me be crystal clear – the decision to deploy a less than lethal tool is not taken lightly. It is done for the explicit purpose of preventing chaotic situations from becoming a threat to public safety. These mechanisms ultimately save lives and we must ensure law enforcement has access to these tools, are properly trained, and know when it is appropriate to deploy them.

Accountability

It will be difficult for law enforcement to address systemic challenges without a sustained commitment to accountability. Law enforcement is entrusted with a solemn responsibility – ensuring public safety – and that must be taken seriously. From academy recruits to the chief, we must hold ourselves to the highest standards and always strive to do better. Being accountable to the public means having zero tolerance for any action that jeopardizes public safety or violates the trust of the communities we serve.

When any officer violates our high standards, it casts a shadow over the hundreds of thousands of police who dutifully serve and are committed to their communities. Law enforcement must do more to purge bad cops from our ranks. Officers must hold each other accountable and speak up when they see something that shouldn't be happening. If misconduct occurs, it must be dealt with decisively.

It's important to note, however, that every chief's administrative authorities are different and not everyone may be legally permitted to take immediate action. Labor agreements that many departments operate under make it an extremely lengthy process to terminate an officer, regardless of the seriousness of the misconduct he or she engaged in. Furthermore, arbitrators have the ability

to overrule any disciplinary decision. There have been far too many situations where an officer who engaged in misconduct was removed from the force only to be reinstated by an arbitrator.

Chiefs' inability to remove bad cops hurt department morale and further undermine the public's trust in law enforcement. We need help from Congress and state legislatures to address these challenges. In addition, as future labor agreements are negotiated, we must strike a better balance between providing due process and protections for labor while ensuring chiefs have the administrative authorities needed to hold officers accountable. We look forward to continuing to work with our police labor partners to ensure that, as a profession, we are meeting the high standards the public expects.

We must also address the issue of officers who have been terminated with cause only to get rehired by another department. I refer to these individuals as gypsy cops – officers who are fired in one jurisdiction only to immediately resurface in another department. Many gypsy cops have exhibited troubling patterns of behavior that clearly do not meet the high standards of our profession, and too often engage in further misconduct at their new department. They undermine efforts to build trust with the public and frequently overshadow the outstanding work of good officers across our nation.

Legislatures must help us address some of the challenges that hamstringing our vetting processes. For example, many states and local jurisdictions have laws that shield disciplinary records and misconduct complaints lodged against an officer. Injecting more transparency into recruitment and hiring processes will benefit each department and is a critical component of community trust and confidence.

Transparency is also an important aspect of accountability. Modern law enforcement agencies need to be data driven. Robust data collection and analysis can help inform decision-making and identify problems. It is important that police departments are transparent with the public about what is being collected and how it is being used. Sharing this information with the public keeps them informed, helps provide a clear rationale as to why a certain course of action was taken, and highlights the progress we are making in ameliorating systemic challenges. At the end of the day, this data belongs to the public because our authority truly is derived from the communities we serve. Transparency breeds trust and trust breeds respect.

Technology like body worn cameras can ensure transparency during law enforcement's interactions with the public. The MCCA strongly encourages all agencies to utilize body worn cameras. The COVID-19 pandemic has strained municipal budgets and as a result, many departments have had to cancel or delay investments in body worn cameras. We call on Congress to assist local governments with obtaining this important piece of equipment that can help foster accountability.

Community/Relational Policing

Mutual trust and respect between law enforcement and the public is crucial to good policing. The civil unrest occurring throughout the country is a sobering reminder of how quickly bad policing can undermine that trust and respect. It is imperative that law enforcement work tirelessly – in both good times and bad – to build strong relationships with the communities they serve. It is much

easier to navigate a crisis and effect change when the public trusts law enforcement and knows their concerns will be taken seriously.

Community and relational policing requires law enforcement to adopt an attitude of service. Law enforcement should be a positive influence and force for good. While police must continue to demonstrate strong leadership, it must be in partnership with, not at the expense of, the community. We must always uphold the oath to protect and to serve. There is no place for an “us versus them” attitude in community and relational policing.

Fruitful community engagement is dependent on being present. Executives and officers cannot build community trust sitting behind a desk, and every encounter serves as an opportunity to connect. MCCA member agencies support various initiatives like police athletic leagues and food drives, as well as non-traditional programs that foster community-law enforcement interaction. Police should look to engage with leaders in the community beyond the conventional religious, nonprofit, and business leaders; sit down with activists, rappers, athletes, and other pillars of the community. These individuals wield significant influence and have platforms that can be used for good.

Ensuring our departments look more like the communities we serve helps build trust and confidence. Officer recruitment can be challenging; however, a concerted effort to recruit from within the community is valuable. Their unique perspectives and insights help shape a department and several MCCA member agencies are now minority majority.

On behalf of the Major Cities Chiefs, I want America to know that we hear you. We will continue to do everything in our power to facilitate your right to peaceful protest for the changes you want to see within the criminal justice system. The MCCA will not shirk away from this challenge and will continue to be a leader and voice in the national discourse on race relations, policing, and reform.

I yield the remainder of my time and look forward to any questions the Committee may have. Thank you.

Chair NADLER. Thank you, Chief.

Our next Witness is Ms. Sherrilyn Ifill. Ms. Sherrilyn Ifill is the President and Director-Counsel of the NAACP Legal Defense and Educational Fund. She received her J.D. from New York University School of Law and her B.A. from Vassar College.

Ms. Ifill, you may begin.

STATEMENT OF SHERRILYN IFILL

Ms. IFILL. Good morning. My name is Sherrilyn Ifill. I am the President and Director-Counsel of the NAACP Legal Defense Fund, the Nation's oldest civil rights legal organization, formed in 1940 by Thurgood Marshall.

I want to thank Chair Nadler, Ranking Member Jordan. I want to salute the leadership of Representative Bass and the Congressional Black Caucus on this issue. I want to extend, on behalf of the Legal Defense Fund, my deepest condolences to the Floyd family and thank them for their courage and their voice at this important moment.

We welcome the Justice in Policing Act as a first step in addressing the decades-long call and demand for policing reform.

The legislation includes reforms that LDF's Policing Reform Campaign has advocated for years to ensure greater accountability for police officers who engage in misconduct and brutality. Members of Congress incorporated a number of our proposals in the act, which is a step in the right direction toward ensuring police accountability nationwide.

I want to first focus this Committee's attention on the significance of this moment and the importance of the Federal Government's role in addressing this crisis. You are in a civil rights moment.

In 1964–1967, cities all over the North in this country were gripped by urban unrest. In Watts and Detroit, Harlem, Minneapolis, and scores of other cities, Black people took to the streets to protest police brutality. It was during that period of unrest that Dr. Martin Luther King said, "Riots are the language of the unheard."

The 1968 Kerner Commission was created to study the source of that unrest, and much of the report's findings and recommendations focused on law enforcement's presence and conduct in Black communities.

This period overlapped with the years that most people think of as the core civil rights movement, when Black people in the South petitioned, protested, marched, and demanded Federal legislation to address segregation, voter suppression, and economic injustice. The result were core civil right statutes: the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968.

Despite the unrest in northern cities, in over 100 cities during that decade, there was no legislation to address the issue of police brutality in African-American communities. As a result, very little has changed since that period as it relates to this issue.

Therefore, too many officers know that they can commit the most heinous acts against African Americans without fear of accountability. Ranking Member Jordan said that the killers of George

Floyd will face justice, but we also know that those who killed Philando Castile, Eric Garner, Terence Crutcher, Eleanor Bumpurs, Michael Stewart, Clifford Glover, Sean Bell, Amadou Diallo, and countless others never were held accountable for the crimes they committed.

That snapshot of former officer Derek Chauvin kneeling on the neck of George Floyd, with his hands in his pockets, looking out, with no fear of being videotaped, should shame every Member of this body, every judge, every lawyer, everyone who has participated in the perpetuation a system that calls itself a justice system but routinely allows officers of the State to take innocent life with impunity. You have the chance now to change that.

Once the key parts of the system of impunity have been qualified immunity, a defense that shields officials from the unforeseeable consequences of their Act but has been interpreted by courts so expansively that it now provides near immunity for police officers who engage in unconstitutional acts of violence.

LDF has litigated a number of these cases. For example, in 2018, we filed a petition in the United States Supreme Court appealing a decision of the United States Court of Appeals for the 11th Circuit that affirmed summary judgment in favor of a law enforcement officer who tased our client, Khari Illidge, 19 times to death. The U.S. Supreme Court denied the petition.

This case was not a one-off. Every year, cert petitions are filed in the Court, seeking review of cases in which law enforcement officers have successfully eluded accountability for the most violent forms of brutality by raising the qualified immunity defense.

The Justice in Policing Act seeks to address qualified immunity by amending the civil rights statute used most in police excessive-use-of-force cases, 42 U.S.C. 1983, and we welcome this amendment. We want it to apply to all civil suits that are pending or filed after enactment of the act. We will continue to work towards the elimination of qualified immunity.

There is bipartisan support for ending qualified immunity, and so I'll close my remarks by quoting from a Federal Circuit Court Judge in a decision issued just this week in the Fourth Circuit Court of Appeals. It was written by a judge appointed first to the bench by George W. Bush.

He said, in *Jones v. City of Martinsburg*, Judge Henry Floyd said, "Wayne Jones was killed just 1 year before the Ferguson, Missouri, shooting of Michael Brown would once again draw national scrutiny to police shootings of Black people in the United States. Seven years later, we are asked to decide whether it was clearly established that 5 officers could not shoot a man 22 times as he lay motionless on the ground. Before the ink dried on this opinion, the FBI opened an investigation into the death of yet another Black man at the hands of police, this time George Floyd in Minneapolis. This has to stop. To award qualified immunity at the summary judgment stage in this case would signal absolute immunity for fear-based use of force, which we cannot accept."

This decision represents a minority of cases, and so we need Congress to act. You are required by history to meet this civil rights moment. It is a moment in which we have a chance to transform our approach to public safety, to recognize that most community

conflicts do not require the intervention of an armed officer, and to speak our values through Federal and State budgets that prioritize our commitment to antidiscrimination, to public health, and to true public safety for all.

Thank you.

[The statement of Ms. Ifill follows:]



Testimony of

**Sherrilyn Ifill, President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.**

Before the United States House Judiciary Committee

for

**Oversight Hearing on Policing Practices and Law Enforcement
Accountability**

June 10, 2020

I. Introduction

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I would like to thank Chairman Nadler and Ranking Member Jordan for convening this timely Oversight Hearing on Policing Practices and Law Enforcement Accountability. LDF is the nation's premiere civil rights legal organization working to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. For 80 years, LDF has consistently worked to promote unbiased and accountable policing policies and practices at the national, state, and local levels through litigation and policy reform advocacy. In 2015, LDF launched its Policing Reform Campaign to transform policing culture and practices, eliminate racial bias and profiling in policing, and end police violence against residents of this country.¹

For the past several months, the nation has grappled with incident after incident of violence against Black Americans by former and current law enforcement officers. In February 2020, Ahmaud Arbery, a 25-year-old Black man was taking his usual jog through a white suburb of Brunswick, Georgia when a former local police officer and his son chased him with their pick-up truck and savagely killed him with a shot gun.² On March 13, 26-year-old Breonna Taylor, a Black woman and devoted Emergency Medical Technician, was sleeping in her bed when six Louisville Metropolitan Police Department officers executed a no-knock warrant by bursting into her apartment and shooting Ms. Taylor multiple times killing her.³ In May, George Floyd, a 46-year-old Black father and brother, made a purchase at a local store where the owner accused him of using a counterfeit \$20 bill. Four Minneapolis Police Department officers approached Mr. Floyd to question him. Ultimately, one officer handcuffed Mr. Floyd, wrestled him to the ground and pinned him down by placing his knee on Mr. Floyd's neck for almost nine minutes as he pleaded for his life crying "I can't breathe" until he succumbed to the officer's brutal treatment. Two other officers knelt on Mr. Floyd's handcuffed body and another watched and did nothing.⁴

For three weeks, sustained demonstrations have erupted worldwide after the release of graphic videos of Mr. Floyd's slow and excruciating death. Only after the protests began and these brutal killings received national attention, local law enforcement officials expedited their investigations and arrested the killers of Mr. Arbery and Mr. Floyd.⁵ Protesters demand an end to

¹ See, LDF Thurgood Marshall Institute, *Policing Reform Campaign*, <https://tminstituteldf.org/advocacy/campaigns/policing-reform/about/>.

² Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, The New York Times, June 4, 2020, <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html>.

³ AJ Willingham, *Breonna Taylor would have been 27 today. Here's where her case stands*, CNN, June 5, 2020, <https://www.cnn.com/2020/06/05/us/breonna-taylor-birthday-charges-arrests-case-trnd/index.html>.

⁴ Phil P. Murphy, *New video appears to show three police officers kneeling on George Floyd*, CNN, June 3, 2020, <https://www.cnn.com/2020/05/29/us/george-floyd-new-video-officers-kneel-trnd/index.html>.

⁵ Meredith Deliso and Christina Carrega, *Man who filmed shooting of Ahmaud Arbery charged with murder*, ABC News, May 22, 2020, <https://abcnews.go.com/US/man-filmed-shooting-ahmaud-arbery-charged-murder/story?id=70820910>; See also, Lorenzo Reyes, *New charges in George Floyd's death: Derek Chauvin faces second-degree murder; 3 other officers charged*, USA Today, June 3, 2020, <https://www.usatoday.com/story/news/nation/2020/06/03/george-floyd-death-charges/5251117002/>.

police violence, accountability of the officers involved in the killings and police reforms. The response to activists' demands must be swift, decisive, and transformative. After years of focusing on training and supervision, it is time to demand action by the elected officials and policymakers who are responsible for funding police departments, managing police leadership, and making and implementing laws governing police misconduct and accountability.

While public safety is primarily the responsibility of state and local governments, the federal government influences this local function for better or for worse. For example, almost 30 years ago following the highly-publicized beating of Rodney King and after acknowledging that nationwide police violence against people of color was real, Congress passed the Violent Crime Control and Law Enforcement Act of 1994, which allows the U.S. Attorney General to investigate police departments suspected of engaging in a pattern or practice of unlawful policing.⁶ Since its enactment, various administrations have taken a measured approach to utilizing this authority opening about 69 investigations and resolving findings of civil rights violations with 40 agreements between 1994 and 2017.⁷

Yet, the Trump Administration has abdicated its authority to investigate police departments and instead has incited unlawful policing. Specifically, President Trump has encouraged police to abuse arrestees by allowing them to hit their heads as they are seated in police cars;⁸ and, U.S. Attorney General Barr warned that if people of color who protest police violence do not show respect from law enforcement, then they may not receive protection from officers.⁹ Even as demonstrators peacefully protested police violence in Washington, D.C. in the aftermath of George Floyd's death, President Trump and Attorney General Barr, ordered federal law enforcement to disperse crowds by throwing smoke canisters and pepper balls.¹⁰ It is in this climate that we find our country in a policing crisis; and you, Members of Congress, a coequal branch of the federal government are called upon to act through your oversight and legislative authority.

<https://www.usatoday.com/story/news/nation/2020/06/03/george-floyd-death-charges-derek-chauvin-police/3134766001/>

⁶ 34 U.S.C. § 12601.

⁷ Civil Rights Division, U.S. Dep't of Justice, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, 3, Jan. 2017, <https://www.justice.gov/crt/file/922421/download>.

⁸ Associate Press, *WATCH: Trump to police: Don't worry about people in custody hitting their heads on squad cars*, July 28, 2017, <https://www.pbs.org/newshour/politics/watch-trump-police-dont-worry-people-custody-hitting-heads-squad-cars>.

⁹ Owen Daugherty, *Barr warns that communities that don't show respect to law enforcement may not get police protection: report*, Dec. 4, 2019, *The Hill*, <https://thehill.com/homenews/news/472946-barr-warns-that-communities-that-dont-show-respect-to-law-enforcement-may-not>.

¹⁰ Ben Gittleson and Jordan Phelps, *Police use munitions to forcibly push back peaceful protesters for Trump church visit*, ABC News, <https://abcnews.go.com/Politics/national-guard-troops-deployed-white-house-trump-calls/story?id=71004151>.

We welcome the Justice in Policing Act of 2020 (the Act), a comprehensive policing reform bill introduced by House and Senate members this week.¹¹ The legislation includes policing reforms we have advocated for years to ensure greater accountability of police officers who engage in misconduct. Indeed, The Leadership Conference on Civil and Human Rights, LDF and over 400 organizations sent a letter to Congress presenting an eight-point reform platform calling for an end to the defense of qualified immunity that shields officers from accountability, creation of a national public police misconduct database, and an end to the transfer of military equipment, to name a few.¹² Members of Congress incorporated our proposed reforms in the Act, which is a step in the right direction toward ensuring police accountability nationwide. We offer recommendations below on how to strengthen several provisions. We also urge Congress to use its oversight authority to ensure that federal agencies providing funding to state and local law enforcement comply with civil rights laws, such as Title VI of the Civil Rights Act of 1964.

II. Limitations on qualified immunity should apply retroactively

Qualified immunity, a defense that shields officials from the unforeseeable consequences of their reasonable acts, has been interpreted by courts so expansively that it now provides near-impunity for police officers who engage in unconstitutional acts of violence. According to an investigative report by Reuters, from 2017 to 2019, appellate courts granted police qualified immunity in 57% of use of force civil cases.¹³

For example, in 2018, LDF filed a petition to the U.S. Supreme Court appealing a decision of the U.S. Court of Appeals for the Eleventh Circuit affirming summary judgment in favor of a law enforcement officer in an excessive use of force lawsuit.¹⁴ The case involved a 2013 fatal incident during which a Lee County, Alabama sheriff's deputy used excessive force by tasing our client, an unarmed Black man, Khari Illidge, with a taser 13 times for trespassing. Mr. Illidge died from cardiac arrest. His mother filed a civil rights law suit alleging that the deputy violated her son's constitutional right to be free from the unreasonable use of force.¹⁵ The deputy's use of the taser violated both taser guidelines and police training, yet the Eleventh Circuit Court of Appeals ruled that the trial court was correct to dismiss the case on qualified immunity grounds

¹¹ Claudia Grisales, *et al*, *Democrats Unveil Police Reform Legislation Amid Protests Nationwide*, June 8, 2020, <https://www.npr.org/2020/06/08/871625856/in-wake-of-protests-democrats-to-unveil-police-reform-legislation>

¹² NAACP LDF, *Diverse Coalition Sends Letter to Congressional Leaders Urging Swift Action in Response to Police Killings*, June 1, 2020, <https://www.naacpldf.org/press-release/diverse-coalition-sends-letter-to-congressional-leaders-urging-swift-action-in-response-to-police-killings/>.

¹³ Andrew Chung, *et al*, *Shielded*, Reuters Investigates, May 8, 2020, <https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus/>.

¹⁴ NAACP LDF, *LDF Files Supreme Court Petition in Alabama Police Excessive Force Case*, May 18, 2018 <https://www.naacpldf.org/files/our-work/Callwood%20Cert%20Petition%20FINAL.pdf>. See also, *Petition for Writ of Certiorari, Callwood v. Jones*, <https://www.naacpldf.org/files/our-work/Callwood%20Cert%20Petition%20FINAL.pdf>.

¹⁵ *Callwood v. Jones*, 727 Fed.Appx. 552 (11th Cir. 2018)

because the deputy did not violate clearly established law relating to the excessive use of force.¹⁶ The appellate court concluded that Mr. Illidge's thrashing movements as he was being tased meant he was resisting arrest and the deputy's use of over a dozen tases was not "so utterly disproportionate that any reasonable officer would have recognized that his actions were unlawful."¹⁷ The U.S. Supreme Court denied LDF's petition. This case was not a one-off. Every year cert petitions are filed in the Court seeking review of cases in which law enforcement officers have successfully eluded accountability for the most violent forms of brutality by raising the qualified immunity defense.

The Justice in Policing Act seeks to address the qualified immunity shield by amending the civil rights statute used in most police excessive use of force civil cases, 42 U.S.C. §1983, to state that a law enforcement or correctional officer cannot assert a defense that he was acting in good faith or reasonably believed his conduct was lawful at the time of an incident or that a person's civil right was not clearly established when the defendant allegedly violated a victim's legal rights. LDF welcomes this amendment and recommend that it apply to all civil suits that are pending or filed after enactment of the Act. We will continue to work toward the elimination of qualified immunity.

III. A national police misconduct database would prevent problem officers from moving from one police department to another

The law enforcement professionals, like other professionals, such as lawyers and doctors, must have access to a system that collects and reports the revocation of membership or licenses for violations of standards. Doing so would prevent officers fired for misconduct to leave one state and be hired in another without the receiving agency knowing about previous bad acts.¹⁸ The Justice in Policing Act creates a public national police misconduct registry that would collect use of force complaints and termination and certification records concerning federal and local law enforcement officers. We strongly urge this Committee to expand the categories of complaints that can be collected by this database to include other acts of misconduct such as discourtesy and bias, particularly racial bias.

Access to these records would allow members of the public and law enforcement executives to identify officers with problematic backgrounds. State Bar Associations often publish the names of attorneys who have been disbarred, so too must there be a public national registry of officers who have lost their licenses or have had multiple complaints filed against them due to misconduct. Indeed, former President Barack Obama's Task Force on 21st Century Policing noted in its final report that "[a] national register would effectively treat "police professionals the way

¹⁶ *Id.* at 561.

¹⁷ *Id.*

¹⁸ See, e.g., Minyvonne Burke, *Officer who fatally shot Tamir Rice quits Ohio police department days after he was hired*, Oct. 11, 2018, <https://www.nbcnews.com/news/us-news/officer-who-fatally-shot-tamir-rice-quits-ohio-police-department-n919046>; Timothy Williams, *Cast-Out Police Officers Are Often Hired in Other Cities*, Sept. 11, 2016, <https://www.nytimes.com/2016/09/11/us/whereabouts-of-cast-out-police-officers-other-cities-often-hire-them.html>

states' licensing laws treat other professionals. If anything, the need for such a system is even more important for law enforcement, as officers have the power to make arrests, perform searches, and use deadly force."¹⁹

IV. Limitations to the transfer of military equipment is encouraging, but ending the transfer of this equipment is necessary

Without question, the images of the military-style response by local police to public demonstrations in the aftermath of George Floyd's death are jarring. Converting the streets of this nation into war zones only escalate already tense community-police relations.²⁰ Following a similar response to mass demonstrations after the police killings of Michael Brown in Ferguson, Missouri, former President Barack Obama adopted the recommendations of an interagency task force created by executive order, which banned the transfer of certain surplus federal military equipment to state and local law enforcement agencies through the U.S. Department of Defense's (DOD) 1033 Excess Property Program.²¹ This occurred after LDF and other advocates urged the Obama Administration to end the transfer of military equipment to all law enforcement agencies, including those that serve schools.²²

In 2017, despite a Government Accountability Office report detailing deficiencies in DOD's process for transferring equipment that resulted in the delivery of \$1.2 million of military weapons and equipment to a fake law enforcement agency,²³ President Trump ended Obama era restrictions allowing local police departments to access mine-resistant, ambush-protected vehicles, grenade launchers and bayonets among other equipment.²⁴

Congress has and must act to rid our nation's streets of military equipment. The Justice in Policing Act includes a provision that would limit the transfer of certain military equipment,

¹⁹ President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing, 30, Office of Community Oriented Policing Services (2015) https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf#at=30.

²⁰ Michelle Nichols and Catherine Koppel, *Should U.S. police get free military equipment? Protests revive debate*, Reuters, June 5, 2020, <https://www.reuters.com/article/us-minneapolis-police-protests-militariz/should-us-police-get-free-military-equipment-protests-revive-debate-idUSKBN23C2IV>.

²¹ Christi Parsons, *Obama bars some military equipment from going to local police*, May 18, 2015, <https://www.latimes.com/nation/la-na-obama-military-equipment-police-20150518-story.html>.

²² NAACP LDF, *Supplemental Statement by the NAACP Legal Defense and Educational Fund, Inc. To the President's Task Force on 21st Century Policing*, Feb. 17, 2015, <https://www.naacpldf.org/wp-content/uploads/NAACP-LDF-Supplemental-Statement-to-Presidents-Task-Force-on-21st-Century-Policing.pdf>.

²³ U.S. Gov't Accountability Office, *DOD Excess Property: Enhanced Controls Needed for Access to Excess Controlled Property*, Jul. 18, 2017, <https://www.gao.gov/mobile/products/GAO-17-532>.

²⁴ Dartunorro Clark, *Trump Makes It Easier for Police to Get Military Equipment*, Nov. 13, 2017, <https://www.nbcnews.com/politics/white-house/trump-makes-it-easier-police-get-military-equipment-n815766>.

similar to the Obama Administration's ban. We urge Congress to do more by banning the transfer of all excess military vehicles and weapons.

V. Congress Must Use Its Oversight Authority to Ensure that Federal Agencies that Provide Financial Assistance to State and Local Police Departments Enforce Civil Rights Laws

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds from discriminating in their programs and activities based on race, color and national origin. Failure to comply with this requirement could result in the termination of funds.²⁵ Yet, despite providing billions in grant funding to police jurisdictions around the country, the U.S. Department of Justice (DOJ) has never fully enforced this provision through compliance reviews or pattern or practice investigations. For example, Minneapolis has received over \$7 million in federal grants since 2009,²⁶ yet claims of racially biased policing in that city abound.²⁷

There must be an immediate review of all DOJ and other federal agency grant funding to police departments to ensure compliance with Title VI. Federal funds should be withheld from departments that hire officers previously fired for misconduct or those with suspicious levels of in-custody deaths or assaults. The House and Senate Judiciary Committees have oversight power over the DOJ—and must hold it accountable.

VI. Conclusion

The recommendations for federal police reforms submitted by LDF and its coalition partners focus on police accountability because that is what this moment requires. Communities of color are weary of efforts that pour more funding into police departments to purchase equipment, such as body-worn cameras, and provide training to officers while Black and Brown Americans continue to suffer violence at the hands of police. It is critical that Congress change its approach to police department funding by using its legislative and oversight authority to require federal agencies that provide grants to law enforcement to aggressively enforce civil rights laws or risk termination of those funds.

Also, movements to drastically reduce police funding are at the core of a revised vision of public safety that prioritizes social services, youth development, mental health, reentry support, and meaningful provisions for homeless individuals that strengthen community resources to

²⁵ 42 U.S.C. § 2000d. See also, U.S. Dep't of Justice Federal Coordination and Compliance Section, Title VI of the Civil Rights Act of 1964, <https://www.justice.gov/crt/fcs/TitleVI>.

²⁶ LDF Thurgood Marshall Institute National Police Funding Database, *Federal Grant Spotlight Minneapolis* (2009–2018), <https://policefundingdatabase.tminstitutldf.org/report>.

²⁷ Matt Furber, et al, *Minneapolis Police, Long Accused of Racism, Face Wrath of Wounded City*, The New York Times, May 27, 2020, <https://www.nytimes.com/2020/05/27/us/minneapolis-police.html>.

proactively address underlying factors that can contribute to public safety concerns.²⁸ Most public safety issues and community conflicts do not require the intervention of an armed officer. It is time to reimagine how we allocate our public safety dollars at the federal and local levels.

We look forward to working with this Committee and other Members of Congress to improve provisions of the Justice in Policing Act as it moves toward passage.

Sincerely yours,



Sherrilyn A. Ifill
President and Director Counsel

²⁸ Communities United for Police Reform, *More than 110 Organizations Call on Mayor De Blasio and Speaker Johnson to Cut the NYPD's Budget, Redirect Resources to City Agencies that Can Help Communities Hardest Hit by COVID-19*, April 30, 2020, <https://www.changethenypd.org/releases/more-110-organizations-call-mayor-de-blasio-and-speaker-johnson-cut-nypd%E2%80%99s-budget-redirect>.

Chair NADLER. Thank you.

Our next Witness is Darrell Scott, who is the founder and senior pastor of the New Spirit Revival Center, a nondenominational church in Cleveland Heights, Ohio. Pastor Scott is also the author of the book "Nothing to Lose: Unlikely Allies in the Struggle for a Better Black America."

Pastor Scott, you may begin.

STATEMENT OF PASTOR DARRELL SCOTT

Pastor SCOTT. Chair Nadler, Members of the Committee, Ranking Member Jordan, thank you for inviting me to participate in these very serious hearings today.

I want to begin by stating that the prospect of defunding and/or dismantling police forces across the country is one of the most unwise, irresponsible proposals by American politicians in our Nation's history and makes absolutely no sense at all, at least to me. I believe it is nothing short of the politicizing of current social events in an effort to garner votes during this election season. I also believe that it's a reactionary measure that can and will result in short- and long-term damage to American society, particularly in our inner-city and urban communities.

Now, I recognize the fact that the elimination of excessive force and physical retaliation by officers of the law against American citizens is paramount today. I recognize the fact that racial profiling and the harsh treatment of minorities is a very real reality that must be eliminated immediately.

I, myself, can testify of times in my life when I felt racially profiled by police. I can testify of times in my life when I was pulled over for driving while black. I can testify of giving my grandson, who is now of driving age, "the talk" of how to properly behave if pulled over by police, because he had the question of a very real fear of the possibility of death at the hands of police.

In fact, my very first interaction with police, when I was 13 years old, resulted in me being roughed up. I could very easily have been George Floyd. George Floyd could have very easily been me, my brothers, my friends, or any number of any other Black men in America.

However, I do not recommend throwing the baby out with the bath water by labeling all police officers as bad cops simply because of the bad actions of a rogue segment of those whose job is supposed to be to protect and to serve American citizens.

In fact, in certain inner-city communities across America, increased funding for police and increased police presence is actually necessary to enforce the law and to guarantee the safety and the security of law-abiding members of those communities.

As one who was formerly in that street life years ago—I might be a pastor, but I didn't come down from heaven. I came up out of hell with the rest of everybody else. I was formerly in that street life. I know very much about the criminal element. I can State definitively that the criminal element in and of society would enjoy nothing better than a reduction in police presence and police power. It would allow those with criminal intentions and criminal actions to flourish, virtually unchallenged, in the communities of America.

The law-abiding members of society would be directly threatened by the absence of police or the inability of police to respond to criminal activities and, in many cases, would endeavor to take the law into their own hands to ensure their safety and well-being, as evidenced by the response of some who decided to defend themselves and their property from vandalism. An absence of police presence could potentially give rise to acts of domestic terrorism, mob rule, gang rule, neighborhood intimidation, oppression, and vigilantism.

Defunding of police departments has already happened in a number of American cities and, rather than remedying problems, has actually made conditions much worse. The city of Cleveland, my hometown, is a prime example of the results of police defunding.

In 2004, the city of Cleveland laid off 285 officers. The entire police budget was slashed by 31 percent. To cover basic services, the following units were either disbanded or cut forever: The district strike force units; the narcotics unit was completely cut. SWAT was downsized. The fugitive unit was disbanded. The auto-theft unit was disbanded. The intelligence unit was cut to bare bones. The mounted unit was cut 85 percent. The aviation unit was down completely for 3 years and is now only utilized during special events. The harbor unit was disabled; the boat sits, rotting, in a dry dock. The scientific investigation unit was cut 80 percent. All the lab techs were let go. All the evidence collection is now done by priority. The DARE program, the Drug Abuse Resistance Education program, was cut. Community policing was cut 45 percent.

Cleveland went through a decade-long downsizing which saw the department reduce from 1,900 officers to 1,500 officers, on average. Zone car coverage, which directly affects citizens, has been cut. Police presence in any given district on any given shift has been cut in half. One- and two-man units have been cut in half. Response time is dramatically longer, if the police show up at all.

The murder rates have climbed. The property crime is at record levels. Aggravated robbery statistics are higher. Drug sales, drug use, drug abuse is higher. Drug- and alcohol-related motor vehicle accidents are the highest they have ever been.

Cleveland went from a relatively safe city per capita to an unbelievably unsafe city. Calls for service have increased even though the population has dropped significantly over the last 20 years. Once-safe areas of the city are now unsafe. Once-nice neighborhoods in the city are now not nice. Homicides are up 55 percent in Cleveland from this time last year, and Cleveland now has a higher murder rate per 100,000 residents than Chicago does.

I believe the police departments are only as effective as politicians and their appointees allow them to be. Consequently, politicians and appointees are directly responsible for the State of their police departments.

Law-abiding citizens—and I've spoken to a great deal of them—overwhelmingly think that defunding or disbanding police departments is a horrible idea.

Community policing is a very viable option to address the needs of inner-city communities. Having police in the communities to actually get to know the residents is the best way to obtain the results that we all want. When I was growing up, the residents and

the business owners knew the police officers that were assigned to our neighborhoods, and their presence was a deterrent to criminal activity.

So, in short, defunding of police departments in America has already happened, and it has proven to be an epic failure. We cannot allow that paradigm to continue if we want the neighborhoods of America to be safe to live in, the streets of America to be safe for residents to walk on, and the communities of America conducive for businesses to thrive in.

So, I recommend and I agree with the fact that police reform—or, better yet, police revision—should be enacted. It has to be one that is sensitive to the stress, tension, pressure, and paranoia that policing produces—the fact that, on any given day, any given call, any given stop can result in an officer's death can be very challenging mentally—while also being sensitive to the citizens of America, who are supposed to be protected by the police and not be enemies of the police, whether in the suburbs or in the inner cities, whether we are black, white, red, yellow, or brown.

I really believe that most police officers, most cops began their careers—most bad cops began their careers as good cops, but they allowed the rigors of their job to affect their perspectives and their social interaction with those they are supposed to protect, and they began perceiving those that they are supposed to protect as those they, themselves, need to be protected from.

I'm in agreement, I endorse police reform, but it has to be sensitive to both sides of that issue.

Thank you for allowing me. God bless you.

[The statement of Pastor Scott follows:]

Written Statement of Proposed Testimony.
Pastor Darrell Scott

The prospect of defunding and/or dismantling of Police forces across the country is one of the most unwise, irresponsible proposals by American politicians in our Nations history.

It is nothing short of the politicizing of current social events, a reactionary measure that can result in short and long term damage to American society.

Although I recognize the fact that the elimination of excessive force and physical retaliation by officers of the law against American Citizens is paramount today, and that racial profiling and harsh treatment of minorities is a very real reality that must be eliminated as well,

I do not recommend "throwing the baby out with the bathwater", by labeling ALL Police Officers as "Bad Cops" because of the bad actions of a rogue segment of those who's job is to "protect and serve"

In certain inner city communities across America, increased funding for Police, and increased Police presence is actually necessary, in order to enforce the law, and guarantee the safety and security of law bidding members of those communities.

The criminal element in and of society would enjoy nothing better than a reduction in Police presence and power.

The law abiding members of society would be directly threatened by an absence of Police, or the inability of Police to respond to criminal activities, and in many cases would endeavor to take the law into their own hands to ensure their safety and well being, as evidenced by the response of some who decided to defend themselves and their property from vandalism.

An absence of Police presence could potentially give rise to acts of domestic terrorism, mob rule, neighborhood intimidation and oppression, and vigilante-ism.

The weak, the timid, the elderly, retail establishments, single mothers, and youth would be especially vulnerable to criminal activity, as evidenced by the looting and vandalism of the past few weeks.

Defunding of Police Departments has already happened in a number of America Cities, and, rather than remedying problems, has actually made conditions much worse.

The City of Cleveland, my hometown, is a prime example of the results of Police defunding.

In 2004, the City of Cleveland laid off 285 Officers.
The entire Police budget was slashed by 31% (almost a third).

To cover basic services, the following units were either disbanded, or cut forever:

1. District Strike Force Units (never returned)
2. Narcotics Unit (completely cut)
3. SWAT (manpower cut, unit downsized)
4. Fugitive Unit (no ones tracking fugitives)
5. Auto Theft Unit (Disbanded)
6. Intelligence Unit (cut to bare bones)
7. Mounted Unit (cut 85%. Relies totally on donations)
8. Aviation Unit (down completely 3 yrs. Active only during special events)
9. Harbor Unit (disable. Boat rotting in dry dock)
10. Scientific Investigation Unit (cut 80%, all Lab Techs let go, all evidence collection is done by priority)
11. DARE (totally cut)
12. Community Policing (cut 45%)

Cleveland went through a decade long downsizing which saw department reduced from 1900 officers to 1500 on average.

Zone car coverage, which directly affects citizens, has been cut.

Police presence in any given district on any given shift has been cut in half, from 40 to 20.

One and two man units have both been reduced from 9 to 5.

Response time is dramatically longer.

Murder rates have climbed.

Property crimes are at record levels.

Aggravated robberies are higher.

Drug sale, use, and abuse is higher.

Drug and Alcohol related Motor Vehicle accidents are the highest they have ever been.

Cleveland has went from a relatively safe city, per capita, to an unbelievably unsafe city. Calls for service has increased, even though the population has dropped significantly over the last 20 years. Once "safe" areas of the city are now unsafe.

Homicides are UP 55% in Cleveland from this time last year, and Cleveland now has a higher murder rate (per 100,000 residents) than Chicago.

Police departments are only as effective as politicians and their appointees allow them to be.

Politicians and appointees are directly responsible for the state of their Police departments.

Law abiding citizens overwhelmingly think that defunding and/or disbanding Police departments is a BAD IDEA!

In short, defunding of Police Departments has already happened, and it has proven to be an EPIC fail. We cannot allow this paradigm to continue, if we want the streets of the communities in America, to be safe.

Community Policing is a very viable option to address the needs of inner city communities. Having Police IN the communities to actually get to know the residents, is the best way to obtain the results that we all want.

When I was growing up, the residents and business owners knew the Police officers that were assigned to our neighborhoods, and their presence was a deterrent to criminal activity.

In short, defunding of Police Departments in America has already happened, and it has proven to be an EPIC fail! We cannot allow that paradigm to continue if we want the neighborhoods of America to be safe to live in, the streets of America to be safe for residents to walk on, and the communities of America conducive for businesses to thrive in.

Chair NADLER. Thank you.

Before I call on the next Witness, I just remind Witnesses to turn off their mikes when you're not speaking. Turn them on when you're speaking, turn them off when you're not speaking, please.

Our next Witness is Mr. Paul Butler, who's the Albert Brick Professor at Georgetown University Law Center, where he specializes in criminal law and race relations. Professor Butler is also the author of the book "Let's Get Free: A Hip-Hop Theory of Justice" and "Chokehold: Policing Black Men." Mr. Butler received his J.D. from Harvard Law School and his B.A. from Yale University.

Mr. Butler, you may begin.

STATEMENT OF PAUL BUTLER

Mr. BUTLER. Chair Nadler, Ranking Member Jordan, honorable Members of the Committee, thank you for this opportunity to testify.

Mr. Floyd and Ms. Underwood Jacobs, I'm so sorry for your loss. May the memory of your brothers, the memory of the other marchers be a blessing to the people all over the country, all over the world who are rising up in what Martin Luther King called the beautiful struggle for equal justice.

There has never, not for 1 minute, in American history been peace between Black people and the police. Nothing since slavery has sparked the level of outrage among African Americans as when they feel under violent attack by the police.

Black people have endured Jim Crow segregation, being shut out of Social Security and the GI Bill, massive resistance to school desegregation, nonstop efforts to prevent us from voting, and poison water. The rare times Black people have set aside traditional civil rights strategies and instead have risen in the streets, destroyed property, and resisted symbols of the State has been because of something that the police have done.

In Watts, 1965; Newark, 1967; Miami, 1980; L.A., 1992; Ferguson, 2015; Baltimore, 2016; and Minneapolis, 2020; all those cities went up in flames because the police killed another Black man.

Unlawful violence is never acceptable, either as a misguided approach of a few or as an abuse of the power and trust we place in law enforcement officers.

The main problem is not bad-apple cops. Officers have difficult jobs, and many serve with honor and valor. Still, almost every objective investigation of a police department finds that police, as policy, treat African Americans with contempt. The police kill, wound, pepper spray, beat up, detain, frisk, handcuff, and use dogs against Black people in certain circumstances in which they do not do the same to White people.

When armed agents of the State are harming American citizens in our name, we, the people, must ask why.

In the past 2 weeks, we have seen acts of grace and bravery by police officers. Cops in New York took a knee. In Houston, Chief Acevedo arranged for an honor guard to accompany Mr. Floyd's body when he came home.

Unfortunately, we have also witnessed, these past 2 weeks, police officers commit deplorable acts of violence against the citizens they've sworn to serve and protect. In New York, officers drove two

large police vehicles into a crowd of protesters. In Atlanta, officers broke the window of a car, dragged out two college students, and shot them with a stun gun.

In Buffalo, a police officer knocked a 75-year-old man to the ground, but what happened next was just as bad. When two officers were disciplined for that criminal conduct, 57 other officers quit the squad in protest. President Obama's task force on policing decried the warrior mentality present among too many law enforcement officers. In Buffalo, the Nation saw warriors on steroids.

African-American and Hispanic people disproportionately bear the cost. Blacks are about 20 percent of the population of Minneapolis but 60 percent of the people who cops use violence against. The result is that there are more Black people in the criminal legal system today than there were slaves in 1850.

When I mentioned to a young man I mentor that if he attended protests he should wear a mask, he said he certainly would try, but he wanted me to know that, as a young Black man, he has a greater risk of dying from police violence than from the coronavirus. According to the National Academy of Science, 1 in 1,000 African-American men and boys will be killed by the police.

What African Americans need to realize equal justice under the law is for selective enforcement and police brutality to end. We need the police to stop killing us, to stop beating us up, to stop arresting us in situations in which they would not do those things to White people.

The Justice in Policing Act is a commonsense reform. Among other things, it requires cops to be trained in understanding racial bias.

In Minneapolis, as three officers crushed the life out of Mr. Floyd and another served as a lookout, somebody in the crowd said to the cops, "He's human, bro." These four officers did not treat Mr. Floyd like a human being. Too often, police work seems to enforce the dehumanization of people of color. Understanding the history and reality of racism in the United States will make our men and women in blue more effective officers.

In the end, this hearing is about the legitimacy and sustainability of our democracy. "No justice, no peace" is not a threat; it is simply a description of how the world works.

The multiracial, multigenerational demonstrations that have risen up all over the United States reflect the wonderful diversity of our great Nation and the potential of ordinary citizens to make our country live up to its highest ideals.

The Justice in Policing Act of 2020 heralds the urgency of transformation and the promise for all Americans of equal justice under the law.

[The statement of Mr. Butler follows:]

STATEMENT OF PROFESSOR PAUL BUTLER

ALBERT BRICK PROFESSOR IN LAW

GEORGETOWN UNIVERSITY LAW CENTER

Before the

UNITED STATES HOUSE COMMITTEE ON THE JUDICIARY

OVERSIGHT HEARING ON POLICING PRACTICES

June 10, 2020

Chairman Nadler, Ranking Member Jordan and members of the Committee: I am Paul Butler, a law professor at Georgetown University and a former federal prosecutor. For more than twenty five years I have researched and written about race and the criminal legal process. I am the author of many scholarly articles, published in leading journals including the law reviews of Georgetown, Harvard, Yale and Stanford, and two books, including *Chokehold: Policing Black Men*. As a federal prosecutor with the United States Department of Justice, I specialized in prosecuting corrupt federal law enforcement officers. I also served as a prosecutor in the District of Columbia, prosecuting misdemeanor street crimes. Thank you for the opportunity to testify today.

There has never, not for one minute in American history, been peace between black people and the police. And nothing since slavery – not Jim Crow segregation, not forced convict labor, not lynching, not restrictive covenants in housing, not being shut out of New Deal programs like social security and the GI bill, not massive resistance to school desegregation, not the ceaseless efforts to prevent African Americans from voting – nothing has sparked the level of outrage among African Americans as when they have felt under violent attack by the police. Most of the times that African Americans have set aside traditional civil rights strategies like bringing court cases and marching peacefully and instead have risen up in the streets, destroyed property and attacked symbols of the state has been because of something the police have done. Watts in 1965, Newark in 1967, Miami in 1980, Los Angeles in 1992, Ferguson in 2015, Baltimore in 2016, Charlotte in 2016, Minneapolis in 2020 – each of these cities erupted after the police killing an African American person. Of course unlawful violence is never acceptable - either as a misguided approach by a few to seeking change, or as an abuse of the power and the sacred trust we place in law enforcement officers.

The problem is not mainly bad apple cops. Police officers are no more racist than law professors and politicians, or any other occupation. Cops have some of the most difficult jobs in the

nation and most serve with honor and valor. I have on many occasions, including when I have had to summon officers for help, reflected that I do not have the courage to be a police officer.

Still virtually every objective investigation of a U.S. law enforcement agency finds that the far too often, police, *as policy*, treat African Americans with contempt. In New York, Baltimore, Ferguson, Chicago, Los Angeles, Cleveland, San Francisco, and many other cities, the U.S. Justice Department and federal courts have stated that the *official* practices of police departments include violating the rights of African Americans. The police kill, wound, pepper spray, beat up, detain, frisk, handcuff, and use dogs against blacks in circumstances in which they do not do the same to white people. It is the moral responsibility of every American, when armed agents of the state are harming people in our names, to ask why.

In the past two weeks we have seen many acts of bravery, forbearance and grace by police officers. Cops in New York City took a knee, in a sign of solidarity with the people who marched. In Atlanta, officers exchanged fist bumps with protestors. Houston Police Chief Art Acevedo arranged for an honor guard to accompany George Floyd's body when it returned to his city.

Unfortunately we have also witnessed, these past two weeks, police officers commit deplorable acts of violence against citizens who they have sworn to serve and protect. In New York, officers drove two large police vehicles into a crowd of protestors. In Atlanta, police broke the windows of a car, dragged two college students from the vehicle, and shot them with a stun gun. In Buffalo, a police officer assaulted a 75 year old man by knocking him to the ground but what happened next was worse. When two officers were disciplined for that criminal conduct, 57 other officers quit the squad in protest. President Obama's Task Force on 21st Century Policing decried the warrior mentality present among too many law enforcement officers. In Buffalo, the nation saw warriors on steroids.

When police officers treat citizens like an opposing force, African American and Hispanic people disproportionately bear the costs. Black people are approximately 20% of the population of Minneapolis but approximately 60% of the people who cops use violence against. According to the US Department of Justice Bureau of Justice Statistics, during traffic stops, African Americans are three times more likely than white people to be threatened or subjected to force. Almost 90% of the people stopped and frisked in New York City were black and Hispanic – even though officers were more likely to find contraband in white people who were searched.

The result, as Michelle Alexander observed in her groundbreaking book *The New Jim Crow*, is that there are more black people in the criminal legal system today than there were slaves in 1850. When I mentioned to a young man I mentor that, if he attended protests about the killing of George Floyd, he should wear a mask and practice social distancing to the extent possible, he said he certainly would try. But he also wanted me to know that as a young black man, he has a greater risk of dying from police violence than from the coronavirus. According to research published in the Proceedings of the National Academy of Science, 1 in 1000 African American men and boys will be killed by the police.

What African Americans need, to realize equal justice under the law, is for selective enforcement and police brutality to end. We need the police to stop killing us, beating us up, and arresting us in situations in which they would not arrest do those things to white people. The Justice in Policing Act of 2020 establishes some common sense reforms to accomplish these crucial objectives. In the brief time I have remaining, I will highlight three.

First, the Act establishes national standards on the use of deadly force, and requires officers to employ de-escalation techniques. There are 18,000 different police departments in the United States, and the problem is that right now there are 18,000 different ways of policing. To establish accountability and transparency among the men and women who are licensed to kill, basic standards

must be imposed. The Act requires federal officers to use deadly force only as a last resort, and to employ de-escalation techniques, and conditions grants to state and local law enforcement agencies on their establishing the same use of force standards.

Second, the Act removes some of the barriers that make it extremely difficult to bring criminal police officers to justice. Of the approximately 100-150 officers who have been charged with murder for using deadly force in the line of duty, fewer than 10 have been convicted of murder. Some others have been convicted of lesser offenses, but the majority have had charges dismissed or been found not guilty. The Act creates a grant program for state attorneys' general to create an independent investigation process for law enforcement misconduct or excessive use of force. It also reduces some of the barriers that have prevented federal prosecutors from charging officers with civil rights violations.

Third, the Act requires federal law enforcement officers to establish training to cover racial bias, implicit bias, procedural justice and the duty to intervene, and conditions federal funding to state and local police departments on the establishment of such training. In Minneapolis, according to the criminal complaints, as one officer pressed Mr. Floyd to the ground by his neck, another by his legs, a third by his back, and as a fourth officer acted as a look out, preventing any by-standers from rendering aid, one person in the crowd made a statement that should not have been profound, but in the circumstance, it was. That person said "He's human, bro." But those four officers did not treat Mr. Floyd like a human being. Too often police work seems to enforce the dehumanization of people of color. Understanding the history and reality of racism in the United States will make our men and women in blue more effective police officers.

One note of caution: far too often, police unions, including The Fraternal Order of Police ("FOP"), have effectively blocked reform. Police unions frequently stand in the way of progress with their rhetoric and with the special protections they win for officers in the collective bargaining process.

The president of the Philadelphia FOP called Black Lives Matter protestors “a bunch of rabid animals.” After a Cleveland officer killed twelve year old Tamir Rice, who had been playing with a toy gun, another FOP leader tweeted “Act like a thug, you’ll be treated like a thug.” In Chicago, when an officer was fired for shooting a black man named Laquan McDonald sixteen times, the local FOP hired him as a janitor. That officer was subsequently convicted of murder.

Police reform is about transparency and accountability. Police unions frequently resist those important goals by fighting to keep disciplinary records of officers secret. They often stand against common sense reforms like residency requirements. In Minneapolis, only 7% of officers actually live in the city they serve and protect. We know that officers are more effective crime fighters and community caretakers when they are our neighbors and friends.

Of course police officers deserve the same labor protections as other workers. Harvard Law School Professor Benjamin Sachs has suggested that one remedy might be to allow collective bargaining with regard to wages and benefits, but not on issues like use of force and police misconduct.

In the end, this hearing is about the legitimacy and sustainability of American democracy. “No justice, no peace” is not a threat. It is simply a description of how the world works. Some activists involved in the movement for black lives speak of their work as creating a “Black Spring,” similar to the Arab Spring movements that attempted to bring democracy to some Middle Eastern countries. The multi-racial, multi-generational demonstrations that have risen all over the United States reflect the wonderful diversity of our great nation, and the potential of ordinary citizens to, once again, make our country live up to its highest ideals. The Justice in Policing Act of 2020 heralds the urgency of transformation and the promise, for all Americans, of equal justice under the law.

Chair NADLER. Thank you, Mr. Butler.

Our next Witness is Benjamin Crump. Benjamin Crump is the founder and principal owner of Ben Crump Law. He is also currently representing George Floyd's family. Mr. Crump received his J.D. and B.A. from Florida State University.

Mr. Crump, you may begin.

STATEMENT OF BEN CRUMP

Mr. CRUMP. Thank you, Chair Nadler and distinguished Members of the Committee.

I know all the speakers have 5 minutes to speak, but I wish it was 8 minutes and 46 seconds, not as a symbolic gesture but as an actual, exact time reference of how long George Floyd literally begged—he literally narrated a documentary of his death, begging for his life, saying, “I can’t breathe,” and calling for his mama.

The death of George Floyd has galvanized the world and mobilized Americans to demand a more just system of policing, because it's become painfully obvious that what we have right now are two systems of justice: One for White Americans and another for Black Americans.

George is one in a long line of Black Americans who unjustly are killed at the hands of police or, in George's case, at the knee of the police, including Breonna Taylor, Pamela Turner, Botham Jean, Michael Brown, Stephon Clark, Eric Garner, Tamir Rice, Philando Castile, Terence Crutcher, Laquan McDonald, just to name a few. The list goes on and on. It is important, Mr. Chair, that we remember their names.

It is way past time that we revised the role of police to become peacekeepers and community partners. Of course, they must be prepared to protect themselves and the public in direct life-threatening situations, but these should be the exception and not the rule.

What we are witnessing throughout our country is not that. American as being tear gassed in the streets, hit with rubber bullets, shoved violently to the ground, cracking their skulls against the pavement, being bloodied with batons. For what? For demanding justice for Black Americans.

Our constitutional rights are under attack, and not in the shadows but in the broad daylight.

Changing the behavior of police and their relationships with people of color starts at the top. We need a national standard for policing behavior, built on transparency and accountability.

The only reason we know what happened to George Floyd is because it was captured on video. The advent of video evidence is bringing into the light what long was hidden. It's revealing what Black Americans have known for a long, long time: That it is dangerous for a Black person to have an encounter with a police officer.

Given the incidents that have led to this moment in time, it should be mandatory for police officers to wear body cams and should be considered obstruction of justice to turn them off. Like a Black box data recorder in an airplane, body cams replace competing narratives with a single narrative, the truth, with what we see with our own eyes.

Second, insist that police officers only use the level of force needed based on the level of threat actually posed by the circumstances.

We've seen way too many Black people shot in the back or unarmed Black people shot and killed or a handcuffed Black man, face down on the pavement, asphyxiated by a knee on his neck for 8 minutes and 46 seconds though he posed no threat at all.

Neck restraints were used by Minnesota police more than 200 times, resulting in suspects losing consciousness at least 44 times. Lethal restraints like chokeholds and strangleholds should be outlawed.

Finally, reform how qualified immunity applies to police officers. If officers know they have immunity, they Act with impunity. If officers know they can unjustly take the life of a Black person with no accountability, they will continue to do so. That's what you saw in the eyes of Derek Chauvin, with his hand casually tucked in his pocket as he extinguished the life of George Floyd.

Accountability requires that officers face public consequences for unjustly taking a life or brutalizing a fellow American that they are sworn to protect and serve.

Too often, many officers are silent in the face of evil because of the "blue shield," the brotherhood of police officers which fosters systematic racism and abuse. There's a higher brotherhood that God calls us to honor, the brotherhood of mankind, Black and white. That's what we're witnessing in the diversity of the protesters filling our streets even today, and that's the brotherhood our police officers must honor above all.

The Founding Fathers knew they had not built an infallible system, a faultless union, but they did task us with the perpetual duty to aim for it: A more perfect union, of justice, liberty, resilience, hope, and compassion. We have to do better, and we must strive to live up to those American ideals. We are better than this.

Chair, Members of the Committee, you have the power to make this moment in history the tipping point so many of us have been waiting for, fighting for, and praying for, that Americans are marching for. You have the power to make sure that George Floyd's death is not in vain.

I've been asking for us to take a breath. First, the breath that George Floyd was denied. Second, take a breath to consider how we use police in our society and how we hold them accountable for the tremendous power we place in their hands. Third, to take a breath to consider how we create a more perfect union that extends equal protection and equal justice to people of color. Finally, to take a breath for George Floyd, because his life mattered and Black lives matter.

I thank you, Chair.

[The statement of Mr. Crump follows:]

“Oversight Hearing on Policing Practices and Law Enforcement Accountability”

Thank you Chairman Nadler and distinguished members of the Committee:

The death of George Floyd has galvanized the world and mobilized Americans to demand a more just system of policing, because it's become painfully obvious that what we have right now are two systems of justice -- one for white Americans and a different one for black Americans. George is one in a long line of black Americans unjustly killed at the hands -- or a knee -- of police, including Breonna Taylor, Pamela Turner, Botham Jean, Michael Brown, Stephon Clark, Eric Garner, Tamir Rice, Philando Castile. It's important that we remember their names.

It's way past time that we revised the role of police to be peacekeepers and community partners. Of course, they must be prepared to protect themselves and the public in direct, life-threatening situations, but these should be the exception and not the rule.

What we are witnessing throughout our country is not that. Americans are being tear gassed in the streets, hit with rubber bullets, shoved violently to the ground cracking their skulls against the pavement, beaten bloodied with batons. And for what? For demanding justice for black Americans. Our constitutional rights are under attack - and not in the shadows, but in broad daylight.

Changing the behavior of police and their relationship with people of color starts at the top. We need a national standard for policing behavior built on transparency and accountability. The only reason we know what happened to George Floyd is because it was captured on video. The advent of video evidence is bringing into the light what long was hidden. It's revealing what black Americans have known for a long time -- that it's dangerous for a black person to have an encounter with a police officer.

Given the incidents that have led to this moment in time, it should be mandatory for police officers to wear body cams and should be considered an obstruction of justice to turn them off. Like a black box data recorder in an airplane, body cams replace competing narratives with a single narrative -- the truth.

Second, insist that police officers only use the level of force needed based on the level of threat actually posed by the circumstances. We've seen way too many black people shot in the back or unarmed black people shot and killed, or a handcuffed black man face down on the pavement asphyxiated by a knee on his neck for 8 minutes and 46 seconds though he posed no threat at all. Neck restraints were used by Minnesota Police more than 200 times, resulting in suspects losing consciousness at least 44 times. Lethal restraints like chokeholds and strangleholds should be outlawed.

Finally, reform how qualified immunity applies to police officers. If officers know they have immunity, they act with impunity. If officers know they can unjustly take the life of a black person with no accountability, they will continue to do so. That's what you saw in the eyes of Derek

Chauvin, with his hand casually stuck in his pocket as he extinguished the life of George Floyd. Accountability requires that officers face public consequences for unjustly taking a life or for brutalizing a fellow American that they are sworn to protect and serve.

Too often, many officers are silent in the face of evil because of the blue shield -- the brotherhood of police officers which fosters systemic racism and abuse. But there's a higher brotherhood that God calls us to honor -- the brotherhood of mankind -- black and white. That's what we're witnessing in the diversity of protestors filling our streets. And that's the brotherhood our police officers must honor above all else.

The founding fathers knew they had not built an infallible union, but they did task us with the perpetual duty to aim for it: "a more perfect union" of justice, liberty, resilience, hope, and compassion. We have to do better and we must strive to live up to those American ideals. We are better than this. Chairman, members of the committee, you have the power to make this moment in history the tipping point so many of us have been waiting for, praying for -- that Americans are marching for. You have the power to make sure George Floyd's death is not in vain.

I've been asking for us all to take a breath - the breath that George was denied. Take a breath to consider how we use police in our society and how we hold them accountable for the tremendous power we place in their hands. Take a breath to consider how we create a more perfect union that extends equal protections to people of color. Take a breath for George.

Thank you.

Chair NADLER. Thank you, Mr. Crump.

Ron Davis is the legislative affairs Chair of the National Organization of Black Law Enforcement Executives, or NOBLE. From 2013–2017, Mr. Davis directed the Office of Community Oriented Policing Services at the U.S. Department of Justice. In 2014, he was appointed Executive Director of the President’s Task Force on 21st Century Policing.

Mr. Davis received his B.A. from Southern Illinois University and completed the Senior Executives in State and Local Government Program at Harvard University Kennedy School of Government.

Mr. Davis, you may begin.

STATEMENT OF RON DAVIS

Mr. DAVIS. Thank you, Mr. Chair.

Good morning, Mr. Chair and Ranking Member Collins. I want to thank you for hosting this hearing. I come to you today on behalf of NOBLE. On behalf of our president, Police Chief C.J. Davis, we want to again thank you for allowing us to testify today.

As you mentioned, before serving as the Director of the COPS Office, I spent close to 30 years as a police officer, 20 years in Oakland and about 9 years as the police chief in the city of East Palo Alto.

I do want to say, NOBLE joins the Nation in condemning the heinous killing of Mr. Floyd, and we offer our heartfelt condolences and prayers to the Floyd family. I want to thank Mr. Floyd this morning for his powerful testimony and strong recommendations.

Yet, Mr. Chair, with no debate, we know George Floyd is just one in a long list of tragedies. We also know that the vast majority, as the reverend had mentioned, of police officers in this country are decent, honorable, committed men and women to service.

We know that the core problem of policing is not just about a few bad apples. I think too often we focus on the bad apples, and we need to acknowledge, Mr. Chair, that the problem in policing today is the continued use of draconian policing systems that still suffer from structural racism and severe institutional deficiencies. Under these systems, even good cops have bad outcomes, and bad cops and racist cops can operate with impunity.

Most of the systems that we are talking about that determine why we police, how we police, where we police, were constructed in the 1940–1960s, and they were actually constructed to enforce Jim Crow and other discriminatory practices.

In other words, this Committee should acknowledge—the Nation needs to acknowledge—that our policing systems are, in fact, not broken; they are doing what they were actually designed to do.

To understand this hard truth is to recognize that this system cannot be reformed; it must be reconstructed.

It also means that the demand for policing reform should not require an indictment against all police. In fact, it is our hope that our brothers and sisters who wear the badge will not only embrace this moment but will join this movement and become a part of the change that is needed.

We've seen police chiefs and officers walk with crowds and take a knee, and that is great. We now need them to take a stance and stand with the community as we reconstruct this unjust system.

The first step in reconstructing a new system is to strengthen police accountability and trust with our communities. This, in fact, was the core charge that President Obama gave the Task Force on 21st Century Policing, and, until 2015, the task force provided recommendations for police agencies and their communities to advance this.

Unfortunately, the Trump Administration not only tossed this report away, but it also actually retreated backwards to the so-called "law and order" days—days in which the mass arrest of men of color was this Nation's crime strategy.

We need to abandon that dangerous rhetoric, we need to abandon the idea of "law and order," and we need to embrace a "peace and justice" mantra that enhances public safety and assures justice for all.

Mr. Chair, we need the support of the Federal Government to further advance the recommendations from President Obama's task force. We also need to make some immediate actions.

In the interest of time, I will say that we support the eight bullets that Vanita Gupta outlined, with the Leadership Conference on Civil Rights. I won't go over those eight bullets since she's already given the testimony.

We also believe that we need to immediately rescind the Sessions memo so that the Department's Civil Rights Division, the Department of Justice's Civil Rights Division, can immediately restore the use of consent decrees where appropriate.

We believe that we should restore programs within the COPS Office that allows police departments to do voluntary reviews so that they can identify deficiencies in their operating systems and structural programs. We believe that all police agencies should obtain some type of accreditation before receiving Federal funds.

We also need the Federal Government's help in supporting local and State efforts. In the absence of this DOJ, it's been the States that have been stepping up. So, for example, the State of California and Governor Gavin Newsom passed Assembly Bill 392, the most comprehensive use-of-force reform bill in the Nation.

Last week, Governor Newsom also ordered the State to stop teaching the carotid hold, or carotid restraints, and chokehold and made clear that he would support any legislation that prohibits those techniques.

In Illinois, former Attorney General Lisa Madigan and current Attorney General Kwame Raoul used their office to negotiate with the city of Chicago to adopt the most comprehensive consent decree in the Nation's history.

In California, Attorney General Becerra used his office to conduct pattern-of-practice investigations, provide organizational assessments and use-of-force reviews.

Most recently, in Minnesota, Attorney General Keith Ellison worked with Department of Safety Commissioner John Harrington and used their office to convene a task force, a working group, of diverse people to address the issue of police deadly encounters. Now, unfortunately, the group released their report just weeks

after Mr. Floyd was killed so that it was too late to impact that tragedy, but it does provide a roadmap for Minnesota as it moves forward.

These are all activities that the Trump Administration has walked away from and these are all activities that are sorely needed if we're going to address police reform.

Chair NADLER. Thank you, Mr. Davis.

Mr. DAVIS. In sum, the recommendations that have been outlined, the ones I just mentioned, the ones that Ms. Gupta outlined, the ones that you heard today, are all contained in the Justice in Policing Act. We appreciate Congresswoman Bass, yourself, Mr. Nadler, and all the cosponsors for introducing this comprehensive bill. NOBLE looks forward to working with this body as you move the bill forward.

Chair NADLER. Thank you.

Mr. DAVIS. As we proceed, there are immediate steps that I believe police leaders and departments can take. I want to basically quickly go over five points that I would ask my colleagues—

Chair NADLER. Thank you very much. Can he hear me?

Mr. DAVIS. —police chiefs and police leaders to follow. These are the steps that we can do to start the race to reconciliation that was mentioned earlier that we have yet to do and to start the reimagining policing process.

The first step is to publicly acknowledge the historical and current—too often we just say “historical”—but the historical and current police abuses that occur and its impacts on communities of color. The more police chiefs acknowledge this and do so publicly, the more we can start our reconciliation.

Second, the acceptance of responsibility to change our policing system and its culture.

Third, I think it is time for all police officers to reaffirm their oath of office to the Constitution and to the core principles of our democracy. I say that because we need to be reminded that the oath is to the Constitution, not to each other, not to the police department, not to the police union, but to the Constitution and our democracy.

Fourth, collaborate with community to redefine and reimagine policing, including the development of reinvestment strategies that rely less on police and more on community-based safety programs.

As we debate about the departments, I think we can have some core agreement that we definitely need to invest in the social programs, the community-based programs that go more to the core problems of crime—

Chair NADLER. Mr. Davis, your time has expired.

Mr. DAVIS. Thank you.

[The statement of Mr. Davis follows:]

Statement of Mr. Ronald L. Davis

Chair, Legislative Committee
National Organization of Black Law Enforcement Executives
(NOBLE)

Former Director
United States Department of Justice
Office of Community Oriented Policing Services (COPS)

Retired Chief of Police
City of East Palo Alto, California

Before the

United States House Committee on the Judiciary
Hearing on

“Policing Practices and Law Enforcement Accountability”

June 10, 2020

Good morning Committee Chairman Nadler, Ranking Member Collins, and distinguished members of the United States House Committee on the Judiciary. I bring you greetings on behalf of National President Cerelyn J. Davis, the Executive Board, and all members of the National Organization of Black Law Enforcement Executives, also known as (NOBLE).

My name is Ronald Davis and I am a life-member of NOBLE and chair of its' Legislative Committee. I also had the honor of serving in the Obama Administration as the Former Director of the Department of Justice Office of Community Oriented Policing Services (COPS) and the Executive Director of the President's Task Force on 21st Century Policing. I am a career cop who served close to 30 years of policing experience: 20 years in Oakland and nine years as police chief in East Palo Alto, CA. And as evident with my appearance today, I am a Black man and father.

It is an honor for NOBLE to provide testimony on the topic of "Policing Practices and Law Enforcement Accountability." NOBLE joins the nation in condemning the heinous murder of Mr. George Floyd in Minneapolis and we are concerned and alarmed by the recent deaths of Breonna Taylor and Ahmaud Arbery. We offer our heartfelt condolences and prayers to each of their families.

Yet, we know these names represent just a few in a much longer list of tragedies. Though it is very important that the Minneapolis officers responsible for the murder of Mr. Floyd are prosecuted to the fullest extent of the law; we know it is also important to recognize that such tragedies are not exceptions to our policing systems, they are too often an inevitable manifestations of them. We must start with this important fact and hard truth because we cannot address a problem if we fail to properly identify.

We know it is almost impossible to move forward with any meaningful changes and progress while Blacks are still being held down by the unreconciled troubles of our past. Or, as Nelson Mandela has stated, "Only the truth can put the past to rest." So, today let us deal in the hard truths so that we can start the racial reconciliation this nation has purposely avoided. Let us embrace truth so we reconstruct a policing system that reinforces the core principles of our democracy. And lets use the truth to change that reality that, even today, there remain two societies: one white and one black, as identified by Kerner Commission over 50 years ago

We know that the core problems with policing are not limited to just a few bad apples. In fact, we believe the vast majority of police officers in this country are decent and honorable men and women committed to service.

Another fact we should not forget, deny or ignore. The problem is the continued use of draconian policing systems that still suffer from structural racism and institutional deficiencies. Under these systems even good cops have bad outcomes, and bad and racist cops operate with impunity.

Most of the systems that determine why we police, how we police, and where we police were constructed in the 1940's, '50s and '60s to enforce Jim Crow and other discriminatory laws. In other words, our policing systems are not broken; they are doing what they were designed to do. To understand this hard truth is to recognize the system cannot just be reformed; it must be reconstructed. It also means that the demand for policing reform should not require an indictment against all police. It is our hope that our brothers and sisters who wear the badge will embrace this moment and join this movement, and become part of the change that is needed. We've seen many police take a knee over the past week. And that's great. We now need you to take a stance with the community and work to reconstruct an unjust system.

Our challenge here today is not to re-litigate the causes of our dysfunctional policing and criminal justice system. We, as a nation, should stipulate to these facts and invest our time focusing on implementing solutions.

What we need now is action, and NOBLE members are ready to act and live up to our motto: "Justice by Action."

NOBLE believes the first action step in reconstructing a new policing system is to take immediate steps in strengthening police accountability and building trust with communities. This was the core task President Obama charged the President's Task Force on 21st Century Policing in 2015. The task force produced a seminal document with recommendations that provide guidance for police agencies and their communities.

Unfortunately, the Trump Administration not only tossed this report, it has actually taken steps to reverse the progress that was being made and return to the so-called "law and order" days in which the mass arrests of men of color was this nation's crime strategy. We need to abandoned the dangerous "law and order" rhetoric of the '90's and embrace a "peace and justice" mantra that truly enhances public safety and ensures justice for all. We must immediately revive the task force report and its recommendations. This requires leadership at every level of government.

Mr. Chairman, we need the support of the federal government to further advance those recommendations.

We also need to make immediate changes to specific policies and practices pertaining to the police use of force. To this end, NOBLE supports the following recommendations provided by the Leadership Conference for Civil and Human Rights (LCCHR):

- Require a federal standard that use of force be reserved for only when necessary as a last resort after exhausting reasonable options, and incentivize states through federal funding mechanisms to implement this standard;
- Prohibit all maneuvers that restrict the flow of blood or oxygen to the brain, including neck holds, chokeholds, and similar excessive force, deeming the use of such force a federal civil rights violation;
- Prohibit racial profiling, and require robust data collection on police-community encounters and law enforcement activities. Data should capture all demographic categories and be disaggregated;
- Prohibit the use of no-knock warrants, especially for drug searches;
- Give DOJ greater authority to prosecute individuals officers for civil rights violations. Change the 18 U.S.C. Sec. 242 mens rea requirement from willfulness to recklessness, permitting prosecutors to successfully hold law enforcement accountable for the deprivation of civil rights and civil liberties;

- Develop a national public database of police misconduct that would cover all police agencies in the United States and its territories, similar to the International Association of Directors of Law Enforcement Standards and Training's National Decertification Index, which would compile the names of officers who have had their licenses revoked due to misconduct, including but not limited to domestic violence, sexual violence, assault and harassment, criminal offense against minors, excessive use of force, violation of 18 U.S.C. § 242; perjury, falsifying a police report or planting and destroying evidence, and deadly physical assault; as well as terminations and complaints against the officers; and
- End the qualified immunity doctrine which prevents police from being held legally accountable when they break the law. Qualified immunity, a defense that shields officials from being sued, has been interpreted by courts so broadly that it allows officers to engage in unconstitutional acts with impunity.
- We generally agree with LCCHR in their recommendation for a federal standard in the use of deadly force, but we do add specificity for what we think should be included in all use of force policies:
 - o Establish the sanctity of life as an organizational priority.
 - o Require that deadly force be necessary and proportionate.

- o Mandate de-escalation training for all officers and require de-escalation of part of a continuum of force.
- o Prohibit the carotid restrict, chokeholds and all physical restraint maneuvers on or above the neck and any physical act that restricts the flow of blood or oxygen to the brain.
- o Mandatory requirement that officers render immediate medical aid to anyone who forced was used.
- o Mandatory requirement that officers intervene where physical force is being applied to either stop or attempt to stop another officer when force is being inappropriately applied or is no longer required.
- o Mandatory requirement that officers immediately report any misconduct observed to their supervisor.
- Although we do not support an outright ban on military equipment as recommended the LCCHR, we do recommend the reinstatement of the restrictions and oversight mechanisms identified during the Obama Administration.

Additionally, NOBLE proposes the following:

- Rescind the “Sessions” memo pertaining to consent decrees and restore programs that provide organizational assessments and after action evaluations/reports for agencies that request such assistance.

- Require all police agencies to obtain national certification to receive federal funding.
- Continued appropriations for the Department of Justice Community Relations Service directed towards programs to improve community and police relations.
- Enact legislation requiring all police agencies collect and provide the federal government use-of-force, vehicle and pedestrian stops, and arrests data.

We also need the federal government to support leadership at the state level. When it comes to police accountability, the Department of Justice has been absent. However, many state leaders have filled the gaps. For example, the state of California and Governor Gavin Newsom passed Assembly Bill (AB) 392 - the most comprehensive use force reform bill in the nation. Last week, Governor Newsom ordered the state POST to stop training on carotid restrains and choke holds, made clear his support of legislation prohibit these techniques.

In Illinois, former Attorney General Lisa Madigan and current AG Kwami Raoul used their offices to work with the city of Chicago to adopt the most comprehensive consent decree in history.

An action the Trump administration backed away from despite the clear findings of a pattern or practice of Constitutional violations identified by the DOJ Civil Rights Division.

In California, Attorney General Becerra has used his office to conduct pattern and practice investigations, provide voluntary organizational and use of force reviews. Again, support the Trump Administration walked away from this type of support. And in Minnesota, Attorney General Keith Ellison and Department of Public Safety Commissioner John Harrington used their offices to convene a diverse working group on police deadly encounters. The group released their report in February and as Minnesota moves forward, they have roadmap in which to start.

In sum, the recommendations we have outlined are also contained in the “Justice in Policing Act” co-sponsored by Congresswomen Karen Bass and Chairman Nadler. NOBLE supports this legislation and looks forward to working the Congress as the Bill moves forward.

As we proceed forward with this landmark legislation, there are immediate steps police leaders and departments can take as a first step in racial reconciliation and in reimagining policing:

1. Publicly acknowledge historical and current police abuses and its impact on communities of color.
2. Acceptance of responsibility to change policing systems and its culture.
3. Have all officers reaffirm their Oath of Office to the Constitution and the core principles of our democracy.
4. Collaborate with the community to re-define and reimagine policing.
 - o Define the role of police in our society
 - o Stop the over-reliance of police to address social issues
 - o Identify what activities police should and should not be engaging in
 - o Develop reinvestment strategies
 - o Dismantle existing operational systems and develop new (evidence-based) systems in:
 - Recruitment and hiring
 - Training
 - Supervision
 - Discipline and accountability
 - Civilian Oversight
 - Community Policing & Crime reduction strategies
 - Racial disparities
5. Embrace and adopt the recommendations of President Obama's Task Force on 21st Century Policing.

In closing, I would also like to remind this committee and the American people that the issue of policing reform cannot be disconnected from the discussions around COVID-19 and the next stimulus package. Without support from the federal government, the budget cuts that local and state governments will be forced to make will hinder all criminal justice reform efforts, stall any efforts to reinvest in community-based programs, maintain existing inequities, and further expose the open wound of our racial tension that has yet to be treated. We will again be sitting on a powder keg waiting for the next tragedy to spark an explosion.

On behalf of NOBLE, I thank you for supporting law enforcement and our ability to maintain public safety while acknowledging the pressing need to address the issues of police accountability and building trust between police departments and the communities they serve.

Thank you, Mr. Chairman.

Chair NADLER. Mr. Davis, thank you for your testimony. Your time has expired.

Our next Witness is Daniel Bongino. Daniel Bongino has served with both the New York Police Department and the United States Secret Service. He is also a best-selling author and host of "The Dan Bongino Show" podcast.

Mr. Bongino has an MBA from Penn State University and both an M.A. and B.A. from the City University of New York.

Mr. Bongino, you may begin.

STATEMENT OF DANIEL BONGINO

Mr. BONGINO. Mr. Chair, Ranking Member Jordan, I deeply appreciate the opportunity to speak on this critical issue.

Ms. Underwood Jacobs, Mr. Floyd, deeply sorry for your loss. I can only hope you take some solace in the justice that we all pray is to come. I mean that. That was a tough video to watch, for all of us.

Police Officer Dan O'Sullivan, he was a friend of mine. We went through the police academy together. Sadly, we lost touch when we graduated, so we were both assigned to separate precincts, different areas of the city of New York.

Dan and I with a briefly reunited in 1998, but it was no joyous occasion. I was reunited with Dan in a hospital in Queens, where he was hospitalized with devastating injuries after pulling over, off duty, to assist a driver in a critical emergency situation. He was hurt, badly.

Dan was the very essence of a public servant. Dan always put himself last, while putting his commitment to the safety and security of the public he pledged to serve always first. That was the Dan I knew.

During my employment with both the NYPD and the United States Secret Service, I had the honor and profound privilege of working with agents and police officers who had committed themselves to a higher cause. Just like Dan, I met so many of these committed public servants that, sadly, I can't even recall all their names anymore.

These are good men and women. Yes, as with any profession, there are officers, no question, who aren't suited for the job. Some will cause trouble, sometimes worse. We've seen that. In my experience, this is rare and becoming rarer.

The special agents I worked with and remain friends with to this day in the Secret Service joined Members of the NYPD and New York City Fire Department on that tragic day of September 11, 2001. Do you know what they did? They sprinted into those burning buildings and personally escorted people out. As we all know, those buildings collapsed, taking many of those brave NYPD and FDNY souls with them. Those brave souls were running into the buildings; everyone else was evacuating.

These are the types of people I was honored and deeply privileged to work with. Public safety came first. Everything else came second, sometimes even their own families.

The "defund the police" movement will target these heroes. They are the police, these people. It's not some amorphous mass that will be affected. It's real heroes, in real-time, right now.

Removing these heroes from your communities and my community will do nothing but ensure chaos and destruction. Police officers are the front lines, putting themselves between the evildoers among us and the honest, hardworking Americans just yearning for some security and prosperity and a small slice of Americana.

We can and should commit to police accountability, there's no question about that. We can do it without shredding the thin wall between civilization and chaos.

There are few jobs in the country as stressful as policing. I receive an email or a text a few times a year notifying me about the death or injury of a police officer I knew, worked with, or knew someone I worked with. Imagine if that was happening at your job. Think about that, just for a minute. God forbid you found out a co-worker of yours was killed or injured in the line of duty, in the course of doing their job. You didn't just get the text; you got this text a couple times a year. That's policing. That's what they do. They risk their own lives for yours.

I'll say in closing, I spoke at an event for police officers years ago, and a spouse of one of these heroes said this. She said, "The most wonderful sound in the world for the spouse of a police officer is the sound of Velcro at night. You may be saying, why Velcro? Because it's how a police officer's body armor is secured to their bodies. When that body armor comes off and that sound echoes in their ears, the families of these heroes know that they're finally home safely."

I ask you, please, with the greatest of respect and humility, please stop this "defund the police" abomination before someone gets hurt.

Thank you for your time.

[The statement of Mr. Bongino follows:]

TESTIMONY OF DANIEL BONGINO
FORMER NEW YORK POLICE OFFICER,
FORMER US SECRET SERVICE AGENT
BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY
ON
“OVERSIGHT HEARING ON POLICING PRACTICES AND LAW
ENFORCEMENT ACCOUNTABILITY”
June 10, 2020

Police Officer Dan O'Sullivan was a friend of mine. We went through the Police Academy together but we lost touch when we graduated, as we were assigned to separate precincts. Dan and I were briefly reunited in 1998. But it wasn't a joyous occasion. I was reunited with Dan in a hospital in Queens where he was hospitalized with devastating injuries after pulling over, while off-duty, to assist a driver in an emergency situation. Dan was the very essence of a public servant. Dan always put himself last, while putting his commitment to the safety and security of the public first.

During my employment with both the New York City Police Department, and the United States Secret Service, I had the honor and privilege of working with agents and police officers who had committed themselves to a higher cause. Just like Dan. I met so many of these committed public servants that, sadly, I can't even recall all of their names. These are good men and women. Yes, as with any profession, there are officers who aren't suited for the job and who cause trouble, and sometimes worse. But, in my experience, this is rare and becoming rarer.

Special agents I worked with, and remain friends with, in the US Secret Service joined members of the NYPD and NY City Fire Department on that tragic day, September 11, 2001 and sprinted into those burning buildings and personally escorted people out. The buildings collapsed, as we all know, taking many of those brave NYPD and FDNY souls with them. Those brave souls were running into the buildings, while everyone else was evacuating. These are the types of people I was honored and privileged to work with. Public safety first, EVERYTHING else is second.

The defund the police movement will target these heroes. They ARE the police. It's not some amorphous mass that will be affected, it's real heroes, in real time. Removing these heroes from communities will do nothing but ensure chaos and destruction. Police officers are the frontlines, putting themselves between the evil-doers among us, and the honest, hard-working Americans yearning for security and prosperity.

We can, and should, commit to police accountability without shredding the thin wall between civilization and chaos. There are few jobs in the country as stressful as policing. I receive an email or a text a few times a year notifying me about the death or injury of a police officer I knew or worked with. Imagine if that was happening at your job. God forbid you found out that co-workers of yours were killed or injured in the course of doing their jobs. And you received these messages multiple times each year. That's policing. That's what they do. They risk their own lives for yours.

I'll say in closing - I spoke at an event for police officers years ago and a spouse of one of these heroes said this, "the most wonderful sound of the world for a spouse of a police officer is the sound of Velcro at night." Why Velcro? Because it's how a police officer's body armor is secured to their bodies. And when the body armor comes off, and that sound echoes in their ears, the families of our heroes know that they're home safely.

Chair NADLER. Thank you, Mr. Bongino.

Our next Witness is Phillip Goff. Phillip Goff is the co-founder and President of the Center for Policing Equity. He also serves as the inaugural Franklin A. Thomas Professor in Policing Equity at John Jay College of Criminal Justice.

Dr. Goff received his Ph.D. and M.A. from Stanford University and an A.B. from Harvard University.

Dr. Goff, you may begin.

STATEMENT OF PHILLIP GOFF

Mr. GOFF. Thank you, Chair Nadler, Ranking Member Jordan, and Members of the House Judiciary Committee.

[Inaudible] I want to say that we mourn with you.

To Mr. Floyd, I want to thank you, especially, for your powerful witness in front of this body and the entire country. I offer my deepest condolences for the circumstances that made your presence here necessary. I want to say that your words have moved a Nation that was already mourning with you.

To everyone gathered, it is my honor to be back before the Committee to provide testimony on policing practices and law enforcement accountability.

My background and training are in behavioral science. I am the inaugural Franklin A. Thomas Professor in Policing Equity. I was a witness for the President's Task Force on 21st Century Policing; a member of the National Academy of Sciences' Committee that issued a consensus report on proactive policing. I was one of three leads on the recently concluded Department of Justice-funded National Initiative for Building Community Trust and Justice.

I am likely best known for my work with the Center for Policing Equity, the leading research and action organization focused on equity in policing. My testimony today is in that capacity.

CPE maintains the National Science Foundation-funded National Justice Database, which we understand is the largest collection of police behavioral data in the world. Our work focuses on combining police behavioral data, psychological survey data, and data from the U.S. Census to estimate not just racial disparities in police outcomes, such as stops and use of force, but the proportion of those disparities for which law enforcement are actually responsible and can do something about.

I have to say that what we have seen in the streets of the United States over the past 2 weeks nearly defies description. Some have called it massive protest; others have called it a riot; others have called it a revolution. What I am confident in is that what we have seen has been larger than the incident that sparked collective outrage and is still tearing at the fabric of our democracy.

What has spilled out onto the streets of this Nation is even larger than our grief at the brutal extension of George Floyd's life and the life of 1,000 citizens per year killed by police, a number that has not changed significantly since newspapers began cataloguing those numbers in 2015.

What we are seeing on the streets of the United States is a "past due" notice for the unpaid debt owed Black people for 400-plus years. If the responses to this moment are not proportional to that

debt, I fear we will continue to pay it, with interest, again and again and again.

Turning to the complex issue of police reform, I applaud the work of Chair Nadler and Congresswoman Bass in putting forth a comprehensive proposal to rethink how we best hold law enforcement accountable to the ideal of equality. The Justice in Policing Act of 2020 contains a number of critical reforms, including banning neck restraints and creating a national registry of police misconduct.

In my capacity at CPE, however, I want to spend a moment focusing on what science says about bias in policing. I feel it's important to set a baseline, especially with all the false information circulating in the media, given the general vacuum in the ecosystem on evidence in this area.

First, there is no doubt that black, Native, and Latinx people in this country have more contact with law enforcement than do White people. There's also relative agreement that where there are fewer public services—so fewer drug treatment, mental health, job training programs—law enforcement has more contact with residents.

There is evidence of racial bias in who is contacted by police and who is targeted for force. However, it is also the case that, clearly, not all the disparities we see are from police policy or behavior. It is some but not all.

Given this understanding of bias in policing, what are we to do? As we've already heard today, the most recent debate is between institutional reform and defunding the police.

While there is no quantitative research literature on abolishing policing, there are reasons to believe that many within Black communities are not fully aligned with this vision. Historical and polling results reveal that Black communities support less biased and less deadly law enforcement more than eliminating it. With the mood of the Nation changing so quickly, so too may these attitudes.

Still, to the degree that a path forward involves using police budgets to invest in Black communities, the process must be led by evidence—evidence about what programs work, both in policing and in communities, and evidence about where cities can safely receive a higher return on their investment in community empowerment.

Regardless, there is no need to wait for a decision on police budgets to invest in our most vulnerable communities. Wherever the country lands on police budgets, we can all agree, the communities that have the resources to solve their own problems and do not need to call the police in the first place are safer communities that are better equipped to realize the American Dream. There is no reason to avoid this obvious truth, and there is no reason not to Act on it now.

As I previously mentioned, the Justice in Policing Act of 2020 contains the best Federal police reform package of the bills I have before this Congress, and CPE supports its passage.

Many of our partners in law enforcement—

Chair NADLER. Thank you.

Mr. GOFF. —the chiefs who are experts on public safety, support many of its provisions, especially the Federal ban on neck restraints and the implementation of a national registry of police offi-

cers who have been fired for misconduct. These reforms are long overdue, and such commonsense reforms should be enacted immediately.

Chair NADLER. Thank you very much. Thank you very—

Mr. GOFF. More specifically, and briefly, I want to emphasize—

Chair NADLER. Thank you.

Mr. GOFF. —the need for a national registry of police officers who've been fired for misconduct is a reform that will increase transparency and the public's trust in law enforcement agencies.

Chair NADLER. Thank you very much.

Mr. GOFF. Doctors and lawyers, those tasked with protecting life and liberty—as officers have to do both on their jobs every day—those, along with many other professions, are required to be licensed, and their employment data are shared across State lines by appropriate entities and in appropriate ways.

Chair NADLER. Thank you. Thank you, Dr. Goff. Your 5 minutes have expired.

[The statement of Mr. Goff follows:]

June 10, 2020
House Judiciary Committee
Testimony of Dr. Phillip Atiba Goff
Co-Founder and Chief Executive Officer
Center for Policing Equity

Chairman Nadler, Ranking Member Jordan, Members of the House Judiciary Committee, good morning. It is my honor to be back before this committee to provide testimony on policing practices and law enforcement accountability.

My background and training are in behavioral science. I am the Inaugural Franklin A. Thomas Professor in Policing Equity at John Jay College of Criminal Justice. I was a witness for the President's Task Force on 21st Century Policing, a member of the National Academies of Sciences committee that issued a consensus report on proactive policing, and was one of three leads on the recently concluded Department of Justice-funded National Initiative for Building Community Trust and Justice. I am likely best known in police reform circles, however, for my work as Co-Founder and CEO of the Center for Policing Equity (CPE), the largest research and action organization focused on equity in policing and my testimony today is in that capacity.

CPE maintains the National Science Foundation-funded National Justice Database, which we understand is the largest collection of police behavioral data in the world. Our work focuses on combining police behavioral data with psychological survey data and data from the U.S. Census to estimate not just racial disparities in police outcomes such as stops and use of force, but the portion of those disparities for which law enforcement are actually responsible and can do something about. The goal of our work is to provide a roadmap for law enforcement and communities towards better alignment between their shared values of equity and safety. Just as COMPSTAT provided a roadmap for measuring crime in order to reduce it, our work measures justice with the goal of promoting it.

What we have seen on the streets of the United States over the past two weeks defies description. Some have called it massive protest. Some have called it a riot. Others have called it a revolution. What I am confident is that what we have seen has been larger than the incident that sparked collective outrage and is still tearing at the fabric of our democracy. George Floyd's murder, filmed in slow motion, committed by officer Derek Chauvin and in front of three of officer Chauvin's colleagues was a tragedy deserving of righteous fury. So too were the murders of Breonna Taylor and Ahmaud Arbery that came to the nation's attention inside two weeks of the Floyd murder.

But what has spilled out onto the streets of this nation is even larger than our grief at the brutal extinction of the light of the thousand citizens per year killed by police—a number that has not changed significantly since newspapers began cataloguing those numbers in 2015. What we are

seeing on the streets of the United States is a past due notice for the unpaid debts owed to Black people for four hundred plus years. If the response to this moment is not proportional to that debt, we will continue to pay it—with interest—again and again and again.

So, before I discuss what science knows about race and policing, it is important for me to say as both a scientist of policing racial bias and a Black man, this country must make a full accounting of that debt, not only to heal the festering wounds of racial violence woven into our history of policing, but to render us a nation that is equal to its ideals. We have seen in the past several months a nation that has done big things. We've moved trillions of dollars in attempts to avert financial crisis, participated in one of the largest scale collaborative social protections in human history by simply staying home to try to save our neighbors, and demonstrated in the hundreds of thousands to demand reforms to the way we protect public safety. And we have done all of this while a deadly virus has stalked residents of this nation in numbers that exceed every other country in the world.

If we can do these things, then we can be honest about our history and what we owe to Black people.

Turning to the complex issue of police reform, I applaud the work of Chairman Nadler and Congresswoman Bass for putting forth a comprehensive proposal to rethink how we best hold law enforcement accountable to the ideal of equality. The Justice in Policing Act of 2020 contains a number of critical reforms, including banning neck restraints and creating a national registry of police misconduct. In my capacity at CPE, however, I want to spend a moment focusing on what science says about bias in policing.

What we know about race and policing is embarrassingly inadequate. The most recent National Academies of Sciences consensus committee—on which I sat—concluded that we knew shockingly little about bias in policing, and that there needed to be far more rigorous work on the topic. Still, there are some points of consensus that are worth laying out.

First, there is no doubt that Black, Native, and Latinx people have more contact with law enforcement than do White people. Measured in calls for service, stops, arrests, or use of force, marginalized communities—from stigmatized non-White groups to those struggling with poverty to those negotiating serious mental illness—experience more contact with law enforcement.¹ There is also relative agreement that where there are fewer public services (e.g., drug treatment and mental health clinics, job training programs, and even parks) law enforcement has more contacts with residents.²

¹ Davis, E. et al., [Contacts between police and the public, 2015](#), US DEPARTMENT OF JUSTICE. (October 2018).

² Weisburd, D., [Does Hot Spots Policing Inevitably Lead to Unfair and Abusive Police Practices, or Can We Maximize Both Fairness and Effectiveness in the New Proactive Policing?](#), UNIVERSITY OF CHICAGO LEGAL FORUM: Vol. 2016, Article 16. (2016).

But with that said, we do know a bit about how race shapes contact with the police. This comes to us primarily from two methods of study: so-called “hit-rate analyses” and regression analyses.

Hit-rate analyses reveal the percentage of searches that return contraband such as drugs or guns. If that percentage is lower for one group than another (e.g., lower for Blacks than for Whites), the common inference is that officers are stopping too many Black people and/or have a lower threshold of suspicion for Black people. This is suggestive of bias, although it is not conclusive. These types of analyses robustly reveal lower hit-rates for Blacks compared to Whites.³

Regression analyses, specifically hierarchical step-wise regressions of the type popularized by Gelman, Fagan, and Kiss in their analyses of the NYPD stop-question-and-frisk actions, attempt to predict how much police activity (e.g. stops or use of force) one can expect based on local demographics. In other words, the data would show how many people we might expect police would stop in Neighborhood X given Neighborhood X’s poverty and crime rate. In this way, it is possible to assess whether or not crime, poverty, and other neighborhood factors are sufficient to explain racial disparities in policing outcomes (e.g., stops or use of force). This literature demonstrates that neither crime nor poverty are sufficient to explain racial disparities in use of force,⁴ and in some limited geographic areas, it is not sufficient to explain racial disparities in stops.⁵ In other words, whether arguments about “Black-on-Black crime” are made in good faith or in bad faith, the research literature is fairly clear that the phenomenon is not sufficient to explain disparities in police enforcement actions.

In sum, there is evidence of racial bias in who is contacted by police and who is the target of police force. However, it is also the case that clearly not all the disparities we see are from police policy or behavior. Unfortunately, there are some who argue that “science has proven there is a lack of bias in policing.” I want to clearly state that this conclusion is not supported by the scientific research as I have said in previous testimony before this body.

Given this understanding of bias in policing, what are we to do?

³ Goel, S. et al., *Precinct or prejudice? Understanding racial disparities in New York City’s stop and frisk policy*, THE ANNALS OF APPLIED STATISTICS, 10(1), 365–394. (2016).

⁴ Goff, P., A., Lloyd, T., Geller, A., Raphael, S., & Glaser, J. (2016). The science of justice: Race, arrests, and police use of force. Retrieved from the Center for Policing Equity website: https://policingequity.org/images/pdfs-doc/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf.

⁵ Gelman, A. et. al., *An analysis of the New York City Police Department’s “stop-and-frisk” policy in the context of claims of racial bias*, JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION, 102(479), 813–823. (2007).

The most recent debate is between institutional reform and defunding the police. While there is no quantitative research literature on abolishing policing, there are reasons to believe that many within Black communities are not aligned with this vision. Historical and polling research reveal that Black communities do not favor eliminating law enforcement, they mostly want less biased and deadly law enforcement.⁶ But with the mood of the nation changing so quickly, so may this attitude.

Even police agree that they are ill-equipped to perform a number of services that currently fall to them. For example, underfunding of mental health resources often leaves police departments as the only state agents left to respond to serious mental health crises. No one thinks this is ideal, but often police are all communities have. Investment in community mental health resources is a logical solution for this specific problem, allowing police to focus on crime reduction.

Still, it is important that such reinvestments in our communities are performed responsibly. For instance, if one were to cut police personnel by 50%, there is no guarantee that the department will be less biased afterwards. In many cases, union contracts specify that the last hired are the first fired, which means younger officers—often less biased and better positioned to embrace department culture changes—will be first cut. Similarly, it is often community service programs that are cut before neighborhood patrols when budget cuts befall police departments, a process that ends the very programs that communities most value from their law enforcement agencies. To the degree that a path forward involves using police budgets to invest in Black communities, the process must be led by evidence. Evidence about what programs work—both in policing and in communities. And evidence about where cities can safely receive a higher return on their investment in community empowerment.

Regardless, there is no need to wait for a decision on police budgets to invest in vulnerable communities. Wherever the country lands on police budgets, we can all agree that communities that have the resources to solve their own problems—and do not need to call the police in the first place—are safer communities that are better equipped to realize the American dream. There is no reason to avoid this obvious truth. And there is no reason not to act on it. Now.

As I previously mentioned, the Justice in Policing Act of 2020 contains the best federal police reform package of the bills I have seen before this Congress, and CPE fully supports its passage. Importantly, this legislation enjoys broad support than civil rights advocates and legislators. Many of our partners in law enforcement—the Chiefs who are experts on public safety—support its provisions—especially, the federal ban on neck restraints and the implementation of

⁶ Hinton, E., Kohler-Hausmann, J., & Weaver, V. et al., [Did Blacks Really Endorse the 1994 Crime Bill?](#), THE NEW YORK TIMES. (April 13, 2016).

a national registry of police officers who have been fired for misconduct. These reforms are long overdue, and such a common sense reform should be enacted immediately.

Specifically, a national registry of police officers who have been fired for misconduct is a reform that will increase transparency and the public's trust in law enforcement agencies. Doctors and lawyers, along with many other professions, are required to be licensed and their employment data are shared across state lines by appropriate entities. Why should a police officer who has been terminated for cause be able to move to another state or jurisdiction without undergoing an appropriate background check? The creation of a national clearinghouse with a list of those officers who have been terminated will empower state and local governments to decide what standards they want to set for officer conduct and character. Without such a registry, many law enforcement agencies simply do not have the capacity to determine whether or not an officer was fired prior to seeking employment—and many, therefore, do not. These data will only be available to law enforcement agencies, and proper due process protections will be provided for police officers.

This is a unique moment in our history, where a diverse array of groups, ranging from protestors in the streets to civil rights organizations to law enforcement associations, all recognize that policing needs to be different after this moment than before it. Let's build on that momentum and create a better framework for the manner in which our public safety institutions operate in this country.

In the coming weeks and months, I look forward to working with you, communities demanding reform, and the law enforcement leaders sworn to protect them. In this moment, we have the opportunity to provide hope. I pray we take it. Thank you for the opportunity to testify, and I look forward to answering your questions.

Chair NADLER. Our next Witness is Marc Morial. Marc Morial is the President and CEO of the National Urban League. Mr. Morial also served as Mayor of New Orleans from 1994–2002. He received his J.D. from Georgetown Law School and his B.A. from the University of Pennsylvania.

Mr. Morial, you may begin.

STATEMENT OF MARC MORIAL

Mr. MORIAL. Thank you very much, Chair Nadler and Ranking Member Jordan, the Members of the Committee.

To Representative Bass, thank you for your incredible leadership on this issue.

First, we at the National Urban League strongly support the passage of the Justice in Policing Act.

To Mr. Floyd and Ms. Underwood Jacobs, I join in sharing our thoughts and our prayers with you on your losses. Your courage is admirable. Thank you very much.

Between 1882–1968—that’s an 86-year period—4,742 people, mostly black, were lynched in the United States. These murders were turned into public spectacles, with people being tortured, mutilated, and burned in front of hundreds of spectators mocking their deaths.

In 1922, the United States House of Representatives had the courage to pass a bill to make lynching a Federal crime. However, White supremacists in the United States Senate filibustered that bill and blocked 200 attempts to pass that bill—a blockage which continues to this day in the United States Senate.

Imagine, if in 1922 the Congress of the United States had demonstrated the courage to make lynching a Federal crime, how many of those 4,742 people would not have died?

Today, we look at most recent history, and we see, from 1954–1965, dozens of civil rights activists were murdered, including the four little girls at that Birmingham church in 1963.

This Congress, in 1964 and 1965, this Congress, with bipartisan majorities and the courage of a Southern President who had previously supported segregation, demonstrated the courage and the conviction to pass the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act.

Since 2013, when Trayvon Martin was killed in Florida, 1,291 Black people have been shot and killed by the police. Over 100 of them were unarmed.

Now, in 2020, as we stand just 6 years ago from the 250th anniversary of this Nation, before the eyes of the world, George Floyd was lynched on the streets of Minneapolis, Minnesota.

The world, from Hungary to New Zealand, to Australia, to Paris, to London, to big cities, small towns, every village, every hamlet, every neighborhood in this Nation, have risen up in mainly peaceful protests to simply say: Enough is enough. Enough is enough, and Black lives matter.

This Justice in Policing Act represents a bold and clear step forward, but an opportunity at a historic time in American history, as to whether this Nation’s elected representatives will hear the pain, hear the cries, hear the suffering, hear the outrage, and realize this is not the time for a de minimis, backroom, Washington political

compromise, that this is a moment for bold and courageous action and the type of action where, 20, 40, 60 years hence, history will ask, your children will ask, your grandchildren will ask: Where did you stand? Where did you stand?

This is a moment not of politics. This is not a moment of Black or white. This is a moment of morality. It's a moment of human decency.

This Act does a number of things. It bans some practices that we all know have to be banned: Chokeholds, no-knock warrants, racial profiling.

It creates a multitiered accountability system, some through the system of the courts, in both civil and criminal proceedings, and strengthens the hands of the Justice Department so that it can do its job.

Chair NADLER. Thank you, Mayor Morial.

Mr. MORIAL. It also suggests an accreditation program.

So, let me just say one last thing, Mr. Chair, if you'll indulge me, and I'll go back to what I said earlier.

I am asking this Congress, this body and the United States Senate, to recognize the gravity of this moment and the importance of this time and to stand with the people of this Nation to say enough is enough, Black lives matter.

Chair NADLER. Thank you, Mayor Morial.

We've now heard from all the Witnesses before the Committee. The Committee will now stand in recess for 45 minutes for lunch. As a matter of safety, there will be no eating in this room. The Committee will reconvene in 45 minutes. The Committee is in recess.

[Recess.]

Chair NADLER. The Committee will be in order.

We will now proceed under the 5-minute rule with questions. I will begin by recognizing myself for 5 minutes.

On May 25th, in the twilight of Memorial Day, Derek Chauvin of the Minneapolis Police Department held his knee to George Floyd's motionless neck and pressed his face to the pavement for 8 minutes and 46 seconds as Mr. Floyd pleaded for relief, repeating the words, "I can't breathe."

Mr. Floyd, I'm sure you've seen the video. Can you think of any reason why Officer Chauvin would need to hold his knee on your brother's neck for over 8 minutes?

Mr. FLOYD. No, sir. I don't really know why he did it. Personally, I think it was personal because they worked at the same place. So, for him to do something like that, it had to be premeditated and he wanted to do it.

Chair NADLER. Intentional.

Mr. FLOYD. Yes, sir.

Chair NADLER. Now, we've learned since then that Officer Chauvin faced at least 17 misconduct complaints during his career on the Minneapolis police force. He was named in a brutality lawsuit. He shot and critically wounded a man after a brief and non-violent confrontation.

Mr. Floyd, how did you feel when you learned about Officer Chauvin's history of misconduct?

Mr. FLOYD. He should have been off the force. Any officer committing an Act like that shouldn't be able to get a job in any county after they get fired. The guy—they had enough evidence to sit there and fire them, but they didn't have enough evidence to arrest him? I'm not understanding that.

Chair NADLER. Ms. Gupta, does this make any sense? Should we keep police officers with long histories of misconduct complaints on patrol?

Ms. GUPTA. No, we shouldn't. It is why The Leadership Conference has pushed for the establishment of a national police misconduct registry. It's a national registry of all Federal, State, and local law enforcement officials that would be created containing information on misconduct complaints, discipline and termination records, and records of certification.

I will tell you, there is actually significant law enforcement support for this kind of registry, and prosecutors around the country have asked for this kind of registry. Chiefs in particular have said that this is a real problem when they don't have this kind of information when they're making hiring decisions.

Chair NADLER. That's why we have the registry provision in the Policing in Justice bill that we're considering.

Ms. GUPTA. That's correct.

Chair NADLER. Thank you.

Now, Chief Acevedo, you manage a large urban police force. Are repeated misconduct complaints a red flag?

Chief ACEVEDO. Yes, they are, Mr. Chair.

Chair NADLER. What do you think we can do about that?

Chief ACEVEDO. Well, we make it real clear to our officers and our employees that none of them are cats, that you don't get nine lives. Quite frankly, we use the tenets of progressive discipline.

Sometimes labor will argue, why are you firing somebody if you believe in progressive discipline? The answer is simple. If the crime or the policy violation supports termination, indefinite suspension, that's what we do, whether it's the first offense or the third offense.

A pattern of misconduct cannot be tolerated, should not be tolerated. That's why it's important to also use the pattern of complaints, whether they're sustained or not sustained or unfounded, to look for any type of patterns of conduct, to see if there's any commonality, to see if we need to take a deeper look at our employees.

Chair NADLER. So, you would think it's a good idea to have a national registry so that one police department knew about the misconduct of an officer at a different police department before they hired him?

Chief ACEVEDO. Well, I can tell you on my individual capacity, Mr. Chair, that I do support that concept. We've been as an organization very busy operationally in the last 2 weeks, and we're going to start having our deliberations on all these matters hopefully Friday and we will come back with an official position. I can tell you the individual chiefs that I know that I've spoken with absolutely support it.

Having said that, even absent a national registry, it is incumbent upon hiring agencies to do thorough backgrounds. The internal af-

fairs packages, complaint histories, everything is available at the previous employing histories of departments.

So, due diligence is important with or without a registry, but personally I do support that concept.

Chair NADLER. Thank you.

My time has expired.

Mr. Gaetz.

Mr. GAETZ. Thank you, Mr. Chair.

Mr. Floyd, I don't know that the cameras picked it up or saw it, but when Angela talked about her brother dying, I saw a physical reaction from you. I saw you lean over in your chair. I thought I noticed your body even tremble with empathy and care for Angela and her brother Pat who passed away.

If you could say anything to the people who killed Pat, what would it be?

Mr. FLOYD. Life is precious. Everybody should be able to live and be able to walk this Earth in a journey that they want to. Nobody should have to be filled with hatred and so much animosity that they want to kill somebody.

Dr. King said a long time ago he wanted everybody around the world to be able to join hands together. I think right now, if he was here right now, he would understand that the world is united right now and we all are coming together.

Mr. GAETZ. That is so powerful, and I deeply thank you for that. I want to test that sense of unity.

Mr. Chair, if we could get the Witnesses who are joining remotely to be on the screen so we could see them, I have a question I would like to ask everyone. I apologize for the crude nature in which I have to ask this but there's just so many Witnesses.

If you believe that we should defund the police, will you please raise your hand?

Yes, is there anyone on the—okay. So, that's unifying and wonderful that here we are gathered—

Ms. IFILL. Can you tell me—can you please tell me—excuse me.

Mr. GAETZ. I'm sorry.

Ms. IFILL. I actually have an answer to that question.

Mr. GAETZ. Well, I'm sure someone will be able to ask you that question, but I have limited time here.

I didn't see anyone raise their hand to defund the police. I certainly didn't see any of the Republican Witnesses.

Ms. IFILL. I take issue with the way you asked the question.

Mr. GAETZ. So, I'm going to now go through and see where that sentiment may have been reflected.

Here's a tweet from two of our congressional colleagues supporting this group Black Visions Minnesota.

The next, please.

Then here's that group, that same group, Black Visions Minnesota, that my congressional colleagues are raising money for, saying that they should—we should end the police.

Can we go to the next one?

Then here's that same organization retweeting: Rebel scum, abolish the police.

Then here's the same group saying that instead of police we need therapists, doctors, and street medics, not cops.

Mr. Bongino, in your experience, every time someone calls 911, would a therapist or a medic be sufficient or sometime do people need cops?

Mr. BONGINO. I'm quite unclear how a medic is going to help with an armed subject who is assaulting his wife in a domestic violence situation or elsewhere. I'm not sure how that's going to be of any value.

Mr. GAETZ. Here again is that same group saying that we need lasers to disorient surveillance cameras and we need water balloons filled with milk to throw at people. Again, this is the organization that my congressional colleagues are raising money to support.

If we could go to the next one.

Then here again that same organization that multiple Members of Congress are supporting saying it's not enough to only abolish police or prisons. We need to abolish race, abolish ICE, abolish the military, abolish the State, abolish the borders.

Again, this is what our colleagues are raising money for. It's not just any Member of Congress. It's actually one of our treasured colleagues on the Judiciary Committee, the gentlelady from Washington, raising money for this very same organization.

Ms. Underwood Jacobs, your brother is someone who was part of this law enforcement community when he gave his life. When you learn that my colleagues in Congress are raising money for an organization that promotes defunding the police, destroying our borders, defunding our military, and taking apart the State all together, how does that make you feel?

Ms. UNDERWOOD JACOBS. Actually, I find that conduct to be deplorable. We elect officials to represent everyone. The idea to have our communities without protection and safety is wrong.

So, my response to that would be for people to get out and vote and get the right person in office to ensure that we feel protected and our children feel protected for generations to come.

Mr. GAETZ. Well, I appreciate that greatly.

Mr. Floyd, again, I appreciate your calls not only today, but in the direct aftermath of your brother's killing. You showed grace and care for your fellow Americans. I don't know if everyone is religious, but I do believe God is working through you to try to call us together.

Finally, I wanted to thank Ms. Bass for the legislation she's introduced and that constellation of ideas. While I think that we can fine tune elements to ensure that we don't defund the police, that we don't make our communities less safe, I do think there is not a legitimate defense of chokeholds or lynching or bad cops that get shuttled around. You will be able to count on Republican cooperation as we hone these ideas and hopefully pass them and get them to the President's desk.

Thank you, Mr. Chair. I yield back.

Chair NADLER. The gentleman yields back.

Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chair.

First, let me say what a transformational few weeks this has been since the murder of Mr. Floyd. I am grateful to my constitu-

ents and those around the country who have marched peacefully to raise the issue of justice in our country.

I am grateful to Karen Bass and the Congressional Black Caucus, as well as you, Mr. Chair, for your work in putting this bill together.

I think it's important to State at the outset what this hearing is about and what it isn't about. It's really about this bill and how we can improve the State of policing in the United States.

I've heard several people talk about funding for law enforcement. We did that when we passed the HEROES Act. We provided funds for local governments to address issues in their communities, whether it's health or public safety, and we all know that it is the local communities that organize their public safety response, not the Federal Government.

However, when there are police, we want to make sure that those police operate in a legal way that doesn't use violence against people who pose no violent threat. That's why I would like to ask Ms. Ifill if she could address these two questions.

First, we've incorporated the PEACE Act into this bill, which basically outlines when the use of deadly force is appropriate. That, coupled with the new standard for unwillfulness, that would provide accountability, is my question to you. Will those two measures help prevent violence against people who are not posing a violent threat?

Ms. IFILL. Thank you very much, Representative Lofgren. I at some point would love to and welcome the opportunity to talk about the funding issue. Let me answer the question that you asked.

One of the principal problems that we have found in this long-standing systemic issue of police violence against unarmed African Americans is the inability to hold officers who engage in misconduct accountable.

Now, this is not just about the individual officer who some refer to as a bad apple. This is about a system of accountability that must exist if police officers are to understand that they cannot engage in certain kinds of conduct without impunity.

Unfortunately, all the legal tools that are available to us to hold officers accountable have been weakened or lack the sufficient strength and language to allow us to do so.

So, strengthening the language of the Federal criminal statute that will not hold us to such a high standard in proving intent of the officer's conduct is critical. So, adding a recklessness provision into that language that will allow us to get at some of this officer conduct is vitally important.

What I suggested earlier, qualified immunity on the civil side, is vitally important to removing that defense to ensuring that we can hold officers accountable. I've spoken to many police officers about the culture of impunity around these killings and around these acts of brutality. They know, just as anyone who is in a system knows, whether they are lawyers, whether they are doctors, whether they are police officers, that accountability is critical to influencing behavior.

Unfortunately, our legal system has failed in providing that accountability. What this bill tries to do is to go into those statutes

where the language either isn't sufficiently strong or where courts have interpreted the language in such a way as to remove the power of the statute to put the tools back into the hands of the Department of Justice, but also private attorneys and civil rights attorneys, so that they can use the law to hold officers accountable.

Ms. LOFGREN. Thank you, Ms. Ifill. Thank you very much. My time is just about expired.

I would just like to note that for many years African Americans have been mistreated in many cases, in many communities by law enforcement. The multiethnic, broad, peaceful protests that have arisen around our country that have been met also with violence I think have opened the eyes of Americans across the United States about the need for reform. I think this is an important step forward, and I'm grateful to be a part of it.

I thank you, Mr. Chair. I yield back.

Chair NADLER. The gentlelady yields back.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chair.

When I turned the TV on the day after Memorial Day and saw the brutal murder of George Floyd, it made me sick. The depravity that was exhibited there really burned in my soul.

I would like to say, Mr. Floyd, that not only am I personally sad and express my condolences to you and your family, but the pain of your brother I think has become the pain of America. It's up to us to constructively deal with this so that we can do more than just have a press release and make a difference.

After your brother died there were a lot of people who legitimately exercised their constitutional rights to peacefully protest. There were some who came in that didn't want to peacefully protest, and as a result we had riots and arson and burning, and people, both protesters as well as police, became injured as a result of that.

That, in my opinion, ended up attempting to destroy the legacy of your brother. The people who did decide to raise mayhem are going to have to account for that sooner or later, whether it's in a court of law or elsewhere.

I think we have to recognize one thing, and we've heard about this from some of the Witnesses as well as in the news media, and that is, is that there are good cops and there are bad cops. If the police end up being defunded, which I think would be a horrible idea, let's look at what the consequence will be.

First, the consequence would be, if there are no police, there will be vigilantism. I would submit to you that there will probably be more racism if people take the law into their own hands than if they relied on the police to investigate crimes and to protect the public.

Second, is that it would hurt the good cops. Ninety-nine percent of the people who serve in law enforcement and put their lives on the line every day of the year are good cops. They want to enforce the law. They don't want to harm anybody, and they know that their job is to protect the public. These are the cops, if money were taken away, that would end up either losing their job or not getting pay raises or maybe even getting pay cuts. That would be a travesty of justice, in my opinion.

Now, having said that, I want to turn to my Democratic colleagues. A lot of the police union activity that we have seen has been to protect bad cops. The police unions in this country—and my Democratic colleagues have more friends in those unions than we Republicans do—are going to have to step up to the plate and to be cooperative with communities in getting rid of the bad cops.

I heard that George Floyd's assailant had 16 allegations of misconduct against him. Why was he still on the force? That was just an invitation to more misconduct. Unfortunately, Mr. Floyd, your brother ended up being the victim of that.

So, I would hope that as this debate goes on we have speedier resolutions of getting rid of bad cops. I see nothing wrong with having a bad cop database, but having a database isn't going to get somebody fired who ought to be fired. The sooner we get the bad cops off the force, the sooner there will no longer be any bad apples to spoil the whole barrel.

I look forward with working with all of you, but you guys over on the other side of the aisle, and gals, are going to have to be very proactive in telling police unions that it is in their interest and in the interest of the vast majority of their Membership to get rid of bad cops.

I yield back.

Chair NADLER. The gentleman yields back.

Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you, Mr. Chair, for the leadership, and the leadership of this entire Committee, and of course the Congressional Black Caucus that we are privileged to work with.

My very deep sympathy, Ms. Jacobs, to you. No one should die on the streets of this Nation. We thank you for your brother's service.

Let me speak to my family and constituent from Houston to let you know that George Floyd, your brother, your big brother, should not have died on the streets of Minneapolis. He did not deserve to die. He was an innocent person. The 8 minutes and 46 seconds which we knelt to reflect was so painfully long that the stain and the impact will be seared in our souls forever. You have to carry this in your heart.

So, today I think the good news is that the George Floyd Law Enforcement Trust and Integrity bill already named is incorporated in this bill, and the Justice in Policing Act is a legislative reconstruct to do what you've asked us to do, to do what those who are on the streets, who are young and Black and brown, White and Asian, are crying out, and we need to hear them. I want to say that I have heard them.

So, Mr. Floyd, if you would, there are many things that you have said. I believe in harmony. Do you believe that race impacted what happened to your brother?

Mr. FLOYD. I believe—yes, ma'am, I believe that because George, wherever he goes, he impacts the place. He talks to a lot of people. He's just a gentle giant. So, at that club, and Mr. Chauvin worked there, I know that he knew him. Everybody knew him. The mayor knew him. He killed my brother just because he didn't like him, and it has to be racist. It has to be something to do with racism.

Ms. JACKSON LEE. We must get rid of the stain of race.

In this legislation is an emphasis on discerning what executive force is, accreditation.

Chief Acevedo, if you can emphasize the importance of having standards and accreditation of the huge numbers of police departments very quickly for us, please. Chief Acevedo, thank you for your leadership.

Chief ACEVEDO. Thank you, Congresswoman. Thank you for your leadership and for your advocacy in Washington.

We have 18,000 police departments in this Nation with 18,000 sets of rules, policies, regulations, and 18,000 levels of accountability and training.

We really believe—I believe, and I can tell you that I believe once we discuss this as a group with the major city chiefs, that we absolutely have to have national standards when it comes to critical policies, training regimens, and oversight. So, we are prepared to be part of that conversation and look forward to the conversation.

Ms. JACKSON LEE. Thank you.

Mr. Crump, you have seen a lot of these cases. You might very briefly for me indicate race. Holding police accountable, taking away this barrier of qualified immunity, but additionally getting back to consent decrees. If you could quickly respond to that.

I have a question for Mr. Butler, but you—and let me thank you for being there from the litany of names, including Eric Garner and Trayvon Martin. We have been together, and there's a long list that I am not ignoring, Michael Brown. Thank you very much.

Mr. CRUMP. Yes, ma'am, Congresswoman, and thank you for your leadership.

To answer your question directly, immunity breeds impunity for these police. If they have this qualified immunity, we see no accountability. It allows for all those names, all those Black Lives Matter names to keep adding up, adding up, and adding up.

So, we need that there. We need the registry. We need to attack this like it's an epidemic on Black people because that's what we see happening in our communities.

Ms. JACKSON LEE. This is about misconduct, Professor Butler. I'm glad to be able to say that we know there are good police officers. Help us understand—and Mr. Morial gave us a history of slavery and the stain of it—how much of that stain permeates into policing when they go into the African American community and deal with African American men.

The mike.

Mr. BUTLER. Far too often, Congresswoman, officers view themselves as warriors, and it's almost as though the communities they serve experience them as occupying forces.

There's been so much attention to the pandemic and how we're going to find a treatment. For this epidemic of police violence, we already have a treatment. President Obama's commission on 21st century policing recommended commonsense reforms, many of which are contained in the Justice Act of 2020.

So, we don't have to reinvent anything. We know exactly what to do now to make police departments more accountable and transparent. The question is, will your colleagues have the will to implement these commonsense measures.

Chair NADLER. The gentlelady's time is expired.

Ms. JACKSON LEE. Well, I believe we can change the policing, Mr. Chair.

Chair NADLER. The gentlelady's time is expired.

Mr. Gohmert.

Ms. JACKSON LEE. I look forward to changing the bill's name to George Floyd Bill.

Chair NADLER. Mr. Gohmert.

Ms. JACKSON LEE. Thank you so very much.

Mr. GOHMERT. Thank you.

Appreciate all of you being here. We know it is very difficult, especially for those of you that have lost loved ones. You have our deepest sympathy, as do all those families that have lost loved ones in the aftermath.

This is a serious issue. Mr. Floyd, it's a comfort to a lot of us, especially those of us who are Christians, to see the way in which you've carried yourself. You've asked for people to refrain from violence. We don't need it to lead to worse violence. That was atrocious. It's just hard to watch the video and not feel great sympathy for your brother and great sympathy for you and your family.

So, it's nice when we get together and talk about potential solutions. Hopefully, the majority will allow more input than the zero input we've had on the bill so far. It also is important to look at different proposals.

We've heard some say on television let's get rid of—defund the police, get rid of them. Some are saying let's get rid of the qualified immunity that police have so they don't get sued by every single person they come in contact with.

As a judge, I had judicial immunity, and the thing is, it's a qualified immunity. It's not there if you're violating the law, and that's as it should be.

As we look at solutions, and it's been brought up by others, but the police unions have defended bad apples. If you talk to police, if you know police, heard Dan Bongino talk about it, they know who the bad apples are, and most of them don't want to have anything to do with them. They don't want to be on patrol with them. They don't want to work with them.

So, how do we get rid of them? I personally have seen where you have a bad apple at the top and some righteous whistleblower has retaliation against them, and the unions have come in and appropriately defended them.

When it comes to eliminating qualified immunity, I've seen what happened with teachers. I had a bill to eliminate—or to create qualified immunity for teachers, educational immunity. The teachers group never had got on board. I was told it was because they make so much money selling liability insurance to their members. I'm afraid it might be a cash cow for the unions, but that's not what this needs to be about.

Let me just ask you, Mr. Floyd, if somebody conspires to lynch somebody else, do you think a 10-year maximum sentence would be appropriate?

You're shaking your head. Thank you.

Mr. FLOYD. No.

Mr. GOHMERT. Okay. Yeah. Well, I agree with you. Bobby Rush, he's a fine man, a just wonderful heart, good-hearted man. He had a bill that will make a life sentence if you conspire to participate.

I said, "Bobby, it should be a life sentence. Why is it now 10-year max?" He said, "Well, you know, I had it at life maximum sentence, but I was told if it was going to pass the House it had to be brought down to 10 years." Well, I think that's an insult.

I know the Emmett Till bill is part of this overall bill, but I would hope we would come together and say 10 years for conspiring to lynch is not an adequate maximum punishment. Maybe it needs to be lower in a given case, but let's have life in there as the penalty, and I would hope to see that.

I know Chuck Colson once said, our hope in America will not arrive on Air Force One. Pastor Scott, I have imminent respect for you. Where is your hope for America?

Mr. SCOTT. My hope for America is the Lord Jesus Christ. I believe that our country was founded on Christian principles, that we've invoked the name of God and the presence of God, and I believe the hand of God was upon this Nation in its founding.

Let me say this. When I saw the video of George Floyd—

Chair NADLER. The time of the Member has expired.

Mr. Cohen.

Mr. GOHMERT. Can he finish his answer?

Chair NADLER. Mr. Cohen.

Mr. GOHMERT. I guess we'll have to have you do by video and then you can just keep going.

Mr. COHEN. Thank you, Mr. Chair. Appreciate it.

Chair NADLER. Your mike. Your mike.

Mr. COHEN. Thank you.

H.R. 7120 contains in it a change in qualified immunity, basically an elimination of qualified immunity, and that's important and it's good. Mr. Amash got out on front on that, and Mr. Nadler and Mr. Butterfield and I had a bill on it too and others. It's an important part of civil rights litigation.

The employer has to be made responsible as well. Because of that, I'm going to propose a bill to have a respondeat superior relationship with the employer and make part of that reform that respondeat superior will apply to 1983 civil rights actions.

Mr. Crump, in your experience with civil rights actions, and I know you've got a lot, would having a respondeat superior relationship with the employer be effective in seeing that the conduct that was improper was changed?

Mr. CRUMP. Absolutely. Also, I think qualified immunity, as I've said earlier, allows for police to Act with impunity. I think there's a reason we see Black men mostly but also Black women being killed by police over and over again and nobody ever being held accountable in either criminal or civil, and this qualified immunity, almost as if we're condoning it, almost as if Black lives don't matter. That's why hopefully with this moment we can do something to change that.

Mr. COHEN. Thank you, sir.

Mayor Morial, part of this bill is a different forum for judging police misconduct, an independent prosecutor to determine if a law

enforcement officer may have violated the law in using deadly force or force at all.

You've been a mayor of a major city. You helped clean up the New Orleans Police Department when you were there, and that was a tough thing to do.

How do you feel a provision, which we've got in this bill and which Ms. Gupta had in her recommendations, to have an independent prosecutor would help restore confidence in the public?

Mr. MORIAL. I think it's an essential element. The working relationship between the normal prosecutor, whether it's a State's attorney, a District attorney at the local level, and the police department is a hand-in-glove relationship. Therefore, friendships are developed, a working relationship is developed, and it becomes difficult sometimes for local prosecutors to indeed investigate and bring charges against police departments or police officers.

In the Federal system you'll find sometimes the same thing, right, where United States attorneys may work very closely with the FBI, may work very closely with local law enforcement on joint task forces and strike forces to ferret out crime. So, independent prosecutors.

I also think it would allow for there to be expertise, teams of investigators that understand these sorts of cases. It's just an idea whose time has come.

The record, unfortunately, has been, whether it's in Ferguson with Prosecutor McCulloch, whether it's been in the Eric Garner case with the Staten Island district attorney, and you could cite numerous examples of just instances where many times these local prosecutors cannot bring themselves to bring charges even when the evidence is clear.

So, I think this is a reform whose time has come. I think it's a reform that it should not be difficult for people to agree to, and I think it would be a vast improvement over the status quo.

Mr. COHEN. Thank you, sir.

With the local prosecutor you also have—the police unions make endorsements, as do the Deputy Sheriffs' Association, and they endorse the DA or they don't endorse the DA, and they make contributions as well. So, while it is the hand-in-glove relationship being witnesses and a lot of former officers end up being investigators for the DA, they also have that political problem.

Mr. MORIAL. You're absolutely right, Congressman Cohen, and that working relationship is so close and so substantial.

Mr. COHEN. This bill also—that was another bill I had that I worked with Lacy Clay on and it's part of this bill is requirement of reportage of deadly force incidents.

It would help me now—I tried to do so some research myself and maybe you can help me—the most egregious civil rights cases I know of are ones where White officers killed Black officers—Black citizens unlawfully. Garner, Floyd, necks, shootings, whatever.

Other than St. Paul, Minnesota, I didn't see any—this is where Black officers were alleged to have done the same type of thing. Is it because we don't have statistics to know it, or is there something that is said about a systemic racism?

Mr. MORIAL. I will say this. We had instances in New Orleans where Black officers killed Black citizens. I can't think of an in-

stance where a Black officer killed—I can think of an instance, one instance where a Black officer killed a White citizen. They may be aberrations—

Mr. COHEN. Were those lawful? Was it lawful actions?

Mr. MORIAL. No, not lawful at all.

Mr. COHEN. No.

Mr. MORIAL. No. They were acts of misconduct and acts of brutality. I think there's a great database that The Washington Post has that pretty much over the last 5 years can give you pretty much chapter and verse on all killings of citizens by police.

Mr. COHEN. Thank you. I yield back the balance of my time.

Chair NADLER. The Member yields back.

Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chair.

Mr. Floyd and Ms. Jacobs, it took tremendous courage for both of you to come here today when you're still grieving the loss of your brothers. I hope we can honor their memory by enacting meaningful reforms that prevent future senseless acts of violence and begin a healing process that makes us a stronger, more unified Nation.

I also want to thank the other Witnesses for appearing today and helping us to determine what changes ought to be made. We must enact reforms that ensure accountability for police misconduct, not defund, or dismantle police departments.

I represent the First Congressional District of Ohio, which includes most of the city of Cincinnati. Nearly two decades ago, in 2001, an African American young man named Timothy Thomas was fatally shot by a police officer in the Over-The-Rhine neighborhood in Cincinnati.

Following protests and civil unrest, unfortunately including rioting, police representatives, community leaders, and city and Federal officials entered into something called the Collaborative Agreement with the goal of building a positive, constructive relationship between the Cincinnati Police Department and the neighborhoods that they serve. Reaching the agreement required everyone involved putting aside their political agendas and working together.

What did the Collaborative Agreement do? Well, it addressed use-of-force situations, called for de-escalation training for the police, body cameras, and formed a citizen complaint authority, among other things.

Once the framework of the agreement was in place then Senator Mike DeWine, who is now our governor, then Congressman Rob Portman, who is now in the Senate, and I worked closely together to help secure the Federal funding needed to implement its provisions.

The results haven't been perfect, but we've seen a dramatic improvement in Cincinnati police-community relations. Trust and good will have been restored. Arrests and serious crimes have decreased in Cincinnati. Excessive use of force by police officers has also decreased, as has violence against police officers.

Perhaps most importantly, when problems do arise, they're handled in a predominantly civil, respectful manner due to years of cooperation and direct, honest communication between the police and our communities.

Given the success we've had in Cincinnati, perhaps the Collaborative Agreement could be the starting point for other cities across the country who need to repair police-community relations. The process required to craft such an agreement can lead to better communication, understanding, and if undertaken seriously, greater respect between all parties involved.

Mr. Bongino, I'll start with you if I can. Is this the direction that you think perhaps American cities ought to move towards if they want to improve police-community relations?

Mr. BONGINO. I think it's a terrific idea. I can tell you, the sheriff in Martin County, where I live and reside, now has made a concerted effort to do outreach before there's a problem.

Now, having said that, those collaborations can and do work. The problem that I see during my experience as a police officer—or saw, as I should say, back in the late 1990s—is you can develop all the relationships you want and they can be very productive and friendly, but if they become omnidirectional—excuse me, one way, not omnidirectional, but one way instead of bidirectional, you're not going to get anywhere.

What I mean by that is if people are afraid to go to those contacts in the police department that they've made and established relationships with because the local drug dealer basically has them under constant threat and effectively house arrest, you're going to get nothing out of that.

Again, let me just be crystal clear, it's a terrific idea. There is nothing but positive externalities to be generated from that. If you can't establish a framework of safety and security, it's not going to be a bidirectional relationship and it will be useless. Citizens have to be able to come forward to the contacts they made knowing they're not going to be attacked or criminalized later on or retaliated against. That security comes first.

Mr. CHABOT. Thank you very much.

Let me just conclude with this. We need to find a better way to interact as a society, to work with each other, and have the police and the communities that they work with actually work together and talk. We need to put aside our differences and listen to each other and focus on those things that unite us rather than divide us.

Finally, we owe it to our children and our grandchildren, to the future of this Nation, to dedicate ourselves to the principle that all men and all women are created equal.

Again, I want to particularly thank Ms. Underwood Jacobs and Mr. Floyd for being here today, and really all the Witnesses. Hopefully, we can have both parties working together to actually accomplish something here and not just point fingers and blame the other side. So, let's hope we can do that. You've helped to bring that together today. So, thank you very much.

I yield back.

Chair NADLER. The gentleman yields back.

Let me simply note that if Members ask questions of remote Witnesses, you should mute your mike while the Witness answers the question remotely.

Mr. Johnson.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair, for holding this incredibly important hearing.

Chair NADLER. Use your mike.

Mr. JOHNSON of Georgia. Thank you for holding this hearing.

I thank the Witnesses for being here to help us forge a new path forward, a path to a place where Black men and women cannot be murdered in the streets with impunity by those sworn to protect them.

Mr. Floyd, know that we grieve with you and your family on the loss of your brother, and my heartfelt condolences go out to you and to your entire family.

Ms. Underwood Jacobs, I offer my sincere condolences to you and your family on the loss of your dear brother.

Mayor Morial, throughout recent times we've seen repeated instances where Black people, often unarmed, have been killed by a police officer and if the death results in a use-of-force investigation, that investigation most often is conducted by the law enforcement agency that employs the officer who used the deadly force. Isn't that correct?

Mr. MORIAL. That's traditionally the way it works.

Mr. JOHNSON of Georgia. Professor Butler, we've also witnessed these use-of-force investigations being overseen by the local district attorney who works hand in hand, day after day, year after year with the same officer and with the agency that employs the officer who used the deadly force in the case that's under investigation. Isn't that correct?

Mr. BUTLER. Yes, sir.

Mr. JOHNSON of Georgia. Attorney Crump, we've seen time and time again that the investigation becomes long and drawn out, and at some point months or even years later the local prosecutor takes that case before a secret grand jury, and out of that grand jury usually comes what's called a no bill, which is a refusal to indict the officer who committed the homicide. Isn't that correct?

Mr. CRUMP. Yes, sir, Congressman Johnson.

Mr. JOHNSON of Georgia. Professor Butler, because grand jury proceedings are secret, the public never learns exactly what the prosecutor presented to the grand jury. Isn't that correct?

Mr. BUTLER. Just like the grand jury proceeding in Staten Island with Eric Garner, who was placed in an illegal chokehold, we have no idea why that grand jury didn't indict that officer for murder.

Mr. JOHNSON of Georgia. It becomes just another justified killing of a Black person by the police in America.

Wouldn't it be fairer if the homicide investigation were undertaken by an independent police agency, Attorney Gupta?

Ms. GUPTA. I think it would. It would also give the community Members much more faith in their legal system if there was an independent investigator in these kinds of cases.

Mr. JOHNSON of Georgia. Attorney Ifill, wouldn't it be better for the use-of-force investigation to be overseen by an independent prosecutor?

Ms. IFILL. Without question.

Mr. JOHNSON of Georgia. Professor Butler, wouldn't it inspire public confidence and trust if the law required transparency in the investigation and that the results of the independent investigation

be made available to the citizenry within a reasonable period of time, but not 2 years later like in the Michael Brown case in Ferguson?

Mr. BUTLER. Yes, Congressman. When an officer dishonors her badge by committing a crime, she should receive the same process as any other criminal.

Mr. JOHNSON of Georgia. Attorney Ifill, do you believe that the Justice in Policing Act should require the withholding of Federal grant funding to police agencies when the States in which they operate do not require independent deadly force investigations overseen by an independent prosecutor and police agency in police use-of-force, deadly use-of-force investigations?

Ms. IFILL. I believe there needs to be an entire overhaul of the funding that goes from the Federal Government to the Department of Justice to local police departments to ensure that they comply with title 6 of the Civil Rights Act of 1964, which prohibits the Federal Government from giving money to local programs that engage in discrimination.

One way to ensure that there is not [inaudible] is to ensure that there are independent investigations of police killings of unarmed Americans and particularly unarmed African Americans.

Mr. JOHNSON of Georgia. Thank you.

Last, Attorney Gupta, many police officers are protected from being questioned in use-of-force investigations because of so-called cooling-off periods mandated under State law like in Minnesota or under labor contracts negotiated by police unions like the Fraternal Order of Police.

Cooling-off periods prohibit investigators from interviewing an accused officer for a period ranging from, say, 48 hours to sometimes as long as 10 days after an incident. They give police officers a chance to learn the facts uncovered in the investigation and to create their story lines, get their story lines straight. Cooling-off periods for police officers can undermine the integrity of investigations into police misconduct. Isn't that correct?

Ms. GUPTA. That's correct.

Mr. JOHNSON of Georgia. Is it time for the Federal law to mandate restrictions on cooling-off periods, as has been mandated by Department of Justice consent decrees with police departments in Los Angeles, Seattle, New Orleans, Albuquerque, and Portland?

Ms. GUPTA. Yes. The Justice Department specifically put those provisions into consent decrees because they were a real problem, not only in individual investigations but, frankly, undermined the community's faith in the independence and fairness of an investigation with setting up two different sets of rules for people.

Chair NADLER. Thank you. The gentleman's time is expired.

Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chair.

Coming together today, I'm reminded of something this Committee has done before, and it goes back to Old Testament scripture: "Come now, let us reason together." What the scripture is telling us is, is that we've been confronted with a problem, and the question is for us is, how do we deal with it? We've been confronted with the issue. The question is, how do we deal with it?

What's concerning, and as I see this today—and for Mr. Floyd and Ms. Jacobs, the loss and the realness in your body language, in your eyes, and in your voice—is the pain of a Nation right now coming to grips with conflicting issues and values in their head, wanting a safe and civil society in which all of us get along in a way that should and in a society we know doesn't. When you see your loved one murdered, when you find out your loved one was murdered, in a time in which we're just all struggling.

It is not surprising to this Committee. It's unfortunate for this Committee because in the previous Congress we actually had a police working group in which we went to Houston. Chief Acevedo was there. We worked and we had a good couple of days of meetings. We went to Detroit. We went to Atlanta. We also had meetings here. We were beginning these conversations, but we didn't continue. When this new Congress set in, we didn't do anything.

Now, we're here again faced with a crisis of the moment, and Congress, unfortunately, lives by this seeming decree: Put it off until we have to have a hearing like this and we mourn the loss of the things most precious to us.

My question is really, what can we do?

Ms. Jacobs, you said something earlier. It's talking about communities and jobs. It's about putting our communities together. The policing issues.

As someone who is a son of a law enforcement officer—my father was a State trooper—I sympathize with it, I watched it.

One of the most grievous days in my father's ever memory is I remember when one of his own did something horribly wrong and they took him to prison. The reason is, is he come home, and I remember him being down, and he looked at me and he said, "The problem is," he said, "everybody thinks I did it." He said, "We've got to get rid of that."

What have we done? There are things that we can do to help our communities. This Committee came together on the First Step Act, on criminal justice reform, sentencing reform, working with the Senate to actually make a difference in our communities, to actually take the President, who signed that, who made it a pillar of what he wants to do and signed it, that's what a Committee together can do. We've not done that here.

We've actually took—and I worked with the late Elijah Cummings, Chair of the Fair Chance Act. We talk about jobs? Then the Fair Chance Act was giving those with a criminal record a fair shot at applying for jobs because we unchecked the box, where they wouldn't have to go through a screening beforehand. Let's see if they can actually set on their own and try a new chance in life. It's about making our communities whole again.

Yet, there are things in this bill that we can all agree on, but there are things in this bill that I wish we would take a little more time with, that we would just sit back and say, what is this going to happen?

We've had task forces set up with the Justice Action Network, COVID-19 Emergency Justice Task Force, that looked at how we deal with our prison populations. A solicitor from my hometown, Stephanie Woodard, was a part of that. Others have been a part.

This is a time for conversations to find good answers without unintended consequences.

Mr. Bongino, I have a question for you, and it's been sort of intimidated. Are there things about this that concern you, not that they're not ideas that need to be discussed, but when you look at some of the issues around qualified immunity, some of the micro-management in this bill, what concerns you when you see this from a law enforcement perspective?

Mr. BONGINO. Well, as the great Thomas Sowell says often, it's not what you do, it's asking, "And then what?"

Listen, I get it. There are serious issues with qualified immunity. Nobody on the panel is wrong or the Witnesses either bringing them up. There's no question about that. We're in full agreement.

The problem is, if you were to repeal qualified immunity, have you considered the, "And then what?"

Have you considered the fact that police officers' legal bills, some who may, in fact, deserve it for doing an awful job, but some who may not, will be so oppressive that you won't have police officers?

Have you considered the fact that some of these police officers, out of fear of the rather litigious society we live in now, unfortunately, will now be afraid in the street to go and do their jobs and be proactive in communities that need it most? I mean, has anybody asked that question, or are we just gaffing that off to create an interesting sound bite?

The "Then What?" matters here, folks. Qualified immunity has issues. You can work around the edges, but the margins matter here.

Mr. COLLINS. I think what we're bringing up here is not an issue that we don't need to discuss. When we were discussing this through our police working group, we went to these communities.

I appreciate what you said, that it has to go both ways. The community and the police have to have these conversations both ways.

I am concerned here, and I appreciate that concern, because this is heading to where I know it always heads here. This is the hearing. Next week we mark up a bill. Next week it goes to the floor. Then we hope the Senate does something. Then we sort of go back and forth and hope that it gets right.

My hope is that, Mr. Chair, we get this right. We did it before, let's make it happen again, and take the comments of these committees on both sides, Mr. Crump and everybody.

We can work on this. I've done it before. This Committee has a history of working together. Let's do this, and let's get with the President and the Senate and make a difference so that lives are valued.

Yield back.

Chair NADLER. The time of the gentleman has expired.

Mr. Deutch.

Mr. DEUTCH. Thank you, Mr. Chair. Thanks to all our Witnesses for being here today. Ms. Underwood Jacobs, I'm sorry for your loss. Mr. Floyd, I'm sorry for your loss.

We're here today because of the long and growing list of Black Americans whose lives were taken from us prematurely at the hands of police. That's why we're here. George Floyd is the latest.

Breonna Taylor, Sandra Bland, Philando Castile, Michael Brown, Tamir Rice, Eric Garner, and far, far too many others.

We're here today to keep this list from getting even one name longer. In this moment, we must dedicate and rededicate ourselves to working toward a more just and inclusive country.

The violence and disregard for human life is what people were sickened by when they saw that awful video, Mr. Floyd. The fact that so many have marched, representing the true diversity of our country, led by young people, all in the face of a pandemic to speak out for others shows just how tired our Nation, our entire Nation, all of us, are of seeing Black person after Black person killed by the police.

The thousands and thousands of peaceful protesters across this Nation deserve our attention. They deserve action. The Justice in Policing Act is comprehensive reform that tackles the scourge of police brutality that has plagued communities of color year after year, brutality that undermines and tarnishes the invaluable contributions of the honorable law enforcement officers who are just as heartsick as the rest of us at this problem.

What we saw in the video of George Floyd's murder was the complete indifference to pain. Mr. Floyd was experiencing pain, and it was indifference to that human suffering, indifference to a death that was taking place in plain view. The indifference was cultivated by a culture without consequences. That's why we must provide accountability.

We need better data collection on police misconduct and use of force. We need fair and thorough investigations by DOJ's Civil Rights Division that starts by giving them subpoena power to investigate allegations of police misconduct. We need to know that police officers who violate the civil rights of Black Americans can be held accountable for their actions in a court of law.

For Breonna Taylor, who was shot in her own home while the actual suspects the police were looking for were in police custody, we need to end the practice of no-knock warrants. For Sandra Bland, who was found dead in a jail cell 3 days after being stopped for a minor traffic violation, and for Philando Castile, who was shot five times while seated in his car during a traffic stop, we need to require police officers to wear body cameras and to require police vehicles to use dashboard cameras.

For Tamir Rice, a child who was shot by police while playing in a park with a toy gun, we need to help communities reform public safety and change the culture of law enforcement. For Eric Garner—and yes, Philonise, for your brother George—we need to outlaw chokeholds.

The Justice in Policing Act does all this. It will provide accountability. It will provide transparency.

For our Witnesses, I'd like to focus on what happens when troubled officers leave or are fired by one agency, they move to another, a system where police officers evade sanctions simply by moving jobs. We don't accept this for doctors who care for us, we don't accept this for lawyers who defend us, and we shouldn't accept this for officers who protect us.

So, the question I have with respect to Tamir Rice's killing by an officer who, as we heard earlier, lost his previous job as a police

officer in a nearby suburb of Cleveland, was deemed emotionally unstable, an unstable recruit and unfit for duty, Ms. Gupta, what would a newly imagined registry that would require the law enforcement agency to report their finding of the officer's fitness for duty look like in that scenario?

Ms. GUPTA. Well, if there was a registry of the kind that the Justice in Policing Act recommends, you'd have a national registry of all Federal, State, and local law enforcement agents that would record misconduct complaints, discipline/termination records, records of certification. It would be conditioned if you—law enforcement agencies would need to put those inputs in, to get some Federal funding. The registry has to be public.

In the case of Tamir Rice, I will tell you—not just in Tamir Rice's case, but in many of the cases I remember Justice Department civil rights prosecutors upset that they didn't have access to that information not only for prosecutions, but also police chiefs. Chief Acevedo just spoke to this earlier, about the importance for chiefs to also have that information available when making hiring decisions and the like. It protects the community.

Mr. DEUTCH. Mr. Chair, this is our civil rights moment. I pray that our Committee and this body will rise to meet that moment.

Chair NADLER. We all agree.

The time of the gentleman has expired.

Mr. Buck.

Mr. BUCK. Thank you, Mr. Chair.

George Floyd's death was senseless and tragic. I grieve for the Floyd family and look forward to justice being served.

My heart also goes out to the family of Patrick Underwood. I thank both of you for being here under these difficult circumstances.

Yes, there are a few officers who are attracted to the uniform for the wrong reasons, who want the authority of carrying a badge and a gun, but can't handle the responsibility. Some have anger issues, some mental health issues. The bad cops are an extremely small percentage of the police officers in this country.

There's another side of the story. For 25 years I prosecuted criminals, working closely with great police officers and Federal agents. Yes, I prosecuted and convicted some officers. I also was at the bedside of officers after they had been shot trying to help someone. I've attended funerals for officers killed because they had the courage to wear the badge and do their job. I've been in the hospital trying to comfort one of my employees who learned just moments before of the death of her husband, a sheriff's deputy killed in the line of duty.

Don't blame the police. It takes a special kind of courage to protect those who can't protect themselves, who care so much for their community they are willing to risk their lives to save others. When there is gunfire, violence, conflict, a few brave men and women wearing blue uniforms run toward the danger while others run away.

Don't blame the police because they didn't create the policies that cause crime. We all know the root causes of crime. Some don't like to admit their role in the breakdown of our society, but the people watching this hearing know.

We commit a grave injustice to those who have died at the hands of police and those who have died at the hands of violent criminals if we don't deal with the root causes of crime.

A comprehensive bill, as was discussed earlier, must recognize the societal impact of single parent families, substance abuse, mental health issues, failed education system, and transnational gangs. Defunding the police or otherwise handcuffing the police has its consequences.

After the death of Freddie Gray in Baltimore, the police were severely restricted by the mayor and the Obama Department of Justice. In May 2015 alone, the month after six officers were charged for crimes a jury found that they did not commit, Baltimore saw 43 homicides, the city's deadliest month in 40 years.

A New York Times investigation found that Baltimore ended 2015 with 342 homicides, a 62 percent increase from 2014. Let me repeat that. After Baltimore police were prevented from doing their jobs, the city suffered a 62 percent increase in homicides.

There are also indirect consequences to restricting police enforcement. In 2017, Baltimore had 692 opioid deaths to go along with the 342 homicides. Chicago recently saw its most violent day in six decades. Eighteen people were killed on May 31st. While police were responding to riots downtown, residents of Chicago saw firsthand what happens when police are absent from the neighborhoods.

To achieve justice for all, we should support investing in police protection of our most vulnerable neighborhoods, and we need to change the policies destroying our cities. Let's agree to empower good police officers to continue to protect and serve. Everyone deserves to be safe and secure in their home, on their way to work, walking to school or throwing a ball in the park. Don't blame the police for our breakdown in society. They are doing their best to clean up the mess caused by politicians.

Mr. Bongino, your thoughts about the causes of crime and the role of our police in this country?

Mr. BONGINO. I read an interesting op-ed about 4 or 5 years ago. In the opinion piece, they compared and contrasted two different areas of the country, one that voted largely for Mitt Romney in the election versus Barack Obama, one that voted largely for Barack Obama. It was an inner city in one case and an Appalachian region in the other case, both considered failed by many measures, high crime, poor economy, and poor healthcare outcomes.

What's interesting is it wasn't the voting patterns. It was the deeper patterns you're talking about there, broken families, drug use, and lax law enforcement.

If we ignore that—and believe me, I am not in any way suggesting accountability for police and reforms are not necessary, I wouldn't be here if I didn't believe that—but if we're going to ignore the societal problems and broken families and all the degradation of the culture and all that and just scapegoat the police, you will get nothing out of this hearing. You won't see one Act of real change. You may get some sound bites, you may get some votes, but you're not going to see a darn thing change.

Mr. BUCK. What I hear you saying is it will be counterproductive.

Mr. BONGINO. It will absolutely be counterproductive. You will see nothing.

Chair NADLER. The time of the gentleman has expired.

Ms. Bass.

Ms. BASS. Thank you, Mr. Chair.

There are a couple things I wanted to say before I start my questions. It was said in the opening statement that the mayor of Los Angeles defunded the police department. I just wanted to make note that he absolutely did not defund the police department. He did reduce the budget, and he shifted the funds to deal with some of the real issues that police departments, police officers always complain about, because how do they address some of society's problems, like homelessness and mental illness? So, he shifted the funding for that reason.

I also wanted to follow up with Mr. Morial, who was describing a history of lynching. I just wanted to point out that one of the reasons—although you didn't say this, I would believe that one of the reasons you were talking about lynching is because in many of those cases law enforcement officers were involved in the direct lynching, either getting the person, killing the person, et cetera. That was the relationship there.

I wanted to also talk about qualified immunity and wanted to ask Mr. Crump if he would respond to that, because I believe one of my colleagues was mentioning, what is the issue since it is qualified, it's not absolute? So, why do we need to do anything? Why would we need to change that?

Mr. CRUMP. Too often what we have seen in courtrooms, especially when police have killed African Americans, especially Black men, that the courts have interpreted this qualified immunity to almost give complete impunity to the police officers.

That's why nobody is ever held accountable when you think about that long list of Black Lives Matters names that we often recite to make sure that people know their life mattered. If there is no accountability, Congresswoman Bass, it will keep happening. We pray that George Floyd is the last one. If this great body doesn't act, it's going to happen again, and I predict it's going to happen in the next 30 days.

Ms. BASS. Wow.

What about some of the other professions that have this? Is it the same thing? People have raised a concern about child welfare workers or other people that have qualified immunity.

Mr. CRUMP. It only seems to be the police that have this great authority, this power that we've given them, and it goes unchecked. Every other profession you are kept in check by the laws that govern this, but the courts have, I believe unconstitutionally in many ways, given police this absolute blanket immunity, especially when it comes to Black and brown people being killed by police.

I mean, it's almost you can count on one hand the people who actually go to jail for killing Black people. Out of those thousands of people since Marc Morial said since Trayvon Martin was killed, I think it was over—almost 1,300, you can literally count specifically the number of times police have actually gone to jail. It is horrific, Madam Congresswoman.

Ms. BASS. Mr. Morial, having served as a mayor, I have often heard you say that you're one of the few folks around that have actually been involved in addressing this issue with the police department that you managed. Could you point out some of the specific things?

Mr. MORIAL. So, we orchestrated a highly successful reform of a very broken police department, a city that had 500 murders a year, a city that led the Nation in the number of civil rights complaints, a city that has two police officers on death row.

We had to completely rebuild the department. I said at the time that we were going to tear it down brick by brick and we were going to rebuild it brick by brick.

At the end, we had a nationally accredited department. We took the murder rate down by 60 percent. We brought the civil rights complaints down to an infinitesimal number. We instituted community-oriented policing.

So, the idea is obnoxious to me that somehow that if you hold police accountable you're trying their hands from fighting crime.

Ms. BASS. Maybe Ms. Gupta could conclude on that to continue that response.

Do we tie police hands by instituting these reforms?

Ms. GUPTA. I actually appreciate this question very much, because just a few weeks ago Richard Rosenfeld and Joel Wallman did a long study that they released in May of 2020, found no evidence for a Ferguson effect linking police killings of Black citizens to the homicide spike in places like Baltimore and other places via depolicing.

There's been a lot of statements about that that were very concerning in the aftermath of Freddie Gray's death in Baltimore, and there had been no data that had been actually collected and put out. The study I think is a really important offering that belies, actually, that notion. This notion that somehow when you protest racial injustice that that increases homicide rates in cities, this evidence actually produced says that's not true.

Chair NADLER. The gentlelady's time is expired.

Ms. Roby.

Ms. ROBY. Thank you, Mr. Chair.

There are no adequate words I can say to take away the pain of those suffering across our country. Now is the time for understanding, and I am committed to listening and learning.

First, Mr. Floyd and the entire Floyd family and loved ones, I am deeply sorry for the loss of your brother, family member, and friend. No actions or words I can say here today will ever make you whole again, but please know how grateful I am for your presence here today, and I offer you my deepest condolences.

Ms. Underwood Jacobs, your brother Pat was proudly protecting the community he loved, and I am deeply sorry for your loss as well.

I hope you both will accept my heartfelt grief for you and your entire family.

To all the families, like the Floyds and the Underwoods, who have had to suffer the tragedy and sorrow of losing a loved one due to needless violence, I also want to add my deep condolences.

Today is a day to set our politics aside and focus on sound policies for our country.

To all the Witnesses, I have reviewed your written testimony, I have heard your verbal testimony, and I've listened to you answer questions from my colleagues. I want you to know that I am listening, I am learning, and I hear you. I stand ready. I am hopeful that we can find bipartisan solutions and policies.

Mr. Floyd and Ms. Underwood Jacobs, I would like to give each of you the remainder of my time to address the Committee.

Mr. FLOYD. Just sitting here, coming to try to tell you about how I want justice for my brother, I just think about that video over and over again. It felt like 8 hours and 46 minutes. It hurt seeing my brother plead for his life, watching that officer just put his knee on his neck.

Every day just looking at it, being like anywhere, that's all people talk about. The rest of my life, that's all I'll ever see, somebody looking at the video.

The kids had to watch the video. His kids had to watch the video. It just hurt. There's a lot of people with a lot of pain.

My family, they just cry, cry every day and just ask, why, why? He pleaded for his life. He said he couldn't breathe. Nobody cared, nobody. People pleaded for him. They still didn't care.

Justice has to be served. Those officers, they have to be convicted. Anybody with a heart, they know that's wrong. You don't do that to a human being. You don't even do that to an animal.

His life mattered. All our lives matter. Black lives matter.

I wish I can get him back. Those officers, they get to live.

Ms. ROBY. Mr. Floyd, we grieve with you, and we appreciate very much your courage to be here with us today.

My time has expired, but may Ms. Underwood Jacobs address the Committee as well?

Chair NADLER. By all means.

Ms. ROBY. Thank you, Mr. Floyd.

Ms. UNDERWOOD JACOBS. Thank you very much, Mr. Chair and Congresswoman Roby.

I have to say that I'm heartbroken. I didn't get a chance to say good-bye to my brother either before he was killed.

I am also heartbroken for all the other people that are in this country living every single day and feel unsafe just to drive to the store. I also have had the talk with my son.

We sit here today at somewhat opposite ends of the spectrum to a certain degree, but there is so much commonality among both of us. The heartbreak and the grief is inexplicable, because it's very, very hard to articulate when your entire world has been turned upside-down.

I do want to know, though, when I think about all this, is that my brother wore a uniform and he wore that uniform proudly. I'm wondering, where is the outrage for a fallen officer that also happens to be African American?

So, as I'm sitting here and I'm listening to all of you and us, I truly hope that you take your positions, your offices so seriously that you want to go back and really work together and collaborate, because if you can't get it right there's no hope for the rest of us.

So, when you go back and you convene and you talk through everything that's going on, I hope that we're not people on paper, but the fact that you could be able to see our faces and feel our pain and feel it enough that you want to make change for all the citizens of the United States of America.

Ms. ROBY. Again, we grieve with you both and we thank you very much for your courage to be with us here today. Thank you.

Thank you, Mr. Chair. I yield back.

Chair NADLER. The gentlelady yields back.

Mr. Richmond.

Mr. RICHMOND. Thank you, Mr. Chair.

Very rarely I'm at a loss of words or know where to start. I want to start with you, Ms. Angela Underwood Jacobs, and just say that you have my condolences, my sympathy, and my prayers. Unfortunately, this was the hearing you were invited to. You were not invited to the hearings where in Homeland Security we talk about the threat to our law enforcement officers that put on blue and Black every day, the fact that we tried to get more vests for police officers and the other side fought it, the fact that we wanted to fight sovereign citizens that's killed more police officers in this country than anybody else and the other side fought it.

They invited you to this hearing. I just want you to know that we have fought for increased survivor benefits for the families of officers and we respect those who serve our communities.

Then, Mr. Floyd, Philonise, let me just tell you that when I met with you in Houston and your family, the remarkable thing is you asked for two things, neither of which was for you, justice for George and a just society, and that's why we're here today.

The unfortunate part is in this process we speak, and we leave. There's one thing that I want to address. Mr. Buck came and said that it was politicians that has messed up the family unit in America. That could somewhat be true. For him, how do you ignore the White man's knee on the neck of Black people for 401 years and Act like that has nothing to do with where we are?

Part of the reason why I am so encouraged today is more people are recognizing that now, and the systematic racism and oppression that has existed, that we're now coming together to fight and establish a solution.

It was Dr. King in his "Letter from a Birmingham Jail," that he actually responded to his critics for the first time, because he said that he would assume they were people of good will with sincere concerns. Over my better judgment, I will assume the other side is people of good will and sincere concern in some of these arguments why we can't or shouldn't pass this bill.

The other part I want you to understand is the outrage that I have, because it was 1991 when the movie "Boyz n the Hood" came out. The last line in the movie said, "Either they don't know, don't show, or don't care about what's going on in the hood."

Well, if you didn't know, now you know, because the protesters, the peaceful protesters out there are showing you what's happening. Video footage is showing us what's happening.

So, then you go to the last line and the real question is, do we care? I believe that this piece of legislation is a good piece of legislation that moves the ball forward. It is very easy to sit on the

other side and let perfection be the enemy of the good or just sit back with inertia and we never move the ball forward. We have an obligation to the next generation of kids, to men and women walking the streets now, to make sure we move the ball forward.

Every once in a while—we've tried it the other way all this time. We're just asking you to try it our way this time. Let's pass some legislation. Let's hold the bad police officers accountable.

We always say bad apples. Well, the saying is, enough bad apples spoil a bunch. So, let's make sure that we're talking about it.

Mr. Morial, in 30 seconds, and I know I used up all the time, I was the beneficiary of your reforms. What you did was you moved some resources from a constitutional police department that you created to after school funding and things that the community can do better than police. Twenty seconds, can you explain that?

Mr. Chair, I yield back.

Mr. MORIAL. The disinvestment in those types of programs over the last 20 years, and some of it's happened in this Congress, the elimination of a summer youth employment program, the elimination of supports for children. Baltimore City, no extracurricular activities in any of the schools.

So, we can fix policing with this, and we need to do some other things to address those other systemic issues.

You're right, I moved \$1 million the first 30 days I was in office from police overtime to create a summer jobs program, because there was no money. The summer jobs program and the camps for kids and the outdoor camps for inner city kids that didn't cost a dime, that gave kids, a person like you, a chance to work at LSU Dental School, those made great differences.

Part of this conversation about, quote, "don't want to open up Pandora's box," unquote, defunding police is really not about defunding police. It's about funding other things that have been ignored and forgotten, investing in young people and youth.

You're a middle-class parent in America today, your kid wants to go to dance class, you pay. Karate, pay. Little League baseball, pay. Inner city kid, no opportunity if it's not provided by the public dollars.

You go back to 1950s and 1960s in America when immigrants made up the vast majority, European immigrants made up the vast majority of major American cities, and you had free recreation programs and free summer camps. On our watch, as these cities have changed, somehow, some way, a lot of that has gone away. So, we're there trying to patch together dollars and patch together work.

So, it's important to understand this bill is about reforming policing, which is a pillar. There's a separate discussion and an additional discussion that needs to be had about how we do all the other things. I want to work with you on that. Don't confuse the two. I mean, that's the thing. People want to confuse the two.

Just I'll say, respectfully, a bad family situation didn't kill George Floyd. Sir, that's an outrage. It's an absolute outrage to think that a bad family—I am tired of trying to change the issue, when we have police brutality and police misconduct, to this rhetoric about bad family situations. It's an insult and it needs to stop.

It needs to stop. I sit, I take it, I listen, but not at this moment, not at this time.

Let's fix policing in America. Let's focus on that. There's ample time to do other things. As I said earlier, it's a moral moment. It's time for that. We're called to act. Yes, figure out a way to do it in a bipartisan way.

Go back and look. On the other side of this Capitol there are two office buildings named for United States Senators, both of whom have a legacy of what we're talking about today. One is Richard B. Russell, a man who led the filibuster against the anti-lynching law for decades. The other, Everett McKinley Dirksen, a Republican from Illinois who provided the courage to help President Johnson pass the Civil Rights Act of 1964. That's the moment we're in.

Chair NADLER. The gentleman yields back.

Mr. Johnson.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chair.

I'm struck today by a lot of the testimony and that we're hearing some of the same recurring themes. It is a moral moment, Mr. Morial, my friend from Louisiana, as you said.

One of the recurring themes that we've heard many times this morning from the Members and Witnesses is about the need to rebuild relationships.

One of the Founders, Henry David Thoreau said "There are a thousand hacking at the branches of evil to one who is striking at the root." One of those root problems in this moral moment we face is that we don't know each other anymore. That's kind of how society and culture have evolved.

We all agree on the objective, obviously, by the comments this morning, of rebuilding relationships, but I think we need to drill down a little bit—public policy is one thing, but this is a hard issue, as we all agree to determine what the best, most effective methods are to achieve that objective that we all agree on.

So, I just wanted to ask a couple of our Witnesses, beginning with Mr. Crump, I appreciate what you said this morning. We had a little sidebar over here, and I like the heart that you bring to this issue. I wanted to ask your opinion on that, because you mentioned that in your remarks about the need to build relationships.

So, from your experiences and everything you've been doing, what do you think are some ways we can do that between members of our communities and law enforcement officials?

Mr. CRUMP. Certainly. Thank you, Representative Johnson.

I do think we have to work together. At the crux of the matter, it's a lack of trust, I believe, between communities of color and law enforcement, because we have to have transparency, which we haven't had in the police killings of Black people. As one of the Witnesses said, you go to a secret grand jury proceeding, like Eric Garner or any other cases, Michael Brown, Tamir Rice, and they come back after the secret grand jury and say, no indictment, we didn't find evidence, even though we all saw it with our eyes.

So, you have to have transparency. Then you have to have accountability. That's how you get to trust.

I think you said something that I agree with. It's about transparency, it's about training, and then termination. We've got to terminate police. We don't do it. I mean, we just don't do it. We don't

send them to jail. We don't even fire them when they kill Black people.

So, as Philonise said, we've got to care. As Representative Richmond said, do we care? Because our actions don't construe that. So, first, we've got to just get to the core. It's transparency, accountability, and then maybe we can get to trust.

Because we do see it from the other side, that Black people, the prison industrial complex, school-to-prison pipeline, you see it all the time, you're going to jail. Then when we're the victim, you don't see convictions, like Eric Garner or any of these other cases.

Mr. JOHNSON of Louisiana. I appreciate those comments. I think that it goes even more fundamental than that in that it's the relationships even in the communities. Before you can get to building trust with law enforcement, it's with our neighbors too, right?

I was on the phone last night with the local director of our YMCA, and he had this idea to host—to use the YMCA facilities in my community as a neutral forum where he would have these events, an activities night, Saturday night or maybe Sunday nights. He'd invite one Black church and one White church, right? Just put everybody together in the same facility and let them get to know each other and have fun together. Just simple things like that, we ought to foster and try to encourage.

It doesn't have anything to do with the law, really, or public policy. It's about being good Americans and good neighbors. I hope we can get back to that, and maybe this is a flash point to do it.

If Mr. Davis is still with us—I know he was with us remotely—I'm really interested in his experience at DOJ and the community-oriented policing services. I know that's a big function of this as well. I wonder if he could speak to that issue, if he's still with us on the idea of building those relationships and community policing as an important function of that.

Mr. DAVIS. Yes, Congressman, I am still here, and thank you very much for the question. I would say, with the COPS Office, it has a great opportunity to actually do that, to facilitate community policing, and that's really its charge. It's its charge to be able to identify the best practices of community policing, how to engage through our grant program, to incentivize best practices through our grant programs, our hiring process. You are hiring in the spirit of service. So, I think it does help on a lot.

If I can say one thing, Congressman, a key to that is there are over 16,000 individual police agencies in the country. Most of them are 25 officers or fewer. So, without the help of the COPS Office or the Federal Government, it is hard to infuse those types of training and information and best practices. So, the COPS Office is the key [inaudible] whether there's two officers or 4,000, if they have the opportunity for best practices.

That was our goal, was to advance the policing, and it still probably should be the goal today. I do say we have stepped away from that, from a lot of the programs that we were offering at one time.

Mr. JOHNSON of Louisiana. Thank you. I'm out of time. I yield back.

Chair NADLER. The gentleman yields back.

Mr. Jeffries.

Mr. JEFFRIES. Thank you, Mr. Chair.

The chokehold and other police tactics, such as a knee to the neck, are inherently dangerous and present an unreasonable risk of serious bodily injury or death. That is why the Justice in Policing Act will make such strangulation tactics unlawful pursuant to our Nation's civil rights laws.

President Davis, the National Organization of Black Law Enforcement Executives supports criminalizing chokeholds and other strangulation tactics as a matter of law. Is that correct?

Mr. DAVIS. This is for Ron Davis? Yes, sir, it is.

Mr. JEFFRIES. Ms. Gupta, does the civil rights community support criminalizing chokeholds and other strangulation tactics as a matter of Federal law?

Ms. GUPTA. We do. In fact, there are departments around the country that have already banned them. So, this is about making that the national standard.

Mr. JEFFRIES. Professor Butler, is it fair to say that the neck should be off limits during police encounters?

Mr. BUTLER. Absolutely. When the police use—

Chair NADLER. Use your mike, Mr. Butler, please.

Mr. BUTLER. Thank you, sir.

When the police use pain compliance techniques like neck restraints, it prevents blood and oxygen from going to the lungs and brain. There's a great risk of death.

Mr. JEFFRIES. Black lives matter, yet month after month, year after year, decade after decade, the list of tragedy continues to grow. Amadou Diallo dead, Sean Bell dead, Eric Garner dead, Tamir Rice dead, Walter Scott dead, Oscar Grant dead, Yvette Smith dead, Stephon Clark dead, Breonna Taylor dead, and George Floyd dead.

Mr. Bongino, the police are at times able to show restraint under very difficult circumstances. Is that correct?

Mr. BONGINO. Of course.

Mr. JEFFRIES. Let's review a few examples.

In 2012, James Holmes entered a movie theater in Aurora, Colorado, and opened fire on an audience, killing 12 people and injuring 70. Mr. Holmes was heavily armed with an AR-15, 12-gauge shotgun, and .40 caliber handgun, yet he was taken into police custody outside of that very same movie theater without incident.

Mr. Bongino, James Holmes is white. Is that correct?

Mr. BONGINO. I'm not sure of his background. I don't know James Holmes personally.

Mr. JEFFRIES. He's white.

In 2014, Dylann Roof massacred nine Black parishioners at Mother Emanuel AME Church in Charleston. Mr. Roof was heavily armed with a high-powered Glock, .45 caliber pistol, and 88 rounds. The police somehow arrested Dylann Roof without incident and even treated him to Burger King.

Mr. Bongino, Dylann Roof is white. Is that correct?

Mr. BONGINO. Yeah, I don't know where you're going with this. So, if he's white, that doesn't make him any better. It was an awful thing he did, whether he was White or black.

Mr. JEFFRIES. Correct.

Mr. BONGINO. I'm not sure where you're going with this.

Mr. JEFFRIES. Dylann Roof was white.

Mr. BONGINO. He's awful.

Mr. JEFFRIES. Last year, in El Paso, Texas, Patrick Crusius killed 23 people and injured dozens during a shooting rampage. He used an AK-47 and was heavily armed. Yet, somehow he was arrested without incident.

Mr. Bongino, Patrick Crusius was white. Is that correct?

Mr. BONGINO. Sir, I have no idea of his—I don't know his parentage.

Mr. JEFFRIES. He was white.

Mr. BONGINO. Again, I don't know why you're making a racial thing out of it.

Mr. JEFFRIES. Reclaiming my time. Because Black lives matter, sir.

Mr. BONGINO. Yeah. All lives matter, sir. Every single life matters, white, black, or Asian.

Mr. JEFFRIES. Professor Butler, you have heavily armed mass murderers in places like Aurora, Charleston, and El Paso somehow apprehended by police without incident. That's the point, sir.

Mr. BONGINO. I arrested those people, sir. You didn't.

Mr. JEFFRIES. Innocent unarmed African Americans are repeatedly killed in police encounter after police encounter. Is it fair to say that the difference, which seems explicable, in police behavior somehow relates, at least in part, to race?

Mr. BUTLER. In law and in police practices, Black lives do not have the same value that White lives have.

Mr. JEFFRIES. All we simply want is for every single community, regardless of race, to be able to breathe the free air of liberty and justice for all. That's what the Justice in Policing Act is all about. I yield back.

Chair NADLER. The gentleman yields back.

Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chair.

We're here because we've recently suffered multiple failures of law enforcement, beginning with the killing of George Floyd. He died because a rogue cop with multiple complaints for misconduct was allowed to remain on a police force, as did one of his accomplices.

This has become an intolerable pattern in big city police forces, and we need to ask how politically powerful police unions and the politicians they maintain in office protect the bullies in the system that inevitably lead to atrocities like this.

The other failure was the decision to withhold police protection from their citizens by mayors and their appointed police chiefs. That failure killed Pat Underwood, killed David Dorn, and so many other innocent victims in the ensuing riots.

Withdrawing police protection from our streets, abandoning police stations to rioters, turning a blind eye to looting, arson, and mayhem, all have an incendiary effect on insurrections.

Without law enforcement there is no law, and without law there is no civilization. An accounting of the deaths and destruction caused by these acts of dereliction have yet to be tallied, but it's going to be staggering.

Now, we meet today to chart a course forward. I think we can look to no better guide than Sir Robert Peel, the father of modern

policing, who set forth principles of law enforcement for a free society nearly two centuries ago. When you read them, you realize how far we have drifted from these moorings.

Central to our discussion is his seventh principle, quote: "To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only Members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interests of community welfare and existence," end of quote.

So, how do we get back to these principles? I think there are many proposals that have been raised in the House that merit support, and first is the doctrine of qualified immunity. As it's currently applied, it has no place in a Nation ruled by laws.

For every right, there must be a remedy, and qualified immunity prevents a remedy for those whose rights have been violated by officials holding a public trust. This reform should apply as much to a rogue cop who targets people because of their race as it does to IRS or Justice Department officials who target people on the basis of their politics.

Reforming qualified immunity simply holds public officials to the same standards as any other citizen exercising the same powers.

Second, police records must be open to the public. It is a well-established principle that public servants work for the public and the public has a right to know what they're doing with the authority the public has loaned them. Police departments should be able to dismiss bad officers without interference from the unions.

By preventing the public from access to these records and preventing departments from acting on them, we destroy the very foundation of successful policing in a free society—public trust and accountability.

Third, turning police departments into paramilitary organizations is antithetical to the sixth principle laid down by Peel, quote, "To use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective. Weapons that are unique to a battlefield need to be limited to a battlefield."

Fourth, no-knock warrants have been proven to be lethal to citizens and to police officials, for obvious reasons. The invasion of a person's home is one of the most terrifying powers the government possesses. Every person in a free society has the right to take arms against an intruder in their homes. That means that the authority of the police must be announced before that intrusion takes place. To do otherwise places every one of us in mortal peril.

I think these four reforms are legitimate powers for the Federal Government to uphold the constitutional rights of its citizens, but it's not within our legitimate power to dictate training and procedures for every community in the country. As Peel counsels us, effective law enforcement is a community endeavor, and every community has different needs and different circumstances which require different standards. One size fits all bromides are, at best, ineffective and, at worst, dangerous.

Then finally, lest we forget, when faithful, dedicated, honest police officers—and that is the vast, vast majority of those who serve

us—when they are attacked, degraded and disrespected, demoralized, hamstrung, and withdrawn, those most at risk are the poor and the defenseless who live and work in our inner cities.

I yield back.

Chair NADLER. The gentleman yields back.

Ms. Escobar.

Ms. ESCOBAR. Thank you so much, Mr. Chair and Chair Bass. I'm so grateful for this piece of legislation and for your leadership.

I want to thank all the panelists who are here with us today.

Ms. Underwood Jacobs, I want you to know that we hear, and we feel and we see your pain, and we are praying for justice for you and your entire family as well. Our sincerest condolences. Thank you for being here.

Mr. Floyd, thank you for your incredible courage. I cannot imagine the strength that it took to be here with us today, but you did it. I want you to know that for those of us who are mothers, it tore us up to hear your brother call out for your mother. We heard him and we hear you. We are going to continue to fight for justice for as long as we can.

People are marching in the streets all over this country and all over the world, marching for justice, marching to force us to rise to this moment. It is our obligation and our duty to rise to this moment.

I have heard from many of my colleagues on the other side of the aisle their desire to work in a bipartisan nature on this bill and to achieve an outcome worthy of the American people who have entrusted us in this moment.

So, my request today of my colleagues, for the remainder of this hearing, for our markup next week, and for the day that it comes to the floor, let us focus on what is in the bill, not what is not in the bill.

I've heard a lot of conversations from this dais about issues that are being debated outside of this room. Those debates are important, those debates are healthy, those debates are part of American democracy, but they're not in the bill.

If we truly are going to come to a bipartisan agreement and provide for this country the justice that it is seeking, let's focus on what is in the bill.

Professor Butler, we have heard much about the disproportionate impact that police brutality has had on the African American community, and we have also heard much about the fact that, well, let's focus on family, well, let's focus on God. No one disputes that, as a country and as a government, we should be making investments in education, investments in healthcare, and investments in community.

In terms of fully coming to grips with what is happening in terms of race and law enforcement in this country, we know that unarmed Black Americans were five times as likely as unarmed White Americans to be shot and killed by a police officer.

To what do you attribute that fact? Your microphone, please, sir.

Mr. BUTLER. A legacy, Congresswoman, of White supremacy, a legacy of slavery and Jim Crow segregation, and then an evolution from the old Jim Crow to the new Jim Crow where the stereotypes

and the biases against people of color don't go away, but they just take different forms.

Ms. ESCOBAR. That's absolutely correct.

Mr. Floyd, I want to ask you, as a Black man in America, do you live in fear that you will one day be a target as well?

Mr. FLOYD. Yes, ma'am. Every day I walk around, I ask myself am I next, am I next all the time, because I don't want to do anything wrong to make anybody think that I'm doing wrong. So, I just try to live life and just have faith and hope everything comes out the right way. Basically, that's it, just a Black man just trying to go to work every day and go back home safely. That's it. Thank you.

Ms. ESCOBAR. Thank you, Mr. Floyd.

If we are truly to come to an agreement on this legislation, if we are truly to rise to this moment, we have to acknowledge the truth that is looking at us in the face every single day in America. We have to rise to this occasion. We have to do justice.

Thank you, Mr. Chair. I yield back.

Chair NADLER. The gentlelady yields back.

Ms. Lesko.

Ms. LESKO. Thank you, Mr. Chair.

Before I start, I'd like to just point out something. When we started, Mr. Floyd spoke first, and it was very passionate. I was very moved. Then for some reason you didn't have Ms. Underwood Jacobs speak about the loss of her brother. It really surprised me, quite frankly, and I thought it was very disrespectful. I don't know if that's what you meant, but I wanted to say that.

I want to thank all of you for coming here, and I am very sorry for your loss, Mr. Floyd, and for your loss, Ms. Underwood Jacobs.

I have two Black grandsons. So, I haven't experienced the discrimination that some of you have experienced that you have told us about, but I sure don't want them to be discriminated against. So, this is very important to me.

There's another thing going on here that I just want to read some tweets. This is very disturbing to me.

First, in early June, Brian Fallon, the Executive Director of Demand Justice and the former press secretary to Hillary Clinton's Presidential campaign and spokesman for Attorney General Eric Holder, tweeted, "Defund the police."

On June 5th, Representative Ilhan Omar, who represents Minneapolis in Congress, tweeted, "The Minneapolis Police Department has proven themselves beyond reform. It's time to disband them and reimagine public safety in Minneapolis."

Minneapolis City Council Member Jeremiah Ellison, son of Minnesota Attorney General Keith Ellison, tweeted, "We are going to dismantle the Minneapolis Police Department."

Lisa Bender, the President of the Minneapolis City Council, tweeted, "We are going to dismantle the Minneapolis Police Department."

I read that Patrisse Cullors, a cofounder of the Black Lives Matter movement, wants to see police forces abolished entirely eventually.

Steve Fletcher, Minnesota City Council member, also stated that he and the city council President and the chair of the public safety are calling to disband our police department.

Mr. Bongino, I am a survivor of domestic violence from a previous marriage, and I remember when my neighbors called the police. I don't know why, but I disputed. When the police came to the door, I said, "oh, I'm fine, nothing happened, everything's good here."

If we disband, dismantle, defund, or reduce funding in the police, what's going to happen to the woman that calls out who's a victim of domestic violence? What's going to happen to response time? What's going to happen in that situation, do you think?

Mr. BONGINO. Well, I became a police officer—I wanted to be a doctor—precisely because in a situation, without rendering any further embarrassment to people in my family, a police officer showed up and dissuaded the member of my family from doing something he shouldn't have been doing. This person wasn't scared of anything. He was only scared of the police. I don't mean that in a negative way. I meant he didn't want to go to jail.

It's the only thing—I was about nine or ten—it's the only thing that brought peace to me that night. I knew I wanted to be a cop the moment after that.

This defund the police abomination will lead to a catastrophe like you've never seen. I can't emphasize that in strong enough terms.

I worked in a largely minority precinct, East New York Brooklyn, the 75 Precinct. It's a tough place to work. I was young. I was in my twenties. The only time I was ever physically attacked by someone was in a domestic violence situation.

I have nothing but the utmost respect for social workers, medics, EMTs, and firemen. I mean that. Running into a burning building is tough. Saving someone's life and catching a pulse in the last minutes, that's tough.

When I walked into that house, make no mistake, that man—and forgive me for not saying my sincere, my heartfelt empathy with you for having gone through that, having lived through it myself, I should have opened with that. I mean that.

That man in that house, I'll never forget it, he wasn't going to be stopped. There was no negotiating. This isn't a movie, folks, this is real. He wasn't going to be stopped from attacking his wife.

There was a five- or six-year-old, I don't know the age, cowering in the corner. I've told this story recently, because it's so tattooed on my brain, I'll never forget it. You know what that's like, cowering in the corner, the daddy, stop.

The guy wasn't going to be stopped. He didn't care that we had guns. You think he's going to care if it's a social worker?

Again, I'm not sure where this ridiculous absurdity of defunding the police came from, but I didn't come here with some partisan agenda. Frankly, I'm deeply offended that some have made it so, including mischaracterizing my comments by Mr. Morial, which was offensive to me, too. You can pound the table all you want, but that's not what I said.

Black families matter to me too, that was my point, not that the tragic death of Mr. Floyd had anything to do with that. What about Black families that are the subject of domestic violence? The guy

I stopped hit me with an ironing board, you know that? Luckily, my partner was able to save me and that woman and that crying five-year old child.

Chair NADLER. The gentlelady's time has expired.

Ms. LESKO. Thank you.

Chair NADLER. Ms. Jayapal.

Ms. JAYAPAL. Thank you, Mr. Chair.

Mr. Floyd, please accept my deepest condolences for your brother's death. It is one too many deaths that result from centuries-old pervasive violence and anti-blackness at the hands of the police.

I promise you that we intend to honor George Floyd with the most sweeping changes to policing that this House has seen in recent memory, banning chokeholds, no-knock warrants, making lynching a Federal crime, and investing in community-based models that provide community safety for all. That is all we can do. We cannot bring him back, but we can honor him with real change.

I want to bring into this room the name of Charleena Lyles, a pregnant Black woman and mother of five in Seattle, and, with her, the many Black women across the country who have lost their lives or their children.

Three years ago, the Seattle Police Department responded to a call from Ms. Lyles, who had been flagged as someone with mental health issues. The officers had received crisis intervention training, and they did know about her mental health issues. Yet, before attempting nonlethal methods of de-escalation, they fired seven rounds, killing her in front of her children. Her 2-year-old son climbed onto her body and laid in her blood.

This brutal story is one of far too many. It's not enough just to say Black lives matter; we have to do the work to cement this essential principle into policy and practice. It's why we must pass, as a critical first step, the Justice in Policing Act.

Professor Butler, I want to start with you. Is any amount of crisis training to teach officers how to interact with individuals with mental health issues sufficient in and of itself to overcome what we're calling the warrior mentality that exists within law enforcement?

Mr. BUTLER. Congresswoman, if the culture of police departments isn't shifted away from that warrior mentality, then no other reform would matter.

Guardianship is the model that President Obama's commission recommended. If you think about it, if you're applying for a job as a warrior, you're going to have one resume and one group of skill sets. If you're applying for a job to be a guardian, to be a caretaker for your community, you have a different resume and a different set of skills.

Congresswoman Lesko, thank you so much for sharing your story. I heard that story as a failure of policing. What I imagined is, what if responders had shown up who understand what your experience is like as a survivor? It's too often the case that survivors don't go to the police or shun the police because the police aren't going to give them the service that they need. Imagine, if a guardian had shown up instead, what a difference that might have made.

Ms. JAYAPAL. Thank you, Professor Butler.

Mr. Gupta, as you know, the Seattle Police Department is in its eighth year under a Federal consent decree that was based upon DOJ's finding that excessive force was most often used against people of color and those who were either mentally or chemically impaired. As you know, initially, there were some wonderful, positive changes that occurred.

However, 8 years later, we have run into some roadblocks, where reforms recommended by the community police commission that were set up were ignored by city leaders and not incorporated into police unit contracts. The recent protests on the streets here in Seattle have been met by a police force that uses use of force against peaceful protesters.

You had talked about a phrase, "Culture eats policy for lunch." Can you explain what that phrase means to you and what tools within this bill are most important and what else is needed to truly bring about justice that meets the cries of the protesters on the streets?

Ms. GUPTA. Yeah. I think in the success of any kind of long-term reform effort or a consent decree, Congresswoman, is where there's leadership and there's an effort that is sustained over time to change the culture of policing. It is what Professor Butler was alluding to just now. It doesn't happen overnight, but it requires sustained commitment.

I look at the Justice in Policing Act and I look at the provisions in there that are seeking to ensure accountability. Because when people feel like their police department can Act with impunity and no accountability, when police officers feel like there is no accountability or consequences on the other side, the culture of a police department becomes very hard to change.

No matter how many policies you change, how much you overhaul in terms of the policing manual and the like, the culture of peace is actually the thing that takes the longest amount of time to shift. It requires constant and persistent leadership at the top, and it requires a commitment to changing and reflecting a system of policing that is much more guardian-oriented than warrior.

I will also say that, right now, there is a hunger in the streets and in communities around the country to recognize that people want other options in their communities other than to call 911 and have a police officer come at the door when people are in a mental health crisis, for homelessness issues and school discipline issues.

I've heard this from police chiefs. The International Association of Chiefs of Police issued a very powerful statement 2 days ago recognizing the systematic decades of underinvestment in the kinds of social systems, in housing and homelessness and education, and how that's all been placed at the feet of police officers.

So, there also needs to be a holistic evaluation of what spending priorities have been in communities that have been saturated with a criminal justice response but underinvested with resources for education and jobs and the like.

Ms. JAYAPAL. Thank you, Ms. Gupta.

Mr. Morial, let me end with you. We recognize, as Ms. Gupta was saying, that too often—has my time expired, Mr. Chair? I can't see the timer.

Chair NADLER. Your time has expired.

Ms. JAYAPAL. Thank you, Mr. Chair. I yield back.

Chair NADLER. The gentlelady yields back.

Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chair.

A lot of important things have been said here today, but maybe the most important—and, frankly, the most succinct was a statement that Mr. Floyd made earlier at the prompting of the very first round of questioning from Mr. Gaetz when he asked Mr. Floyd to respond to something Ms. Underwood Jacobs had said during her testimony. He said, “Life is precious.”

Life is precious. George Floyd’s life was precious. Pat Underwood’s life is precious. Life is precious.

Our country, the greatest country ever, started on that premise. The document that launched this experiment in liberty we call America says this: We are all endowed by our Creator with certain inalienable rights. Among these are—what? Life, liberty, and the pursuit of happiness.

I think it’s interesting to think of the order the Founders placed the rights they chose to mention. Can you pursue your goals and dreams and happiness if you first don’t have liberty, if you first don’t have freedom? Do you ever have liberty and freedom if government won’t protect your most basic right, your right to life? Because Mr. Floyd is right; life is precious.

Mr. Bongino, do you agree with that statement, life is precious?

Mr. BONGINO. Absolutely.

Mr. JORDAN. You protect it every day in your job—your previous job. Is that right?

Mr. BONGINO. To the best of my ability.

Mr. JORDAN. You were a New York City police officer. You protected life every time you put on that uniform and did your shift, did your service. Is that right?

Mr. BONGINO. Proudly so.

Mr. JORDAN. When were you in the Secret Service, you protected life. You protected some pretty important life.

Mr. BONGINO. President Barack Obama and President Bush.

Mr. JORDAN. Two Presidents of our great country.

Mr. BONGINO. That’s correct.

Mr. JORDAN. When you protected that life, you actually risked another precious—you risked your life. Is that accurate?

Mr. BONGINO. That’s accurate.

Mr. JORDAN. Officers do that every single day, don’t they?

Mr. BONGINO. Eight hours day, 5 days a week.

Mr. JORDAN. Every day.

That is why you have been so strong in your language about this concept of defunding the police, abolishing the police—a policy proposal that is not consistent with the statement made, the best statement made here today, by George Floyd’s brother, which says, life is precious.

I think in your testimony earlier, you said, if police forces are abolished, if police forces are defunded, it’s not some—I think you used the word “amorphous mass.” We’re talking about human beings. We’re talking about officers who put on the uniform and go protect our communities. It will put their lives at risk, won’t it?

Mr. BONGINO. There’s absolutely no question.

Mr. JORDAN. Just as importantly, because life is precious, it will put people's life at risk in the communities those law enforcement officers serve. Is that accurate?

Mr. BONGINO. That is accurate. Anyone supporting this should take an oath today to go to the many funerals of the thousands of Black lives, Hispanic lives, and White lives that will unquestionably be lost in the chaos that ensues in depoliced streets. You should commit today and raise your right hand to go to those funerals and listen to those crying parents watching their sons and daughters in those caskets.

You want to vote for it? Then you go see the consequences of it. Because the streets will be chaos. You can't run away after that. Everyone will know what you did if you choose to go down this road.

Mr. JORDAN. Let's protect life. Let's recognize exactly what Mr. Floyd said, life is precious, and let's do that.

I yield back, Mr. Chair.

Chair NADLER. The gentleman yields back.

Mr. Swalwell.

Mr. SWALWELL. Thank you.

First, to Ms. Underwood Jacobs and Mr. Floyd, my condolences to you.

Ms. Underwood Jacobs, the Bay Area law enforcement community grieves with you. My younger brother was working just two blocks around the corner from where your brother was that night when we passed. We grieve with you, and we'll work to try and find his killers.

Mr. Floyd, we know a lot about what happened to your brother because of citizen video, but let's say we didn't have the video, just the report. Too often, that's what we're left with. In that report, a statement issued by the Minneapolis Police Department, they said that after Mr. Floyd got out, he physically resisted officers.

You've watched that painful video. Did you ever see your brother resist officers?

Mr. FLOYD. I'm too emotional right now to talk about a lot.

Mr. SWALWELL. Yeah.

It also said the officers were able to get the suspect into handcuffs and noted he was suffering medical distress.

Mr. Crump, did you ever see that? Other than the distress of an officer's knee on his neck, did you see what was described in this statement released by the Minneapolis Police Department?

Mr. CRUMP. No, sir, we did not. In the video, we saw him face-down in handcuffs.

Mr. SWALWELL. It also said, at no time were weapons of any type used by anyone involved in this incident.

Well, you had a highly trained and experienced police officer using his knee. You would agree that that knee, in that case, was a weapon; is that right?

Mr. CRUMP. Absolutely, for 8 minutes and 46 seconds.

Mr. SWALWELL. A weapon used for 8 minutes and 46 seconds.

To often in our criminal justice system, the deck is stacked against persons of color because of statements that are falsely made in police statements and then put out to the public when there were no cameras, no public footage.

Ms. Gupta, do you believe that the Justice in Policing Act, by having a body camera requirement, an independent investigation into misconduct, and a national police misconduct registry, could go a long way to make sure that we don't have more false statements?

Ms. GUPTA. I think the Justice in Policing Act contains several provisions that are really, really important to transforming the culture of policing in America, yes.

Mr. SWALWELL. I was consulting with an African-American member of my community last week at a church, and he told me something that you've said, Mr. Floyd. It sounded identical. He said, "I feel safe two times during the day—when I wake up in my own home and when I come home from work to my own home. In between, I drive a nice car that I worked hard for, and people in my community think I stole it. I often see police officers pull up behind me and run my license plate and then drive off because they know I don't have any warrants."

What was shocking about that statement was, that was a police captain of one of our biggest law enforcement agencies in the Bay Area. If he doesn't feel safe, as a police captain, how can people who don't have the resources that he has feel safe?

I want to talk about something else that you mentioned, Mr. Floyd, because we're here because individual tragedies and institutional tragedies continue to persist, and unless we do something now, they'll continue. You talked about the officers there not listening to your brother.

On January 1, 2009, in Oakland, California, unarmed Oscar Grant laid on his stomach as an officer shot him in the back. His last words before he died were, "You shot me. I have a 4-year-old daughter."

In July 2014, Eric Garner, in a chokehold, in Staten Island, gasping to say "I can't breathe" before he died. No one on the scene heard him.

Your brother, Mr. Floyd, on May 25, a police officer with his knee on his neck, as your brother said, "I can't breathe. I want my mama. I can't breathe." The officers on that scene did not hear your brother.

Because of this tragedy, the world is listening now. What do you want them to hear?

Mr. FLOYD. I want them to stop hiring corrupted police officers. I know there's no way to figure out who's good and who's bad, but we got to find a way.

Because your heart, it has to be big if you're an officer. You just can't use the badge to be able to do what you want to do when you want to do it. You're supposed to serve, and you're supposed to protect.

I didn't see anybody protecting and serving that day when my brother was on his front, on his chest, hands behind his back, pleading, "Please, please. I can't breathe." A grown man, 46 years of age, crying for his mom.

It just hurt, just looking. All the time, people try to show it to you, figuring it out. They lynched my brother. That was a modern-day lynching in broad daylight.

People was out there pleading, "Please, please, get off. He can't breathe, he can't breathe." People were video-recording it. Nobody cared. Nobody.

My brother, he lost his life before 8 minutes and 46 seconds. He went unconscious. His life was gone. They just dragged his body across that concrete, his lifeless body. Every day, I'm going to have to live with that. My family's going have to live with that. His kids are going to have to live with that. I just don't know.

Right now, I'm happy that we are getting one step closer to justice, but for the time being, I still need time to grieve with my family, because I haven't had that chance yet.

Mr. CICILLINE. [Presiding.] Thank you.

The gentleman's time has expired.

Mr. SWALWELL. I yield back.

Mr. CICILLINE. Mr. Reschenthaler is recognized for 5 minutes.

Mr. RESCHENTHALER. Thank you, Mr. Chair.

I just want to say thank you to all the Witnesses who came here to testify today.

Mr. Floyd, Ms. Underwood Jacobs, it takes an incredible amount of courage to come here and talk about this after losing a loved one. So, I know I speak for all my colleagues when I thank you for your willingness to come here and share your stories with this Committee. As Leader McCarthy said earlier today, George and Patrick will not be forgotten.

Everyone in this room agrees that police officers who abuse their power must be held accountable for their crimes. I hope that we can also agree that the vast majority of law enforcement officers choose their line of work because they want to protect their communities. They put themselves in harm's way every single day, and they do it to keep us and America safe.

In southwestern Pennsylvania, we've seen firsthand how the selflessness of the police actually saves lives. In 2018, 11 Jewish worshippers were killed by a hateful, anti-Semitic madman at the Tree of Life synagogue. The Pittsburgh police and police from around the region ran into open gunfire, and if it were not for their heroic efforts, the tragic loss of life could have been much worse.

So, that's why I'm incredibly alarmed to hear calls from the left to defund our Nation's police departments. Those on the left can try to minimize this, but I just heard my colleague from Arizona go through a litany of statements from those on the left that are calling for defunding and dismantling police departments.

I think that, if anything, the murder of George Floyd demonstrates the need to invest more in our police departments. We should focus on improving training to promote good police practices. We should also be providing mental health care, especially for those that are struggling with PTSD and other job-related stresses.

Additionally, we should work to build stronger bonds between law enforcement and the communities they serve. We can start by having school resource officers in our schools.

I recognize—I'm sorry. We must recognize and we must empower good police officers while terminating bad actors.

With that said, Mr. Bongino, do you think that defunding our Nation's police departments is an effective way of addressing instances of police misconduct?

Mr. BONGINO. No. It's a disastrous policy.

I think one of issues that hasn't been considered are the second-order effects. I mean, obviously, the first-order effects are quite obvious. Less police on the streets means more crime. There's simply no deterrent to crime. Unless you trust in the goodness of every man's heart, which would be potentially disastrous, you are going to have more crime.

Think about the second-order effects. Has anyone on the panel considered the brain drain that would happen? You will have child abuse investigators, who have a very unique ability they have accumulated over time to look a child in the eye and know right away when they're trying to protect an abusive parent because they've been threatened—I've seen it.

What about the child sexual abuse online, where some of these people, they can look at an image and tell six different degrees of separation, how that person got there and who is that abused child? You're going to defund them too?

What about the latent print officer that shows up at your house for a burglary that's been taking fingerprints for 20 years? You're going to teach someone that in 5 minutes in a social worker police academy? Again, God bless our social workers; that's not what they do.

What about the homicide detectives I worked with? When I was young, rookie Secret Service agent, I couldn't break a guy on interrogation. I couldn't get him to admit the crime. He didn't want to admit it. We had a guy walk in—he had experience. He walked in, knew how to interview. Within 5 minutes, we had a full confession, admitted to everything, because he'd done it before, and he knew exactly the back-and-forth of interview and interrogation.

These are skills that are going to be missing from our streets. You don't understand the catastrophe that would follow. I can't emphasize in strong enough terms the disaster this would be if anyone follows through on it.

Mr. RESCHENTHALER. Thank you, Mr. Bongino.

I want to talk about the effect this would have on the communities that are most vulnerable. For example, affluent communities. If police forces were dismantled and defunded, those affluent communities would just hire private police firms. In fact, there's anecdotal evidence that that's already happened in some places.

Could you talk about the effect, the sad irony we would see if this happened, and what it would have on the most vulnerable communities?

Mr. BONGINO. Yeah. Think about it. With the 75 Precinct in East New York, Brooklyn, where I worked, a couple of years before I got there, they had more homicides in that one precinct in New York City than the entire city of Baltimore had a few years ago. By the time I got there in the '90s, they had cut that down to such a point that the entire crime rate in New York City was almost equivalent to that of Baltimore City, a city multiple times the size.

This will save real lives, if we increase our police, not decrease our police budgets. That's insane.

Mr. RESCHENTHALER. Thank you.

I yield.

Mr. CICILLINE. I now recognize Mr. Lieu for his questions for 5 minutes.

Mr. LIEU. I want to thank Chair Nadler and Subcommittee Chair Bass for your excellent leadership on this outstanding legislation.

We are here because Black lives matter. Most Republican officials have been unable to say those three words. The President has been unable to say it. The Attorney General hasn't said it. The overwhelming majority of Republican Senators and House Members have not said it. Why does this matter? Because you can't fix the problem if you can't even identify the problem.

This is not a problem of a few bad apples. This is systematic, institutional racism against Black Americans.

All life is precious. Black lives are subjected to much higher risk of brutality from the police than White lives. That's what the data shows. We know, for example, that Black Americans are killed at a rate twice as high from police than White Americans.

Our government murdered George Floyd and countless Black Americans. It wasn't one rogue cop who put his knee on George Floyd's neck. There were an additional two police officers who had their knees on George Floyd's body, and then a fourth officer who stood as a lookout, and then a Minneapolis Police Department spokesperson who gave a completely misleading initial account of what happened. Then there were the officers and civilians at the department who knew about the 18 misconduct claims against Derek Chauvin and didn't take strong enough action.

It takes a village to allow for the persistent, systematic murder of Black Americans by our government, and this has got to stop.

The Justice in Policing Act is a critical step to stopping the state-sanctioned police brutality against Black Americans. It has a lot of great provisions. The first one I would like to focus on is training.

Now, is training going to stop bad cops from doing bad things? No. It might help good cops from doing bad things.

I note for the record that, in terms of training hours, according to the Bureau of Justice Statistics, police recruits spend, on average, 840 hours in basic training and 500 hours in field training, for a total of 1,340 hours. In California, to be a licensed cosmetologist requires 1,600 hours. So, in other words, it takes more training hours to be a hairdresser than to be a police officer.

Now, just as important as the number of hours is how we train our officers. I'm very pleased that this legislation requires training in racial bias and racial profiling and in procedural justice.

My first question today is to Mr. Davis.

Mr. Davis, when you testified before this Committee last September, you talked about procedural justice. Can you explain what procedural justice training is and why it's so important?

Mr. DAVIS. Thank you, Congressman. Yes, I can.

The basic concept of procedural justice is, the evidence that shows people comply with the law not because they're afraid of the police or even going into custody; they comply with the law because they're given a voice, they believe the law is fair and equitably applied, and that the process will be fair to them.

We know this over the years when people get tickets and we survey them. How they're treated determines their view about that process more than whether or not they got the ticket.

So, this idea of procedural justice is a way to obtain compliance, how to get people to [inaudible] but to comply. It should be trained so that officers know how to gain compliance, how to give people a voice, how to recognize how they treat people has a greater impact on how they respond to that authority than anything else.

Mr. LIEU. Thank you very much.

My second question is to Ms. Ifill.

Recently, Attorney General Bill Barr stated that he didn't think there was systematic racism in law enforcement systems. Do you agree with him that this is just an issue of a few rogue cops rather than the systems we currently have in place?

Ms. IFILL. Not only do I disagree with him, but if Attorney General Barr would consult the reports issued by his own department in pattern-and-practice investigations in over two dozen jurisdictions throughout the country, he would learn that systemic racism actually exists in police departments around the country. That has been fully investigated and found by the Department of Justice, who sued those jurisdictions and put them under consent decree.

The bad-apple theory of policing reform is a failure. It looks only at individual officers instead of the system in which they operate. If we want to change culture, if we want to change relationships, then we have to change the rules that govern that system.

There is no change that happened in this country, especially culture change, that happened because of midnight basketball or that happened because we all got in a room and ate together. We didn't end racial discrimination and segregation in schools by all getting together and having a meeting. It actually required law to make it happen. We didn't end the barring of women from being hired in certain professions by having a conference. It required the law.

Now we have found a systemic problem that has been with us for decades that required law to actually change the context in which policing happens in this country and to give us a chance to make [inaudible] and to look at public safety more broadly than we've done in the past and to make police officers accountable within that system of public safety.

Mr. CICILLINE. Thank you very much.

The time of the gentleman has expired.

I now recognize Mr. Cline for 5 minutes.

Mr. CLINE. Thank you, Mr. Chair.

Across the street from the Capitol, above the Supreme Court is inscribed "Equal Justice Under Law." Today I stand with fellow Americans in condemning the brutal killing of George Floyd and so many others who have been denied that equal justice under the law.

Mr. Floyd, Ms. Underwood Jacobs, we grieve with you, and we mourn with you. You have our sincere condolences for your loss.

Mr. Floyd's killing was an outrageous Act of violence committed by a member of law enforcement with a long record of over a dozen citizen complaints. With the recent arrest of the former officers involved, I look forward to justice being served and being served quickly. For so many others, they will not see that justice served.

In the time that has passed since Mr. Floyd's murder, many more examples of injustice across the Nation have had the spotlight shone upon them, including Breonna Taylor in Louisville, who

was killed by officers in her apartment when a no-knock warrant was served at her residence by officers looking suspects.

American justice should be served in a court of law, but, sadly, many have been denied this right, having been killed while being brought into custody.

Mr. Chair, in my district office, I have a copy of one of Norman Rockwell's "Four Freedoms," the "Freedom of Speech"—one of the freedoms given to us by our Creator and a cornerstone of American democracy.

As we mourn the death of George Floyd, we're also witnessing Americans who continue to exercise their First Amendment rights to peaceably assemble to protest Mr. Floyd's death and highlight other instances of police violence across the country and the need for significant, real reform.

Congress should continue to work together to find solutions to these pervasive problems and ensure that all Americans are being afforded access to equal justice under the law. I believe there are many ways we can continue to work together, rather than put forward policies that divide us.

This Committee has a long history of working together to find bipartisan solutions on issues facing our justice system. The FIRST STEP Act, just 2 years ago, reformed our Federal criminal justice system. This Act included provisions focused on reducing recidivism, reforming incarceration policy, correctional reforms, sentencing reforms, and improved oversight.

Many of the policies included in Chair Bass's bill are ideas that can achieve that bipartisan consensus once again. Increased data collection about officer-involved shootings, body cameras, outlawing chokeholds, making lynching a Federal crime, demilitarizing our police forces are all areas where we can potentially find that bipartisan consensus.

Although we may need to review certain tactics and methods used by law enforcement, we cannot continue to consider the irrational and ridiculous notion of defunding, disbanding, or eliminating our police departments. The rule of law is foundational in the United States, and we must advance solutions that provide fair access to justice while enforcing our laws. As John Adams said, we are a Nation of laws, not of men.

The vast majority of those who serve and protect are good people and stand firmly against the violent and hateful actions of bad officers. At the same time, we cannot ignore the need to have dialogue and understanding when confronting difficult issues like the ones before us today.

We must also look at the departmental policies that are keeping bad officers in their positions. A substantial number of collective bargaining agreements among police departments limit officer interrogations after alleged misconduct, mandate the destruction of disciplinary records, ban civilian oversight, prevent anonymous civilian complaints, indemnify officers in the event of civil suits, and limit the length of internal investigations.

Instead of efforts pursued by the majority to expand police unions, we should be limiting the scope of their collective bargaining and ensure that laws already on the books aren't hampered by contracts that they've negotiated, such as the Violent Crime

Control and Law Enforcement Act, whose effectiveness has been diluted because DOJ's attempt to reform police departments must work around the terms of collective bargaining agreements.

Mr. Floyd, you just said we might know be able to tell the good cops from the bad. We should be able to keep the bad ones from coming back.

This is a time for personal and national reflection on how we can be better neighbors and better citizens of the greatest Nation on Earth. I truly hope we can seize this moment in time so that Americans can come together. I hope, as legislators, we can come together to craft solutions to make our communities safe, strengthen the bonds that unite us, and ensure that we can live out God's direction in Micah chapter 6, verse 8, to Act justly, to love mercy, and to walk humbly with our God.

I yield back.

Mr. CICILLINE. The gentleman yields back.

I now recognize the gentleman from Maryland, Mr. Raskin, for 5 minutes.

Mr. RASKIN. Thank you.

Mr. Floyd, I have a brother too, whom I love very much, and I cannot imagine your pain right now. My heart goes out to you. I want to say you've been a wonderful brother to your brother and a great citizen today. So, thank you for sticking with us.

Professor Butler, the whole point of the social contract is that we'll be safer inside of it rather than outside of it, in the State of nature, State of war. That's why our Constitution protects life, liberty, and property against arbitrary deprivation by the government.

Now, this legislation that we're looking at today, the Justice in Policing Act, will ban chokeholds, strangleholds, no-knock warrants, racial and ethnic profiling. It will criminalize lynching. It will end the militarization of local police departments. It creates a national police misconduct registry. It strengthens the standards of police accountability.

My question for you is, given that you're someone who studies this for a living and teaches about it, is the social contract working for African Americans today with respect to policing? If not, will this legislation actually vindicate the value of human life that Members on both sides of the aisle have spoken about?

Mr. BUTLER. Indeed, Congressman, I was so moved by Mr. Johnson's introduction when he talked about the dignity of every human life. Then we heard Ranking Member Jordan echo Mr. Floyd's heartfelt plea that life is precious.

The justice Act of 2020 reaffirms the sanctity of life. It establishes a national standard for when the police can legally kill people and requires officers to employ de-escalation techniques. The Act states that cops could only kill people as a last resort and requires them to try to de-escalate the situation before resorting to deadly force. This is common sense, but it's not the law now.

Mr. RASKIN. Thank you.

Ms. Gupta, do you agree with Mr. Crump that we should impose the traditional doctrine of respondeat superior, let the master answer for the employee, on police departments so that they have the

proper incentives to carefully train and supervise and monitor their officers?

Ms. GUPTA. Yes, I do.

Mr. RASKIN. Ms. Ifill, Mayor Morial spoke of the history of lynching and racism and the cycles of American history. There have two other moments in our history when America moved aggressively to try to transcend the original curse of violent White supremacy. One was Reconstruction, which lasted 12 years after the Civil War before it was undone by racism. The second was the modern civil rights movement, the so-called Second Reconstruction, when the blood sacrifice of Dr. King and Schwerner, Chaney, and Goodman and Medgar Evers and Bob Moses and our colleague John Lewis and many others gave us the Civil Rights Act of 1964 and the Voting Rights Act of 1965. This civil rights movement, this Second Reconstruction, also faced a violent backlash.

What are our prospects for a third and enduring Reconstruction today, Ms. Ifill? What needs to happen for us to transcend the nightmare of racist violence and injustice that we seem to have been trapped in?

Ms. IFILL. Thank you.

Well, for purposes of this hearing, every Member of this body has to take responsibility for what is happening in this country and decide that they will put behind them their election prospects, their sound bites for FOX News or for any other news network. They have to decide that they want to get their hands around this problem.

That means working together to try and solve what the people in cities in every State in this country have told them over the last 2 weeks is a problem that people will not tolerate anymore.

It takes courage. It is going to take a lot of work for all of you in that body to come together. This bill has provisions that I believe you can agree on, from what I've heard today. I would encourage people to read the bill.

This bill does not repeal qualified immunity, for example. It actually changes the standard that courts have distorted over time.

Read the bill. There is nothing in this bill that should be objectionable to anyone who cares about public safety truly, who cares about antidiscrimination and pledges themselves to it, who cares about the rule of law, and who cares about this country, and who believes, as many have said today, that they owe something to Mr. Floyd and his family and even to Ms. Jacobs and her family, because police officers are made unsafe by the current system.

Mr. RASKIN. Thank you.

Ms. IFILL. So, I would encourage people to read the bill, and I would encourage people to step up with courage, not only in this body but in State and local governments as well, and to decide that they want to work together to solve this problem that the people have said cannot wait anymore.

Mr. RASKIN. Thank you, Ms. Ifill.

Mr. Chair, I have a unanimous consent request that I would like to propose, if that's all right.

Chair NADLER. [Presiding.] Go ahead.

Mr. RASKIN. A number of our colleagues have denounced several episodes of violence that have marred the beautiful and massive

nonviolent protests that are transforming America today. I ask unanimous consent to enter into the record the following articles: “White Supremacists and Other Extremists Exploiting This Moment” in the Richmond Times-Dispatch; “Far-Right Infiltrators and Agitators in George Floyd Protests: Indicators of White Supremacists,” in Just Security; and “Facebook Removes Nearly 200 Accounts Tied to Hate Groups” encouraging Members to attend protests over police killings, and that is in ABC News.

Chair NADLER. Without objection.

[The information follows.]

MR. RASKIN FOR THE RECORD

White Supremacists and Other Extremists Exploiting This Moment

BY: INTEGRITY FIRST FOR AMERICA BLOG

Facebook

Twitter



AP PHOTO/NOAH BERGER

It's horrifying yet unsurprising — **far-right extremists, including white supremacists, are trying to exploit this moment in order to sow fear, hate, and violence and distract from the core issue at hand: racial justice.**

It's important to be clear: those trying to take advantage of what's happening do not, for one second, take away from the protests' legitimacy. Rather, they only underscore the importance of these protests and of the broader fight against white supremacy and racism in America.

The murders of George Floyd, Breonna Taylor, Ahmaud Arbery, Tony McDade, and so many others are the tragic and unsurprising results of a racist and broken system — the same system that fueled Charlottesville, Charleston and the litany of other white supremacist attacks, including some of the very extremism we detail below.

Here's a summary of what we've seen over the last week:

--Identity Evropa — a white supremacist group that is a defendant in our Charlottesville suit — posed as "antifa" in a viral tweet that urged violence and looting in white neighborhoods. [1] The tweet made the rounds on sites like Facebook and NextDoor, and people were encouraged to "defend" themselves against the supposed antifa threat. Twitter ultimately suspended the account.

As our suit details, Identity Evropa was a key organizer of the Charlottesville violence, specifically leading the efforts to organize white supremacists from around the country for the weekend of planned violence.

Similarly, Facebook says that they suspended accounts associated with white nationalist groups, which advocated bringing weapons to the protests and spread disinformation related to "antifa." [2]

Disinformation campaigns like these are a hallmark of white supremacist tactics, which like we saw in the lead up to the 2016 election and in so many other moments since, disinformation is used to tear communities apart – and white supremacists believe there's no better way to do that than capitalizing on racial fears and tensions.

--An admitted Ku Klux Klan leader drove his car into a crowd of protesters in Richmond, Virginia. [4]

Nearly three years ago, one of his fellow white supremacists did the same thing, not that far away, in Charlottesville.

The use of car attacks has become a deliberate tactic of white supremacists. This latest attack only affirms that efforts to deflect and distract about who's responsible for recent violence are cynical and dangerous.

--Armed extremists are showing up to protests in hopes of a "boogaloo" — their code for a second civil war. [5]

Some claim that they're there to "protect" the protesters. But we should be very clear about who these people are: boogaloo extremists are a loose coalition of far-right militia extremists who urge a second civil war, revolution, or other violent anti-government resistance. They believe these protests can be used as a catalyst for the violent upheaval they've long wanted.

After we originally published this post, three of these "boogaloo" extremists were arrested for inciting violence at Las Vegas protests. You can read IFA's full statement here.

Among other examples, Denver Police seized automatic weapons and tactical gear from two of these extremists at a protest on Friday. [6]

--Some extremists are trying to spur violence at the protests, including against Black protesters to spark a "race war." [7]

The Department of Homeland Security warned law enforcement that white supremacists – including some boogaloo extremists – are encouraging supporters to shoot protesters. One message encouraged shooters to "frame the crowd around you" for the violence. [8]

Some white supremacist accelerationists - **who seek to speed the collapse of society through violence** - suggested murdering protesters and spreading rumors that law enforcement snipers are responsible, per the Anti-Defamation League. [9]

An armed white man with apparent ties to neo-confederate hate groups was arrested for firing shots at a protest in North Carolina; he's a member of Sons of Confederate Veterans, which has deep ties to our Charlottesville defendant League of the South. [10] And a Philly journalist was allegedly attacked by a group of racist bat-wielding vigilantes. [11]

Meanwhile, a man from Illinois allegedly brought bombs to a Minneapolis protest with the goal of starting a riot. He was seen handing out explosives and encouraging protesters to throw them at police. [12]

In Queens, a racist white man with knives strapped to his arms tried to stab and mow down Black Lives Matter protesters. [13]

--At the same time, neo-Nazi accelerationists are urging terror attacks on synagogues and infrastructure during the protests. [14]

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supremacy and extremism. At IFA, our Charlottesville case provides one specific way to tackle the systems of white supremacy; taking on the leaders and hate groups at the center of this violent movement. The case is moving full speed ahead toward trial this fall, [with our team winning some critical court decisions over the last few weeks.](#)

As always, thank you for being with us in this fight,

Amy Spitalnick

Executive Director

Integrity First for America

1. [White nationalist group posing as antifa called for violence on Twitter - NBC News;](#)
2. [White Supremacist Group Identity Europa Posed as Antifa on Twitter and Called For Looting and Violence - VICE News](#)
3. [Facebook takes down white nationalist and fake antifa accounts -Reuters](#)
4. [White Nationalist Group Posed as VICE Reporters While Identifying D.C. Protesters -SPLC](#)
5. [Henrico prosecutor: Hanover man who drove into protest is admitted KKK leader -Richmond Times-Dispatch](#)
6. [Far-Right Extremists Are Hoping to Turn the George Floyd Protests Into a New Civil War - VICE News](#)
7. [Denver Police Seized Assault Rifles from Anti-Government Gun Activists at Friday Night Protest - Colorado Times Recorder](#)
8. [Far-Right Extremists Are Hoping to Turn the George Floyd Protests Into a New Civil War - VICE News](#)
9. [Domestic terrorist actors' could exploit Floyd protests, DHS memo warns - Politico](#)
10. [Extremists Weigh in on Nationwide Protests - ADL](#)
11. [North Carolina Protest Shooting Suspect Appears To Have Ties to Organized Neo-Confederacy, Hate Groups - SPLC](#)
12. [Philly mayor, police commissioner condemn armed vigilante group in Fishtown - Philly Voice](#)
13. [A White Man From Illinois Allegedly Brought Bombs to Start a Riot at the Minneapolis George Floyd Protest - VICE News](#)
14. [Racist Tries to Kill Black Lives Matter Protestors With His Car - StreetsBlogNYC](#)
15. [Neo-Nazi Accelerationists Calling For Terror Attacks During Protests - VICE News](#)

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Far-Right Infiltrators and Agitators in George Floyd Protests: Indicators of White Supremacists

justsecurity.org/70497/far-right-infiltrators-and-agitators-in-george-floyd-protests-indicators-of-white-supremacists/

By Mia Bloom

May 30, 2020



When anyone studies the Middle East for as long as I have, you become practically immune to conspiracy theories. The word in Arabic “muamarrat” is pervasive and after hearing my whole adult life about the hidden forces behind various catastrophes one automatically winces when someone tries to push *the real story* they heard somewhere or saw on social media.

The protests that have torn through the United States, following the murder of George Floyd at the hands of Minnesota police officers, shift the emphasis in real time videos broadcast nationally. The images challenge our beliefs about **who is really protesting and for what reason.**

Minneapolis

Minnesota Governor Tim Walz echoed this sentiment in a press conference on Saturday alleging that the demonstrations that caused so much damage included provocateurs, likely from outside the area. State officials said around 80 percent of those arrested in the Twin Cities on Friday were from outside Minnesota. Former FBI agent and CNN commentator, Josh Campbell wrote, that Minnesota “authorities have been monitoring alleged criminals

online, including postings by suspected white supremacists trying to incite violence.”

Before the rioting started in Washington DC, Brooklyn, Denver, Atlanta, and other cities, allegations emerged that undercover police officers might be to blame for some of the worst commercial destruction in Minneapolis. Experts on political violence (and not just Qanon conspiracy theorists) shared stories on social media that the May 27 looting and arson at AutoZone by an unidentified man in a gas mask carrying an open umbrella (dubbed #umbrellaman) was not necessarily a protester but could be an agent provocateur or member of the police. In video posted to [YouTube](#), while this man smashed windows with a hammer, protesters at the scene accused him of being an outsider and began to film him.



Watch Video At: <https://youtu.be/qv-O4rnUToU>

According to reporting in the [Atlanta Journal-Constitution](#), “The man’s actions were so odd that other rioters in the area paused their own protests to call him out and began filming. “Are you a f—ing cop?” someone else can be heard yelling to the man as he disappeared from view.”

People in St Paul (including someone saying they are a former fiancé) claimed to have identified #umbrellaman as Jacob Pederson, a member of the St. Paul police whose goal would appear to be to exacerbate racial tensions and instigate more property damage in order to undermine the legitimacy of the protests against police brutality. However, the Saint Paul Police Department issued an unequivocal statement saying the individual was not Pederson, and told reporters that Pederson had a complete alibi. “We spoke with his supervisor, who was with him. We spoke to his colleagues, who were with him,” said Steve

Linders, public information officer for the St. Paul Police Department. “We were able to verify where the officer was and who he was with. In fact, he was working, as a Saint Paul police officer, protecting people and property.”

Atlanta

In Atlanta, the demonstrations began in the early afternoon and started out largely peaceful. Legendary civil rights leader John Lewis marched alongside a diverse group shouting slogans and the names of African Americans killed by police violence. I would have attended myself except for a global pandemic (which has also impacted the African American community at a disproportionate rate). Instead I followed along the peaceful march with my friend Shannon who attended with her children.

It appears that over the hours the demographics of the demonstration changed in real time in front of the cameras. What began in Atlanta was a protest to honor the memory of George Floyd and make a powerful statement about continued police brutality across the country, and more locally in Brunswick, Georgia. In February while jogging, Ahmaud Arbery was murdered by a retired police officer, Gregory McMichael and his son Travis. The case took over two months to come to light because law enforcement officers in Brunswick refused to bring charges and once the video of the lynching was posted to social media, the Georgia Bureau of Investigation took action.

By 7 PM the Atlanta protesters appear to have been joined by elements who had an ulterior motive. What explains the attack on the CNN building that Friday evening?

Glass getting broken outside the main entrance to CNN's Atlanta headquarters; protesters cheer pic.twitter.com/EToiEj5Pom

— Fernando Alfonso III (@fernalfonso) May 29, 2020

That morning, the protests were galvanized further by the arrest of Omar Jemenez, a CNN reporter live on air, while his Caucasian colleague, Josh Campbell, two blocks away was not. White anchors said what people of color has been saying for years: that driving while black, jogging while black, reporting while black, bird watching while black, selling lemonade while black was perceived to be a threat by racists. At the hands of police with the power to arrest and kill (and not arrest the lynchers), this was the weaponization of race.

CNN became a target of right wing attacks on social media more so than usual on Friday. While some claim that the demonstrators were attacking CNN because there is a small Atlanta Police Department station inside the building, it is at the back of the building and has a different entrance. The attacks on the iconic red letter sign, and what the demonstrators were saying (and NOT saying) did not correspond with demonstrations in the other cities. Unlike earlier in the day at the protest with John Lewis, these protesters

were not calling out the names of victims of police brutality: George Floyd, Breonna Taylor, Ahmaud Arbery, Freddie Gray, Michael Brown, Eric Garner, Tamir Rice, Philando Castile (the list goes on).

Right-wing extremists and accelerationists

The demographics of a largely white, young, and destructive group fit more with a movement known as accelerationists than Black Lives Matter.

The accelerationists, if you have never heard the term, are an extreme subset of white nationalism whose goal is to bring about chaos and destruction. The basic tenet of accelerationism argues that since Western governments are inherently corrupt, the best (and only) thing supremacists can do is to accelerate the end of society by sowing chaos and aggravating political tensions. “Accelerationist ideas have been cited in mass shooters’ manifestos — explicitly, in the case of the New Zealand killer — and are frequently referenced in white supremacist web forums and chat rooms,” Zack Beauchamp [explained](#).

White Supremacists pretending to host a protest to honor Floyd George on Facebook to whip up violence in San Diego were [posted](#) on the BLMSD social media warning people not to go and that it was a white supremacist organized rally. People attending demonstrations remarked on the fact that the demographics were wrong, in places like Oakland where the majority of the destruction was perpetrated by young Caucasian men has inspired not just people on social media but reporting in the mainstream media to properly question whether this is a form of infiltration by outside extremist elements.

My heart hurts watching this. I don't know what their motive is or who organized these white people to come out, but they don't care about us. That one woman is about to burst into tears and they won't even look at her... pic.twitter.com/35Hz5ldAaC

— [J M Black H T Aziz N G a N a N s i T T](#) (@Freeyourmindkid) May 30, 2020

A [report](#) by Vice News about right-wing infiltrators in the protests notes “hardcore ‘accelerationists’ ... are encouraging their neo-Nazi followers to go to the protests and carry out acts of violence against black people.”

Accelerationists follow the blueprint laid out by neo-Nazi [James Mason](#) in *The Siege* (not the film with Denzel Washington) whose writing inspires Charles Manson types of killing sprees. Mason, living in obscurity in Denver until he was brought out of retirement by Atomwaffen, a right wing Neo Nazi group. The goal of accelerationism is to burn everything down and to use violence both to target enemies and instigate an overt and extreme response from the government. Their strategy echoes Gustavo Gorriti’s [writings](#) about the Shining Path terrorist group that the movement’s “goal was to provoke blind,

excessive reactions from the state... Blows laid on indiscriminately would also provoke among those unjustly or disproportionately affected an intense resentment of the government.”

Similarly accelerationists hope to “demolish the state apparatus that stands between them and a white-dominated future.” And the White Supremacists here could be of a different orientation too – organized to discredit the protestors with no clear or deliberate vision for greater political change in mind.

Bellingcat has documented the involvement in the protests of a largely white, and far-right movement called the Boogaloo, whose leaders “expect, even hope, that the warmer weather will bring armed confrontations with law enforcement, and will build momentum towards a new civil war in the United States.” “As protests over the death of George Floyd heated up in Minneapolis on May 26th, members of Boogaloo groups across Facebook considered it a call to arms,” wrote Bellingcat’s Robert Evans.

On Twitter, Evans has said he does not think the Boogaloo group is behind the destruction of property. Vice News’ Tess Owen wrote about the Bugaloo Bois, anti-government extremists recognizable by their Hawaiian shirts, that “in addition to their physical presence at the protests, the #boogaloo hashtag on social media has been flooded with memes in the last couple days egging on violence, and talking about how they hope this is the beginning of a civil war.”

Sounds like a subplot of the X files, sounds unlikely, or too conspiratorial...maybe. But recall the Russian Internet Agency posted ads and pages for demonstrations for Black Lives Matter as well as Pro Trump anti immigrant groups on Facebook in the months leading up to the 2016 election. The protests have changed the national conversation from over 100,000 dead and counting to rising violence and chaos on American streets. Tossing gasoline onto an already explosive situation, President Donald Trump tweeted and posted on Facebook about the George Floyd protests, including one in which the president warned, “when the looting starts, the shooting starts.” The president tried to walk back the tweet later saying he had no idea of the racist use of that phrase to support extrajudicial killings by police. Yet he can’t deny that several hours after experts pointed out the origins and meaning of the phrase, the official White House twitter account reposted Trump’s statement. Then on Saturday, the president retweeted a post saying, “In an ironic twist of fate, CNN HQ is being attacked by the very riots they promoted as noble & just.”

It is worth reiterating what Loren DeJonge Schulman argued, that even if the protests include outsider participation to foment chaos and spark an overreaction it doesn’t mean that the driving sentiment launched by these protests should be minimized or ignored.

If the protests are being infiltrated by police provocateurs, accelerationists or other bad actors, we can expect a lot more violence in the lead up to the 2020 election.

Facebook removes nearly 200 accounts tied to hate groups

Facebook says it has removed nearly 200 social media accounts linked to white supremacy groups planning to rally members to show up at protests over police killings of black people — in some cases with weapons

By DAVID KLEPPER Associated Press
June 5, 2020, 10:19 PM • 3 min read



The Rundown: Top headlines today: June 5, 2020

Stay up to date on the developing stories making headlines.

Facebook has removed nearly 200 social media accounts linked to white supremacy groups that planned to encourage members to attend protests over police killings of black people — in some cases with weapons, company officials said Friday.

The accounts on Facebook and Instagram were tied to the Proud Boys and the American Guard, two hate groups already banned on the platforms. Officials were already monitoring the accounts in preparation for removing them when they saw posts attempting to exploit the ongoing protests prompted by the death of George Floyd in Minneapolis.

"We saw that these groups were planning to rally supporters and members to physically go to the protests and in some cases were preparing to go with weapons," said Brian Fishman, Facebook's director of counterterrorism and dangerous organizations policy.

The company did not divulge details of the account users — such as their specific plans for protests or where in the U.S. they live. It said "approximately" 190 accounts were removed overall.

Both the Proud Boys and American Guard had been banned from Facebook for violating rules prohibiting hate speech. Facebook said it will continue to remove new pages, groups or accounts created by users trying to circumvent the ban.

Earlier this week, Facebook announced the removal of a "handful" of other accounts created by white supremacists who had been posing on Twitter as

Top Stories

Facebook removes nearly 200 accounts tied to hate groups

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members of the far-left antifa movement.

Facebook announced two other actions on Friday to root out networks of fake accounts used in attempts to manipulate public opinion in Africa and Iraq:

— Hundreds of fake Instagram and Facebook accounts created in Tunisia in an alleged effort to influence elections in that country and other French-speaking nations in sub-Saharan Africa:

The accounts and related pages were used to impersonate local citizens, politicians and news organizations. More than 3.8 million accounts followed one or more of the pages, and more than 171,000 people had followed one of the fake Instagram accounts.

The network of fake accounts and pages was uncovered by the Atlantic Council's Digital Forensic Research Lab. In their report, researchers at the DFRL said they've noticed more and more PR firms dabbling in misinformation and online manipulation.

— Facebook also deactivated another network of 102 fake Instagram and Facebook accounts used to impersonate local politicians and news organizations in the Kurdish region in northern Iraq. Company officials said the fake accounts, which appeared to target domestic audiences in Kurdistan, were linked to Kurdish intelligence services.

Comments (53)



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Trump pushes conspiracy theory about Buffalo protester

Chair NADLER. The gentleman's time has expired.

Mr. RASKIN. Thank you.

Chair NADLER. Mr. Steube.

Mr. STEUBE. Thank you, Mr. Chair.

Mr. Floyd, I would offer my personal condolence to you in the loss of your brother. I can't imagine having to watch your family member die a needless and merciless passing. I feel confident that not only justice will be served for him, but I think that significant and necessary reforms will come of this tragic incident.

I wish Ms. Underwood Jacobs was still here, but I also want to give my condolence to her. Hopefully she'll watch the video.

I have brother and a father-in-law enforcement, and I cannot imagine the pain that you are experiencing, knowing that someone intentionally targeted him simply because he was an officer. I'm very sorry for your loss, and my prayers are with you and your family and with Mr. Floyd's family. In my prayers this morning, Philippians 4:13 came to mind. So, I hope that you can reflect on that.

This is a dangerous, dangerous time for law enforcement and their families. Just in the conversation I had with my brother yesterday, he said he had two of his deputies quit because of all the issues that they are facing: Threats, targeting, being reconned on their homes, their vehicles being looted and broken into at their homes.

Speaking of law enforcement officers, I also would like to give condolences to the family of the retired police captain David Dorn, who was fatally shot last week trying to prevent a pawn shop from being looted during what the left is calling a peaceful protest. His life mattered as well, and I commend his service to his community as a law enforcement officer and wish that there was a member of his family here represented today to give their remarks in his passing.

While officers like David Dorn and David Underwood have been targeted and murdered during these so-called protests, it is extremely troubling that many of my colleagues on the left have failed to condemn the violence and rioting in our cities and communities across the country.

Protests are peaceful. Looting, killing, stealing, destruction, and burning some of the very cities where their leaders just weeks ago were arresting people for violating stay-at-home orders is absolute lawlessness.

The hypocrisy of these leaders arresting those violating stay-at-home orders for, say, going surfing or other activities—gathering in a synagogue with 10 or more people—the hypocrisy of these leaders arresting those individuals for violating stay-at-home orders but sitting by while their cities burn is outlandish to me.

On one day alone, on May 31, in Chicago, one city, on one day, saw 18 people murdered due to rioting in one night—the deadliest day in Chicago in 60 years. There were over 65,000 911 calls. Can you imagine if we abolished the police department? Those 65,000 people would be calling, and nobody would be there to come to their rescue.

That is not America. That is anarchy.

When your leaders talk about disbanding police departments, you are emboldening criminals to continue to commit crime, knowing that there will be no one to stop them.

I talked to my brother yesterday, and they had an incident at a Walmart where there were 30 individuals looting the Walmart—the Walmart that my wife and I go to on a pretty regular basis. They only had 3 officers respond to 30 individuals who had weapons. Well, they're not going to use 3 officers to respond to 30 individuals because of the safety risk incurred to those officers, so those 30 individuals got away.

I thought that Pastor Scott had a great statement today in his opening comment.

Pastor, you said, "The prospect of defunding or dismantling our police forces is one of the most unwise, irresponsible proposals made by American politicians." I would agree.

There are issues in this proposal that we can all agree upon: A law against lynching, which I supported and this House passed months ago, which we voted for earlier this year. Ensuring bad cops don't get hired at different agencies. Absolutely, that's an incredible idea. Reporting use of force in an FBI database. Creating a commission on social status of Black men and boys based on a Florida program that I participated in as a Florida Senator in the State of Florida. I was proud to be a part of that program.

There are proposals in this bill that are extremely dangerous for those who protect our communities. Removing qualified immunity is only—qualified immunity is only a protection if officers follow their training and protocols. If they don't follow the training and protocols, they don't get to use the immunity, because it's qualified.

If officers don't have qualified immunity to follow their training and protocols, I don't know a single person who would want to become a law enforcement officer in today's world, knowing that they may or may not be able to use the training and protocols that they were used to be able to apprehend a suspect who is not complying with them. Maybe that's the goal of the majority: To get less and less people to join our law enforcement offices.

One quick point, in the little time I have left, is military equipment—or, as Mr. Raskin calls it, the militarization of our police departments. They use bulletproof vests and bulletproof shields to protect our officers who protect our communities. By stripping them of that ability and stripping them of their ability to use weapons to protect themselves is a dangerous, dangerous path to go down. I don't think that our country supports that.

Mr. Floyd, I think, said it best.

You said, "Life is precious." I would agree with you. I would contend that all life is precious, and it all deserves protection.

I yield back.

Chair NADLER. The gentleman yields back.

Ms. Demings.

Ms. DEMINGS. Thank you so much, Mr. Chair.

I also want to mention our Subcommittee Chair and thank Chair Bass for her leadership.

Thank you to all the Witnesses and for your endurance. It's worth it.

Mr. Floyd, my family and I, along with my constituents in Florida, join you in grieving the death of your brother, George.

I know that Ms. Underwood Jacobs is not here any longer, but my family and I and my constituents also join her in the death of her brother, Patrick. I have attended many law enforcement funerals, more than I care admit.

We are outraged about both deaths. Let me say this, as law enforcement officers, they are held to a higher standard. I'm sure Ms. Patrick's—or Ms. Underwood Jacobs's brother deserved to wear the uniform. Everybody does not. That's why we are here today.

I come before you as the mother of three beautiful Black sons. I also come before you as a former social worker and a former police chief.

Many have tried to frame this tragic event as an us-versus-them situation. That's not what this is. This is not about the community being against the police or the police being about the community. It's much bigger than that. This moment is about what's right, and this moment is about what's wrong.

This is not a Black issue or a White issue. It's not a Democratic issue or a Republican issue. This is an American issue that has turned into yet another American tragedy. We are all have to get this right. Lord knows I want to get this right.

While the actions of one brutally murdered, took the life of your brother, Mr. Floyd, three other officers did nothing about it for 8 minutes and 46 seconds. I have been on the street, and I know what it feels like to be waiting for backup to come. Eight minutes and 46 seconds feels like a lifetime. That's a long time. While one officer took the life of Mr. Floyd, three others stood by and did nothing for 8 minutes and 46 seconds.

Chief Davis, would you talk for just a moment of an officer's duty to act? In general. An officer's duty to act. For example, if they received a call for service, does an officer have the ability to simply refuse to go to that call? Certainly, when they see a crime in progress, a wrongdoing being perpetrated by a fellow officer, please talk about their obligation to intervene and also report to the agency that bad behavior.

Chief Davis?

Mr. DAVIS. Thank you, Congresswoman.

I agree with you 100 percent. That is why one of the things I asked for earlier was the reaffirmation of the oath of office, because the officer takes the oath to the Constitution to protect and serve, and they have a duty to serve. We say against all enemies, foreign and domestic.

They have the duty to take the calls that they're sent to. They have the duty to enforce the law. Most policies require the duty to intervene. So, they were morally obligated, they were procedurally obligated, they were legally obligated to intervene with Mr. Floyd's murder.

They're legally obligated to respond to the calls. We expect them to go to active shooters. We expect them to go to bank robberies, domestic violence. We also expect them to be consistent. So, anyone that's violating the law should be held accountable, and there's not a pass because you wear the badge.

As you know as a chief, as I just spent 9 years as a chief, you should be held to a much higher standard. That standard includes a duty to intervene, a duty to report misconduct, and a duty to render first aid, because those are the high standards of this profession.

Ms. DEMINGS. Thank you so much, Chief Davis.

Mr. Chair, I yield back.

Chair NADLER. The gentlelady yields back.

Mr. Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Chair.

I'm not sure that an at-large Representative from a State that is 89 percent White and 100 percent rural is always the best person to address these issues, and I don't pretend to be. We neighbor Minnesota. Minneapolis is the city that is, far and away, the closest to North Dakotans' hearts. On May 25, we watched in abject horror as your brother was brutally murdered.

On May 27, our entire State mourned because Officer Cody Holte was killed trying to save another officer who been wounded, independent of anything else that is going on in the rest of the country.

The very next Tuesday, we buried Officer Cody Holte, and it was an incredibly beautiful and incredibly tragic funeral. Yesterday, I watched your brother's funeral, and it was incredibly beautiful and incredibly tragic.

You know what I found through the whole course of all this? None of it was binary. I agree with Congresswoman Demings; this is not an us-against-them. This is not that situation.

We can do reform. We've done it before. We've done it in States like North Dakota. I hope, when we go through a markup, that we are willing to work through this. Because I think you'll find there are a lot of people on my side of the aisle that agree with a lot of the concepts on the other side of the aisle.

I will view this bill the same way I view every other bill: How does it work at 2:30 on the side of road in a State where it's often one officer—and, by the way, not just for the officer, for the officer and the person being detained. How does it work at 2:30 on the side of a road where backup is measured in hours and not minutes?

Because my concern with these things is always: I don't pretend to know how to police in urban districts. I don't live in an urban district. You have to recognize that, as we intend to do these things, we have a high turnover rate. We have a hard time hiring law enforcement as it is in North Dakota. We have to make sure that it can work everywhere.

If it comes to holding bad cops accountable and bad departments accountable, I'm all in. Because once they wash out everywhere else, they might end up where I'm at, and we don't want that either.

After that, I think I would go with: I hope I can give some people some hope. Because regardless of how this works next week and regardless of what we mark up, what we move forward, we shouldn't be done. We should continue to work towards other things. Those things are disparities in sentencing, disparities in pretrial release—things that we quantifiably can show exist.

In 2016, and this is primarily in State court, because it's about 88 percent of the prison population in the United States is in State

court—Black prisoners serve essentially a 5–1 prison sentence on drug crimes than White prisoners. Now, that’s down from 16–1 in 2000, but it’s pretty hard to pat yourself on a back for something that shouldn’t exist in the first place.

What we found is that, as we move forward and we dealt with minimum mandatory sentencing—and minimum mandatory sentencing was supposed to be to get rid of disparity in these sentences. What we found is blacks are almost twice as likely to be charged with a minimum mandatory offense as whites. So, instead of taking it out of the courts’ hands and the judges’ hands, we’ve moved it into prosecutors’ hands.

Pretrial release. As we continue to do this—States have done this; North Dakota has done this—working towards issues that allow for people to be released based on risk assessment, not monetary value. Those types of things work.

This matters on the street, because if you know if you’re going to get arrested that you’re not going to get out, the likelihood of you resisting, absconding, all those different things go up significantly. We can do that.

We should look at policies that are racially neutral on their face but have a historically disparate racial impact. School zone enhancement for drug crimes. As we’ve seen this go on years after years, these enhancements have gotten larger and larger, and they also tend to be in highly urban, densely populated, poor neighborhoods that are predominantly African American. Those enhancements need reform.

We need to look at those things. Those are things we can continue to do and I will continue to do with everybody on the other side of the aisle.

My point to this is not to deflect. We’ve heard all these different things today. I want my friends on the other side of the aisle to know that we can do this. I know we can do it because we did it in North Dakota. If we can do it in North Dakota, we can do it absolutely anywhere. It takes working with each other, and it takes working with each other on both sides of the aisle.

So, no matter how we move forward on this and continue to work, I want you to know, there are people on our side of the aisle that are committed to working on these issues that will have real, positive impact for people across this country. It’s not just about what we have going on now; it’s how we continue to work in the future. So, reach out, ask us. We’re here to help.

Thank you.

Chair NADLER. The gentleman yields back.

Mr. Correa.

Mr. CORREA. Thank you, Mr. Chair Nadler and Chair Bass, for holding this most important hearing.

Mr. Floyd, I want to thank you for being here today in this very difficult moment for you and your family. The murder of your brother, George Floyd, reminds us of all that the relationship between public safety and those who they are sworn to protect can’t be assumed to always be one that’s a healthy relationship.

In my district, the new Ellis Island of the United States, we’re diverse and we’re always changing. New Americans live side-by-side with the Greatest Generation.

We have to remember that we are not a police state, and we are not a police country and that, for public safety officers to do their job, trust and cooperation are essential.

We've worked really hard over decades, the last few decades, to bring that trust into being. That's why it is so sad to see again another murder, another tragedy in our streets. This is exactly why this bill has to become law.

When I was at California legislature, this issue kept popping up over and over again. In my work with the autism community, this issue again resurfaced about a decade ago. As police began to confront the tidal wave of maturing autistic children, we soon realized that police officers were not trained to deal with autistic adults. Autistic individuals, not capable of following directions, were considered to be uncooperative. Soon, violent confrontations arose and were reported in the press.

My work in this area in updating California police officer standards was soon brought to the attention of a retired police chief in the Midwest, the father of an autistic adult who was also trying to address the issue of autism and public safety. This clearly shows that police training is not a local issue but a national issue. Again, this shows why this bill must become law.

The Justice in Policing Act of 2020 improves police training and practices by creating law enforcement development programs to develop policies, best practices, among others.

My legislation, H.R. 5251, Improving Community Safety Task Force, directs the Attorney General to also establish a task force seeking ways to reduce violent clashes between communities and public safety officers.

Mr. Chair, at this point, I would like to submit for the record a letter from Brian Marvel, President of the Peace Officers Research Association of California, discussing how they support reforms.

Chair NADLER. Without objection.

[The information follows:]

MR. CORREA FOR THE RECORD

**Written Testimony of Brian Marvel
President, Peace Officers Research Association of California (PORAC)**

**Hearing before the House Judiciary Committee
“Oversight Hearing on Policing Practices and Law Enforcement Accountability”
United States House of Representatives
June 10, 2020**

Introduction – Who We Are

Chairman Nadler, Ranking Member Jordan, and distinguished members of this Committee: Thank you for holding this hearing on policing in the United States, and thank you for giving the Peace Officers Research Association of California (PORAC) the opportunity to weigh in at this critical juncture. We are ready for, and look forward to, the opportunity to work together with lawmakers and stakeholders from across the country to create a more just and equitable criminal justice system.

PORAC represents more than 77,000 public safety and peace officers across California, and is composed of over 920 public safety associations. Founded in 1953 as a federation of state, local, and federal law enforcement agencies, PORAC is now the largest such statewide agency in the nation.

PORAC is proud of its history as one of the nation’s forward-thinking and innovative public safety organizations. In 1959, just six years after its founding, PORAC became the first association to develop a “peace officers standard setting agency,” now known as Peace Officers Standards and Training (POST). The rest of the nation soon followed.

We carry that spirit of reform into the present day. In 2009, we became one of the first major law enforcement associations in the nation to offer its full support for body-worn cameras (BWC) as a measure to increase our accountability to the community.

Just this last year, PORAC worked with activists, community groups, and lawmakers to tackle use of force issues in California, an effort which resulted in a unified solution, and a reasonable use of force standard; a solution which we will subsequently discuss in more detail.

In addition, PORAC has recently collaborated with Congressman Lou Correa to develop H.R. 5251, the Improving Community Safety Task Force Act. This bill brings together a variety of stakeholders to conduct a comprehensive review of violence directed at and involving law enforcement.

The tragic and unnecessary death of Mr. George Floyd in Minneapolis is simply inconsistent with the mission, standards, and goals of law enforcement.

We were sickened by what we saw. As peace officers, our role is to serve and protect – a responsibility that we cannot fulfill without the trust of the communities we have sworn an oath too. When that trust is broken by officers whose actions are inconsistent with the missions and goals of our profession, we too are outraged – and we have a duty to intercede, an obligation to speak out and a moral imperative to hold those officers accountable.

Our nation has an opportunity to channel this righteous anger into action and lasting reform. That is why we feel compelled today to submit this testimony.

The discussion of law enforcement reform is wide-ranging and can encompass many views. PORAC respectfully proposes several reforms:

1. **National Standards.** Establishment of baseline national standards for policing to cover training, recruitment and use of force.
2. **Mental Health.** Increased focus on, and funding for, mental health services in America, including increasing the partnering of law enforcement with social workers and mental health professionals – a partnership essential to good policing.
3. **Funding.** Increased funding for law enforcement, as opposed to defunding police, to provide the resources necessary to improve training, enhance recruitment and allow for community policing.

Peace officers are an integral part of the communities they serve, and PORAC believes that smart policy along these lines can reduce the use of unnecessary force by law enforcement in our country, and ultimately lead to safer and better communities for us all.

Raising the Bar – Establishing National Standards

PORAC believes that one of the most vital changes to law enforcement policy, and one that can and should be made immediately, is the implementation of full national standards on the use of force, training and recruitment.

As it stands now, each state, locality, and sometimes even agency has its own set of standards in these areas. For example, in a review of the Minneapolis police department's use of force policies, PORAC found several provisions that have been eliminated in the state of California. PORAC believes that implementing national standards, based off of the existing and proven standards under which California law enforcement operates, can ensure that public safety officers everywhere can be held to the same high standard of conduct.

We urge the Committee to take a close look at two pieces of legislation passed last year in California that can provide a roadmap and benchmark for a nationwide use of force standard – and training. AB 392 and SB 230 were developed in a truly collaborative manner.¹ As the leaders in California law enforcement, PORAC spent more than a year surveying all of the proven best practices from around the country, collecting input from legislators, the American Civil Liberties Union, our Attorney General, diverse experts, and impacted stakeholders from throughout the state. Together, we worked to produce America's an innovative policy on the use of force.

However, while a lawful standard may change, as it did under AB 392, that does not mean the behavior of a peace officer is automatically modified. In almost all instances of the use of deadly force, a decision is made in a split second, without time for reflection. In these circumstances,

¹ Text of [AB 392](#) and [SB 230](#).

officers rely most fully on the reflexes instilled and reinforced during their training. That is why the passage of AB 392 was accompanied by SB 230, a companion bill that provides the resources and training policies to meaningfully implement AB 392 on a comprehensive and statewide level.

Provisions in SB 230 include:

- A mandate for every California law enforcement officer to receive the most robust training in the nation strictly designed to minimize the use of force.
- A requirement for every law enforcement officer to adhere to specific, publicly available guidelines for when they are authorized to use force.
- The establishment of specific policies across all law enforcement departments requiring de-escalation, an officer's duty to intercede, rendering medical aid, proportional use of force, and more.
- Detailed requirements for reporting all instances when force is used.
- A specification that use of force policies and training are considered in legal proceedings.

Along with AB 392, SB 230 is the biggest change to California policing policies and restrictions since the 19th century. These new policies have only been in place for less than a year. They will take longer to fully evaluate. But, PORAC is encouraged by early signs of success.

PORAC believes these policies, developed and implemented as part of a collaborative and inclusive process, can and should serve as the building blocks for a national use of force standard.² Given the federal funds to enact these policy changes, and coupled with a national recruiting standard that ensures only the best take on the responsibility and duty of keeping the peace, as well as an extension of the time an officer spends in the academy from one year to two years, these reforms will improve law enforcement outcomes across the country. Only by eliminating the confusing and often inadequate patchwork of use of force, training, and recruitment policies that currently exist can the American public regain confidence in law enforcement nationwide.

² While PORAC understands that the Justice in Policing Act includes a national use of force standard in the form of the PEACE Act, PORAC believes that the specific standard included in that bill would be problematic and counterproductive. The PEACE Act establishes a hindsight standard that will second-guess split second decisions made by peace officers rather than work to limit the use of force. PORAC believes that a standard like the one in AB 392, which is a more balanced approach, is a better approach.

Better Outcomes for Those in Crisis

Perhaps the most undiscussed factor in deadly law enforcement encounters, yet one of the most important, is mental health. Law enforcement officers are, inadvertently, on the front lines of the mental health crisis in America.

PORAC believes that one of the most important ways to reduce police use of deadly force is to address the mental health crisis in this country, a crisis that extends beyond law enforcement. There is a nationwide need for more mental health centers, more mental health workers, and increased access to mental health programs for those in crisis.

According to the National Alliance on Mental Illness, nearly two million individuals with mental health issues are jailed every year, and nearly 15% of men and 30% of women jailed have a serious mental health issue. Mental health situations, often undiagnosed and unknown to the responding peace officer, account for nearly 10% of all calls to the police. Some of our officers estimate that as many as half of the first responder calls they see are related to mental health issues. Severe mental illness is present in anywhere from 25%-50% of fatal encounters with law enforcement nationwide, and a report from the Los Angeles Police Department found that 37% of all peace officer shootings included a mental health component.³

The sad reality of this unacknowledged crisis is that, for all the training peace officers receive, we are not equipped to serve as full-time mental health social workers yet are constantly asked to do so. While many police departments in California and across the country have fledgling mental health programs designed to provide the most qualified assistance, we are far from meeting the needs of those community members in mental health crises. Too often, peace officers are put into dangerous situations that require professional mental health assistance. And, sadly, these situations end in tragedy.

³Mike Maciag, "The Daily Crisis Cops Aren't Trained to Handle," *Governing*, May 2016, <https://www.governing.com/topics/public-justice-safety/gov-mental-health-crisis-training-police.html>.

PORAC supports initiatives to expand and improve the safety net and support systems for those dealing with a mental health diagnosis. In the long run, these types of programs will meaningfully reduce the burden on well-meaning law enforcement officers who are simply not trained to counsel those in crisis.

Before Congress now is legislation specifically designed to help law enforcement assist individuals who find themselves in crisis. The Supporting the Health and Safety of Law Enforcement Act, H.R. 2696, introduced by Congressman Josh Harder would establish a fully funded pilot program to facilitate cooperation and coordination between law enforcement and community mental health centers.

We urge this Committee to include Mr. Harder's bill in its package of law enforcement reforms. Programs such as he proposes, as well as ride-along programs which place social workers with law enforcement officers as they respond to calls, are necessary to ensure peace officers are able to effectively serve those with mental illnesses.

Conclusions – A New Day for Law Enforcement

PORAC recognizes the real crisis of confidence in law enforcement among the communities we serve. It is on us to work with our communities, lawmakers, and other stakeholders to repair that breach in trust. Fortunately, and as our track record clearly shows, we like to think this is among the tasks PORAC is best suited to tackle.

Implementing national standards on the use of force, training and recruiting will greatly contribute to a reduction in use of force incidents nationwide. California's AB 392 and SB 230 provide a blueprint for how to make those standards a reality. Working off that foundation, PORAC believes that Congress should immediately move to create a national standard. In addition, PORAC believes that additional funding aimed at improving the ability of law enforcement to respond to individuals in mental health crises, and at improving training and recruitment is critical. Together, these common-sense solutions will begin to rebuild the reputation of law enforcement in America, and prevent unnecessary fatalities, such as George Floyd's.

Let PORAC reiterate our fundamental belief that peace officers are an integral part of a community, not separate from those we serve. We do not have the absolute answer on how to end systemic racism in our communities and our nation. We may not have the solution for ending the cyclical and crushing nature of generational poverty that exists in communities across the country. But, we will always be on the lookout for those answers, and will always be ready to learn and grow as law enforcement officers. Until the day we do find that magic cure for our societal ills, PORAC will keep working with our neighbors and communities to do and be better. We again thank this Committee for the opportunity to be a part of this vital conversation, and to provide our own thoughts on how best to reform and improve law enforcement practices moving forward.

Mr. CORREA. Mayor Underwood, I want to let you know that your family's loss, your brother, will also not go forgotten.

I have a question for Professor Butler.

Welcome, first, sir.

Welcome, to all the Witnesses.

Mr. BUTLER. Thank you, sir.

Mr. CORREA. I'd like to take a moment to discuss arrest disparities.

The ACLU has said African Americans are almost four times more likely to be arrested for cannabis possession. For Washington, DC, you have stated that African Americans are about 50 percent of those that use cannabis, yet they account for 90 percent of the people who are charged with marijuana crimes. Is that correct, sir?

Mr. BUTLER. Yes, sir.

Mr. CORREA. How do you think the legalization of cannabis will help with social justice in this Nation?

Mr. BUTLER. We think it would help create equal justice under the law.

We know that, for drug crimes, African Americans don't disproportionately commit those crimes. The National Institutes of Health says that we don't disproportionately possess drugs. Most people report buying drugs from someone of their own race.

If you go from NIH in Bethesda to the Bureau of Justice Statistics in DC, they'll tell you 60 percent of people locked up for drug crimes are Black—about 15 percent of people who do the crime, 60 percent of people who do the time. That's unequal justice under the law.

Mr. CORREA. So, would you say that we're mixing criminal justice with social issues, with medical issues, when it comes to our national drug policy?

Mr. BUTLER. The drug addiction issue is an issue of public health, as is the issue of the epidemic of violence in communities. It's a public health issue, not exclusively a criminal law issue.

Mr. CORREA. Thank you very much.

Mr. Chair, I yield.

Chair NADLER. The gentleman yields back.

Ms. Scanlon.

Ms. SCANLON. Thank you.

First, of course, I wanted to join my colleagues in expressing our condolences to your family, Mr. Floyd. I cannot begin to imagine the pain of having to relive that video over and over again.

I just want to thank you for having the strength to speak here today to share George's story and his spirit and his words with this Committee but also with the country. I'm sure that your brother would be proud of you.

Our hearts and those of every thinking and feeling American are with you and your family, and we're committed to making the changes that we need to ensure that you, your family, and every family in this country receives the equal justice and the security that our Constitution and our most essential American values demand.

We're here to listen and to confront the harsh truths about racism in our country and the law enforcement practices that for too

long have allowed police violence against communities of color and especially Black individuals.

The murders of George Floyd, Breonna Taylor, Ahmaud Arbery, Tony McDade, and on and on have once again brought these truths to the surface: That centuries of systemic racism and inaction have resulted in a justice system that harms Black communities and policing practices that disproportionately kill Black Americans.

This is unacceptable. We must change. America must change. Americans have taken to the streets in peaceful protest, all across this great Nation, in big cities and small towns, to demand that change. We are witnessing a long-overdue moral reckoning in our country, and each of us must examine how to be agents of that change, because we have a lot of work to do.

Change must come at the local, State, and Federal level. Just as cities and States are reckoning with ways to protect communities and hold law enforcement accountable, Congress must do the same.

I want to thank all our Witnesses for helping us understand the changes we need to make to achieve justice for all Americans, particularly which ones are uniquely crying out for Federal solutions.

Having worked for decades as a public interest lawyer, I'm particularly interested in some of the legal fixes that this bill provides. I know that, sometimes, small changes in a statute can have enormous implications for holding powerful institutions accountable. The bill we're considering contains a few of those.

Ms. Gupta, one of the ways that police officers can be held accountable is a Federal law that makes it a crime to violate someone's civil rights, including by using excessive force as a police officer. In its current form, it's very difficult to get a conviction under that law, because it requires proving that the police officer willfully violated a person's civil rights.

Can you explain how changing the statute to require a reckless standard instead of willfulness would improve police accountability?

Ms. GUPTA. Yeah. So, the Justice Department currently only has one law that they can use to prosecute police misconduct, and, as you said, it has the highest mens rea requirement there is in criminal law, requiring not only that prosecutors prove that the officer used unreasonable force but, actually, also, that the officer knew that what he or she was doing was in violation of the law and did it anyway. That is actually a very high burden. So, for years, there have been case after case that the Justice Department has been unable to reach because of how high this burden is.

There are many criminal civil rights prosecutors that for years have also wanted the change that is being proposed in the Justice in Policing Act because I think it would enhance the Justice Department's credibility in these matters to be able to hold officers who violate Federal civil rights laws accountable.

So, the Justice in Policing Act asks—it changed the mens rea standard to “knowingly or with reckless disregard.” It's a slightly lower standard, so more cases will be charged.

It also, really importantly, broadens the language of the Federal civil rights statute by including in its definition of a death resulting from an officer's action any Act that was a substantial factor con-

tributing to death. I know many, many former U.S. attorneys that are eager to see this change as well.

Ms. SCANLON. I actually was approached by one of those former U.S. attorneys at my train station this week, saying this was probably one of the key provisions.

Ms. GUPTA. There you go.

Ms. SCANLON. It looks like my time has expired, so I yield back. Thank you.

Chair NADLER. The gentlelady yields back.

Ms. Garcia.

Ms. GARCIA. Thank you, Mr. Chair.

Thank you to all the Witnesses. I thank you for your patience. I know it's been a long day, but, certainly, the topic is worthy of that time and probably more times of discussion before we ultimately vote.

To Mr. Floyd and Ms. Underwood Jacobs, we certainly accompany in your grief.

I know you and I visited just a little bit at the funeral yesterday in Houston. Please know that you have my heartfelt condolences. I have five brothers. Sometimes they beat up on me a little bit, and sometimes they were helpful, and sometimes they were just brothers. So, I know how important that is. So, I grieve with you.

Mr. Chair, I wish that we were here today under different circumstances. Instead, we're here because our Nation is struggling to heal after witnessing the horrific murder of George Floyd.

As a person of faith, I was taught at an early age that we're all children of God. George Floyd was not treated as a child of God during his final moments on this Earth.

Mr. Floyd, I stand with you and your family, and I stand with Black and brown Americans and all Americans across the country who just want to live and breathe without fear.

I stand with my colleagues in the Congressional Black Caucus as we demand for America to live up to its values. We can no longer continue living in an America that says during the Pledge of Allegiance "justice for all," but then not actually guarantee justice for all.

We must put an end to police brutality, racial profiling, White supremacy, and racism in America. We are here today because our laws must boldly affirm that Black lives matter.

I want to get to the topic of the case itself, the investigation and what may or may not happen, because I think that the Justice in Policing Act addresses a lot of the issues that I've seen as a lawyer, a former judge, when some of these cases are handled.

I also might add that I served as the first chair of the Independent Police Oversight Board in Houston. I helped Mayor Parker put that together; then she made me chair for 2 years. So, I've seen some of these cases, and some of them are tough to make.

In your case, Mr. Floyd, I think it was good that there was swift action. The police officer was arrested. It took a little time before they arrested the others. In many cases—the Arbery case. He was out jogging. Seventy-four days before an arrest.

Just recently, we saw in the video that was just released in Williamson County an incident that happened in March of 2019. The arrest was actually delayed, and the video was even more de-

layed. They just released it last week although it happened in March of 2019, a year later.

So, sometimes it's not quick enough, and then we wonder why.

So, I wanted to ask first Ms. Ifill, if she's still with us by video: In terms of investigations, are we adequately addressing the need for an independent investigation in the Justice in Policing Act?

Ms. IFILL. Yes. This is one of the most important parts of the legislation. It is critical that police feel that these killings and these abuses are investigated by someone who is independent, who is not connected with the local prosecutor's office, and who can bring fresh eyes to bear on whether there was a violation of the Constitution or violation of criminal law.

In too many places around the country, we have seen these incidents where prosecutors have demonstrated that they are unwilling to robustly lean into an investigation, unwilling to arrest, unwilling to indict, or if they bring the case before the grand jury, we then hear later that the presentation was lackluster and was not the kind of presentation we would expect of a prosecutor. So, we need independence.

Ms. GARCIA. Thank you. I want to move quickly, if we can—

Ms. IFILL. There is a colossal lack of confidence right now in the justice system, and it is deserved. As a lawyer, I can say it pains me, because I have dedicated my life, as a civil rights lawyer, to using the law to effect change.

What you are seeing on the streets of this country, all over this country, is a colossal lack of confidence in the justice system.

It is incumbent upon this body, in this legislation, to put together the means of restoring that confidence. That confidence only comes back if the justice system can be said to be fair, can be said to be legitimate, and can be said to produce just results. When it comes to cases of police killing unarmed African Americans at this point, we do not have those three.

Ms. GARCIA. Thank you.

Mr. Chair, I did have a question for Mr. Crump and Ms. Gupta, but I'll submit them in writing. I yield back my time.

Chair NADLER. The gentlelady yields back.

Mr. Neguse.

Mr. NEGUSE. Thank you, Chair Nadler. Thank you, Chair Bass, Members of the Committee, and my fellow members of the Congressional Black Caucus, for your leadership on this issue.

I want to express my deepest condolences to you, Mr. Floyd, and to Ms. Underwood Jacobs as well. I know all of us will continue to keep you and your families in our prayers.

What happened to your brother, Mr. Floyd, and what happened to Breonna Taylor is truly an outrage. I pray that, together, we can meet the moment and we can honor their memories by passing the Justice in Policing Act. Not just to honor their memories, but the memories of so many others across the country.

In 2016, here in Colorado, Michael Marshall, a 50-year-old, 112-pound Black man, was killed by jail deputies. While enduring a psychiatric episode in jail, he was restrained in the prone position by five deputies for over 13 minutes, in which time he aspirated on his own vomit and went in and out of consciousness.

More recently, in August of 2019, Elijah McClain, a 23-year-old unarmed Black man, died after a physical encounter with the Aurora Police Department while walking home one night. After initially not responding to police, McClain was tackled to the ground by officers, placed in a chokehold, and vomited. He was later given ketamine, suffered a heart attack on the way to the hospital, and ultimately died. On the body camera recording, you can clearly hear Elijah say, "I can't breathe."

These are the same words that we heard Eric Garner say over 6 years ago as he was put in a chokehold by an NYPD officer. They are the same words spoken by Mr. Floyd, who had a knee to his neck for 8 minutes and 46 seconds.

It is past time that Congress banned chokeholds and other harmful police tactics that have led to far too many deaths. That is why the Justice in Policing Act is so important.

I will say that I'm very encouraged by the broad base of support this legislation has received, including from the American Psychological Association.

With unanimous consent, Mr. Chair, I'd ask to submit their statement of support into the record.

Chair NADLER. Without objection.

[The information follows:]

MR. NEGUSE FOR THE RECORD



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

SERVICES, INC.

American Psychological Association Services, Inc.

Testimony Submitted June 10, 2020

By Arthur C. Evans, Jr., PhD

Chief Executive Officer and Executive Vice President of the
American Psychological Association
to the
United States House of Representatives
Committee on the Judiciary

Oversight Hearing on Policing Practices and Law Enforcement Accountability

Our nation is in the midst of a racism pandemic. Racism is a public health crisis that requires the full attention of our nation now. The consequences of this pandemic are dire, particularly for African American citizens and other communities of color, who disproportionately suffer directly from the structural racism embedded within our society, from our criminal justice system to our schools, from workplaces to our health care system. The public health consequences of ongoing, structural racism include both physical and mental illness. It is past time to fix these inequities.

The American Psychological Association (APA) is the largest scientific and professional organization representing psychology in the U.S., numbering over 121,000 researchers, educators, clinicians, consultants and students. Since the 1940's, psychologists have made fundamental scientific contributions to our understanding of the nature of prejudice, stereotypes and their impact on shaping human actions, emotions, and judgments. As experts in human behavior, the contributions of psychologists are critical to addressing societal concerns about crime, justice, policing, and race.

APA remains committed to the complex and difficult work of change. As an organization, it is our longstanding belief that change starts with our willingness to engage in open and honest dialogues on difficult topics. These issues of systemic and personal racism are complex and multifaceted and accordingly will require multifaceted and evidence-based approaches. We thank the Committee for the opportunity to engage in this dialogue and look forward to working with you to advance policies to reduce racial disparities within the criminal justice system.

Race and the Criminal Justice System

Racial disparities in the criminal justice system are well documented and widespread, particularly in the areas of policing, prison populations, and participation in juries. Research indicates that African Americans are more likely than their White counterparts to report stress as a result of encounters with police officers, and there is a robust body of research demonstrating the physiological and psychological impact of racism and discrimination as it relates to stress (Gellar, Fagan, Tyler & Link, 2014; Utsey et. al, 2008). Although the chronic condition of stress can have negative side effects for all individuals, the unique psychosocial and contextual factors, specifically the common and pervasive exposure to racism and discrimination, creates an



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additional daily stressor for African Americans. This stress is associated with a host of psychological consequences, including depression, anxiety and other serious, sometimes debilitating conditions, including post-traumatic stress disorder (PTSD), and substance use disorders. Moreover, the stress caused by racism can contribute to the development of cardiovascular and other physical diseases (Calvin, et. al., 2003).

Social dominance theory postulates that societies minimize group conflict by creating consensus on ideologies that promote the superiority of one group over others (Pratto, Sidanius, Stallworth & Malle 1994). The theory states that stable inequality among groups is maintained, in part, through the use of disproportionate force against subordinate groups. People who are relatively high in social dominance orientation tend to be attracted to careers in law enforcement (Sidanius, Pratto, Sinclair, & Van Laar, 1996).

Inappropriate stops by law enforcement, in particular, are just one form of psychological violence that has severe consequences for individuals of color. Racial profiling—the use of race, ethnicity, or national origin by law enforcement officials in deciding whom to stop, search, or detain—has been well documented throughout the criminal justice system. Such incidents are not only more frequent for African Americans than for White Americans, but research shows police officers speak significantly less respectfully to Black than to White community members in everyday traffic stops, even after controlling for officer race, infraction severity, stop location, and stop outcome (Voight et al., 2017). Studies have revealed that neighborhood-level frisks and use of force were linked to higher levels of psychological distress among men living in these neighborhoods (Sewell, Jefferson, & Lee, 2016). Research investigating suspected illegal behavior ranging in severity from relatively minor (e.g., traffic infractions) to more severe (e.g., threatened or actual violence) indicate that police officers are more likely to be lenient and to use less force with White than with Black suspects (Kovera, 2019). Finally, even in the absence of physical violence, several studies have shown that stops by law enforcement perceived as unwarranted, discriminatory, or invasive were still associated with adverse mental health outcomes, including anxiety, depression, and PTSD (DeVylder, et. al., 2017; Gellar, Fagan, Tyler & Link, 2014).

Research suggests that some of these disparities may be the result of implicit or explicit racial bias, or attitudes that affect our understanding, actions, and decisions in an unconscious manner. Implicit biases are beliefs (stereotypes) and feelings (prejudice) that are activated without intent and control and are often outside of conscious awareness with limited conscious control. There is substantial psychological research demonstrating that even well-intentioned and non-prejudiced people have biases that are unconscious, and these are considered to be a human attribute (Dovidio, Hewstone, Glick & Esses, 2010). Under conditions of threat and physical and cognitive challenge, these biases can predispose people to more aggressive responses and thus could facilitate police officers' use of excessive force against African Americans.

Psychologists have conducted research on how stereotypes affect our assumptions about other people, particularly how members of majority groups perceive members of minority groups. The roots of implicit racial bias against African Americans are complex, and largely grounded in a shameful history of dehumanization in the U.S. For example, although historical representations explicitly depicting Blacks as apelike have largely disappeared in the U.S., research

demonstrates that U.S. citizens still implicitly associate Blacks and apes. In the context of law enforcement, this association alters visual perception and attention, and increases endorsement of violence against Black suspects (Goff, Eberhardt, Williams & Jackson, 2008). Psychological research has shown that some policing decisions are impacted by racial bias (Glaser, Spencer, Charbonneau, 2014). On the topic of wrongful shootings of unarmed Black men, studies have demonstrated that simply viewing an African American man's face made people (including police officers) more likely to "perceive" a gun that wasn't there (Eberhardt, Goff, Purdie & Davies, 2004). In addition, research has found that people are faster to shoot Black men holding guns than White men holding guns and more likely to erroneously "shoot" unarmed Black than White men in a simulation (Correll, Park, Judd & Wittenbrink, 2002). This shooter-bias is related to the strength of one's implicit associations between Blacks versus White individuals, and weapons (Glaser & Knowles, 2008).

Policing Operations and Strategies

Psychological research can provide direction for law enforcement efforts to reduce crime and increase community trust. For the last several decades, there have been repeated instances of violent conflicts between police and civilians, particularly police officers and individuals of color. The recent death of George Floyd in Minneapolis, MN reinforces a longstanding relationship between citizens of color and law enforcement characterized by mutual mistrust. The police are suspicious of the members of the community, while members of the community have low levels of trust in the motives of the police. Public distrust of the police is important because research shows that low trust leads to high conflict. In addition, research demonstrates an association between deaths among Black individuals due to legal intervention and subsequent poor mental health among Black adults living in the same state (Bor, Venkataramani, Williams, & Tsai, 2018). This illustrates the negative repercussions violent conflict between African Americans and law enforcement can have for the broader public.

Psychological research shows that a key factor shaping whether people obey the law is whether they trust the law and legal authorities. Studies of the police indicate that whether people break the law and commit crimes is more strongly shaped by whether people trust the police than by whether people believe that they are likely to be caught and punished if they break the law. Distrust also makes controlling crime increasingly difficult because it lowers the willingness of community members to help the police solve crimes or identify criminals. In the absence of trust, events of this type too often escalate to violence. Lacking faith in the intentions of the authorities, people give in to expressions of frustration and anger.

Studies have consistently shown that the most important factors related to public evaluations of the police are whether they believe that the police are exercising their authority fairly (Tyler, 2001). To address this, research by industrial organizational (I-O) psychologists in particular have shed light on various issues relevant to policing, such as personnel selection, training, performance evaluation, leadership and organizational culture. On the topic of personnel selection in particular, I-O psychologists working with law enforcement agencies can draw from literature about racial biases to inform personnel selection procedures that help identify applicants' beliefs toward minorities, prejudices, and potential to display differential behavior toward minority versus nonminority citizens (Ruggs, et. al., 2016). These researchers specifically address the problem of police brutality against Black citizens and offers several directions for

future research and practice. Furthermore, researchers (McCluney et al., 2017) describe how racially traumatic events can impact Black employees who are not direct victims of racism but witness it within an organization or within general society. Clearly, racism is evident in work contexts and it has negative consequences for those who are victims of racism, as well as those who witness it. APA supports policies that promote the application of law consistently and without prejudice; constrain law enforcement from making decisions about who to stop based on race; and ensure officers are willing to listen to individuals when they stop them, including an explanation from officers for the reasons for their actions. One potential solution to negative perceptions of police is community policing, which seeks to improve relationships between law enforcement and the community. Community policing also gives police a greater sense of community service and provides more interaction between law enforcement and the communities they serve (Greene, 2000).

Most importantly, law enforcement needs to treat people in the community with dignity and respect. This includes individuals with mental illness. In 2018, approximately 1,000 people in the U.S. were fatally shot by police officers, and individuals with mental illness were involved in approximately 25 percent of those fatalities (Saleh, et. al., 2018). Several studies have demonstrated the effectiveness of crisis intervention teams (CITs) in training police officers to safely and effectively handle situations involving individuals with serious mental illness, including improvements in attitudes a reduction of stigma in police officers (Godschalx, 1984; Compton, et. al., 2006).

Recommendations

- **Promote Community Policing.** APA calls on Congress to implement community-based policing nationwide. We strongly endorse methods of procedural justice in which the central aim of the criminal justice system is to increase cooperation, partnership and trust between communities and their law enforcement agencies. Policies that encourage voluntary compliance through the advancement of trust and authenticity, as opposed to those that emphasize compliance through concerns of punishment
- **Ban Chokeholds and Strangleholds.** APA encourages Congress to work in a bipartisan manner to find solutions in the criminal civil rights statute to prohibit the use of law enforcement tactics that apply pressure to a person's throat or windpipe which may prevent or hinder breathing or reduce intake of air (e.g., a chokehold). These tactics can be deadly or have neurocognitive impacts. These solutions should account for the safety of the officer in dangerous situations as well the safety of individuals interacting with law enforcement.
- **Invest in Crisis Intervention Teams.** Psychologists play a key role in community-based, crisis intervention teams (CITs) that train police officers to safely and effectively deal with situations involving individuals with serious mental illness. Tailored by each community to fit local needs, these teams unite the efforts of police officers, mental health educators and community advocates to resolve potentially violent situations in positive ways. The teams promote de-escalation practices to achieve better outcomes.

APA urges Congress to make additional resources available for communities to invest in CITs for law enforcement.

- **Increase the Number of Mental and Behavioral Health Professionals in Law Enforcement Agencies.** APA recommends that law enforcement agencies increase the number of mental health professionals on staff. Mental and behavioral health professionals can provide training and resources to help identify and diffuse potential conflicts between law enforcement and the community. They are also skilled in identifying and addressing issues affecting police officers and staff including stress, trauma, family support and education. Recognizing the challenges of 21st Century policing for law enforcement personnel can reduce the stress of policing and improve the ability of police to respond to community challenges.
- **Involve Psychologists in Multidisciplinary Teams to Implement Police Reforms.** Congress should include specific language in legislation encouraging law enforcement agencies to involve highly knowledgeable and skilled police and public safety psychologists (and other mental and occupational health professionals) as part of multidisciplinary teams to address the needs of implementing constitutional policing through police reform. Whether hiring the right people, training them appropriately, providing wellness services, or engaging in a range of organizational transformations that increase transparency and accountability to the community, psychologists' professional expertise and research evidence may prove particularly valuable to those agencies mandated to make change in accordance with a DOJ Consent Decree or Memorandum of Agreement. These professionals need to be empowered to do imperative work as it pertains to ongoing psychological monitoring of police officers' stress levels, mental health, burn-out, and attitudes toward the public. Police psychologists are needed to help optimize police department cultures, develop leaders, and institute a "preservation of life" policing orientation.
- **Encourage Private/Public Partnerships between Mental Health Organizations and Local Law Enforcement.** Congress should be at the forefront of advancing and incentivizing law enforcement agencies to form private/public partnerships between mental health organizations in the public and private sector, especially those that offer culturally competent expertise and services to diverse populations. These partnerships can develop best practices for addressing community and police relations that can be disseminated widely across the nation to police departments and mental health facilities. Police-community partnerships encouraged by the Community Oriented Policing Office (COPS) of the Department of Justice (e.g., athletic leagues) can decrease stereotypes and increase citizen engagement.
- **Discourage Police Management Policies and Practices That Can Trigger Implicit and Explicit Biases.** Policies and practices that incentive law enforcement officers to meet certain thresholds can prompt responses rooted in implicit and explicit biases. Instead police at the management level should promote policies designed to constrain the operation of implicit and/or explicit bias or that eliminate (or at a minimum reduce) problematic outcomes for all communities. Evidence shows that types of proactive

policies may be more effective at reducing racial disparities than are interventions designed to eliminate implicit bias.

- **Strengthen Data Collection.** Created following recommendations in the Task Force on 21st Century Policing, the Police Data Initiative (PDI) supports local police department efforts to leverage data to increase transparency and accountability and build trust with their communities. Different from data on crime, these datasets may include data on stops and searches, uses of force, officer involved shootings, or other police actions. To date, these law enforcement agencies have released more than 200 datasets. APA urges Congress to provide increased resources for the PDI, which opens data to the public and allows law enforcement and community members to have honest conversations about what is happening in their communities. Moreover, DOJ needs to establish a national mandatory database on officer-involved shootings and use of force that includes situational factors and demographics. The current patchwork of voluntary data systems dispersed throughout the nation is inadequate in understanding the scope of these incidences as well as identifying patterns. Additionally, there needs to be a national investment in the standardization and research of the use of force continuum.
- **Bolster Research.** The knowledge gained from psychological research can be used to address community concerns about the police while providing support and training to law enforcement. APA strongly supports the inclusion of *Justice through Science Act* (S. 2286/ H.R. 3989) in the Committee's work to address racial disparities in policing. This legislation, introduced by Senator Brian Schatz and Representative Madeleine Dean, will re-establish a Science Advisory Board (SAB) at the Department of Justice to help bridge the divide between research and practice in criminal justice fields. Through regular interactions with the Office of Justice Programs leadership and staff, members of the SAB would gain a deeper appreciation of the complexities of implementing and evaluating innovative approaches to the administration of criminal and juvenile justice. The SAB could then share their knowledge about the perspectives and needs of policymakers and practitioners with the research community and help shape research to be relevant to our nation's communities and police agencies. Moreover, Congress needs to invest in psychological research on operational matters in law enforcement with an eye towards de-escalation, perception of force by the community, and nonlethal techniques as well as policing strategy.

Thank you for your commitment to addressing racial disparities in our criminal justice system. APA and the psychological community stand ready to work with the Congress and the administration on these important issues.

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Mr. NEGUSE. As you may know—or, rather, I know the Chair is well aware, but as many I'm sure are aware also, data on policing has been particularly deficient for quite some time. As a result, it has hindered our understanding and our ability to hold law enforcement accountable in real-time.

We don't know this week how many times an officer used a Taser or fired their weapon or how many times individuals were injured while they were in police custody. This is basic information, and its critical information to ensuring that such actions are regulated.

That brings me to my first question, for Ms. Gupta, which is: How does the mostly volunteer system that we currently have on data collection fail to capture these data points? Second, how does requiring State and local law enforcement to report that data improve accountability?

Ms. GUPTA. Thank you, Congressman.

It is a real shame that in 2020 we still do not have adequate data collection on use of force in this country. We have had to rely for several years on journalists putting this stuff together at The Washington Post and at The Guardian.

The FBI has started to try to more systematically collect it, but this bill, the Justice in Policing Act, actually includes a requirement for States to report use-of-force data to the Justice Department, including the reason that force was used.

Technical assistance grants are established in this bill to assist agencies that have fewer than 100 employees with compliance. That was often the reason that police agencies were not reporting on this.

It, also, requires the Attorney General to collect data on traffic stops, searches, uses of deadly force by Federal, State, and local law enforcement agencies, and to disaggregate that data by race, ethnicity, and gender.

There should be no reason why, in the United States of America in 2020, we aren't able to collect that kind of data. These incentives are going to be really important to making sure that we have that data, can learn from it, and can improve and change the culture of policing from it as well.

Mr. NEGUSE. Thank you, Ms. Gupta. Your testimony certainly underscores why the Justice in Policing Act is so necessary.

Thank you again to each of our Witnesses for being here today and for testifying.

With that, I'll yield back, Mr. Chair.

Chair NADLER. The gentleman yields back.

Ms. McBath.

Ms. MCBATH. Thank you, Mr. Chair.

I want to thank all our Witnesses that are still left. Thank you for being here for so long today. It's really vitally important that we hear from you.

Most specifically, I want to say to you, Mr. Floyd, and to Ms. Underwood Jacobs, I offer you my deepest condolences. Because I know exactly how you feel. I know your pain. I can't sit here and say, "I can only imagine." I know what you are going through.

Mr. Floyd, I was so grateful to be able to go to your brother's funeral in Fayetteville, North Carolina. I am so sorry that you are here testifying over the loss of your brother.

We come to this hearing today as a result of deep, morally painful wounds and events that happen in this country again and again and again. We come to remember George Floyd and Breonna Taylor and the many lives that have been lost to violence at the hands of those with a sworn duty to protect and serve us.

We have lost too many of our brothers and our sisters and our mothers and fathers under these incidents of law enforcement. We know that these recent tragedies are part of a system of racial disparities that have been harming people of color for 400 years.

In Georgia, where I represent Georgia's Sixth Congressional District, we recently lost the life of Ahmaud Arbery, who was pursued by three men and chased by two pickup trucks and murdered in the streets just miles from his home.

As Georgia investigators testified last week, Ahmaud's killer used the "N" word as Ahmaud lay dying in the street. The investigator testified that the killer's father, a former police officer, carried a handgun during the pursuit, a handgun that was issued to him by his police department, a handgun that he carried as a police officer, still bearing the initials of the department.

I grieve every day for these continued losses. I grieve as a mother who lost her own child to the very same violence that we're talking about today and tomorrow and next week and next month and next year.

I lost my son, Jordan, by a man who called him a thug for simply playing loud music in his car. Jordan's tragedy is shockingly, shockingly similar to Ahmaud Arbery's: Being Black while being in your own community.

I feel the pain experienced by too many families every single day. Every single day it happens, it's like a sucker punch in my heart and my gut. Because when is it going to stop?

I pray every single day for our Nation. I pray every single day for every family. I pray that today we finally do something about it.

I know that my time is going to be up, so I'm going to just ask one very quick question.

Professor Butler, very briefly, do you think a commission that I have been working on, a commission that would study the social determinants and the effects of young Black men and boys in this country, do you believe that that would be justified in creating research and data for this very legislation that we're talking about today?

Mr. BUTLER. I think African-American boys and girls desperately need interventions that don't blame them for problems that society causes. So, I think that that kind of commission is key.

Ms. MCBATH. Thank you very, very much.

I know that my time is up, but I am begging everyone here today, I am begging you to stand in the gap. I am begging you to speak up. I am begging you to be a part of solving the problems of all the young Black men and women in this country that die every single day. Because if you do not, you are complicit.

I yield back the balance of my time.

Chair NADLER. The gentlelady yields back.

Mr. Stanton?

Mr. STANTON. Thank you, Mr. Chair. Thank you for moving quickly to hold this necessary hearing during a time of significant pain for our Nation.

I want to recognize and thank Congresswoman Bass for her leadership to heal that pain. The Justice in Policing Act is an essential first step.

Mr. Floyd, I offer my deepest condolences to you and your family. I can't imagine how difficult the last 2 weeks have been, and it is courageous that you are here today.

Just yesterday, you laid your brother to rest, but his murder is a tragic reminder that we cannot rest. We have work to do so that George Floyd and Eric Garner, Philando Castile, Walter Scott, Antonio Arce, and too many others will not have died in vain and have their lives spur us to action.

It's been more than 400 years since enslaved Africans were first brought to America's shores, shackled, and sold. We are in the midst of a reckoning and facing a very difficult truth: That, since that moment, there has not been a single day in which the maxim that our Founders knew to be self-evident, that all men are created equal, has been fully recognized by our country for Black Americans, not a single day in which equal justice under the law has been fully experienced by Black Americans. There is no greater tragedy in our history.

Our generation has a choice: We can sustain America's original sin, or we can redeem her and be repairers of the breach.

I recognize that the ability to end racism in our country is beyond the reach of this committee. We don't have the power to change every person's heart and mind. What we can do is address structural racism and enact tangible measures of transparency and accountability in policing that can help make everyone safe.

This is a charge that every level of government must take up, from those of us in Congress to everyone who serves on a city council.

During my time as the mayor of my hometown, we started a community policing trust initiative which earned the recognition from the Obama Administration's Department of Justice. We enhanced de-escalation training for our officers. We rewrote the guidelines for interacting with our immigrant community. We started putting body-worn cameras on officers on patrol, and then, when we saw the positive results, we budgeted for every officer on the beat to wear a camera.

I'll be the first to tell you, there is more work to do, in every State, in every city, in every community in America.

So, I want to ask our distinguished panelists specifically about body-worn cameras. In 2014, research by Arizona State University found that officers wearing body cameras were more aware of their actions and sensitive to the scrutiny of the footage by their superiors. I believe that every police officer on patrol in America ought to be wearing a body-worn camera.

Professor Butler, do you believe that body-worn cameras help make members of the public and the police officers safer?

Mr. BUTLER. Absolutely. Without body-worn cameras, there would be four killer cops who remained on the police force of Minneapolis.

Mr. STANTON. President Davis, how can body-worn cameras improve training for police officers?

Mr. DAVIS. Thank you for the question.

In addition to capturing what happens, it allows the police department to go back and look at everyday encounter—car stops, traffic stops, pedestrian stops—and evaluate the kind of conduct.

There's a good study out of Oakland that Stanford did that showed how officers engaged men and women of color was completely different than how they were engaging nonminorities.

So, there's a lot to be learned just by watching the day-to-day activities, in addition to capturing the critical incidents that we're talking about.

Mr. STANTON. Thank you.

Ms. Ifill, one of the main challenges of body-worn cameras is that they can be expensive to implement, not just the camera itself but capturing all the information that they provide.

In your view, are they a wise and worthwhile investment for law enforcement agencies?

Ms. IFILL. I think body-worn cameras are vitally important.

I would caution that it is necessary to do more than just impose body-worn cameras. That means that there does need to be attention to the laws that govern who gets to look at that film. In jurisdictions where law enforcement officers get to look at the film before they have to answer questions, then the body-worn camera film is just another tool that assists law enforcement officers in [inaudible].

I think you also have to pay attention to jurisdictions that are embedding facial recognition technology in their body-worn cameras. This presents a very serious privacy concern for communities and particularly African-American communities.

So, they're important. They're not the be-all and end-all, because we've seen film—we saw film with Eric Garner, we saw film with Walter Scott, the officer who killed Walter Scott, who was originally acquitted, or the jury was hung. We know that film is not the be-all and end-all. It is vital, for all the reasons that have been suggested.

I do want to flag, however, those cautions about what happens with that film is also a question that I would encourage you to think about answering on the front end.

Mr. STANTON. Thank you so much.

I yield back.

Chair NADLER. The gentleman yields back.

Ms. Dean.

Ms. DEAN. Thank you, Chair Nadler, and thank you, Chair Bass, for bringing us together and for bringing forward this powerful piece of legislation at a time when our country desperately needs it.

I thank all our Witnesses today. I pray that our words and our actions will be worthy of this moment.

If anybody has a doubt as to systemic racism in this country, as to inequality based on race in this country, you can look no further than between me and my friend and colleague, Ms. McBath. I'm the mother of three White sons. I've never had to have "the talk."

You were the mother of beautiful Jordan Davis. You had to have “the talk.”

If you doubt there is racism, look no further than the inequality of our life experience.

I mourn with you.

My sincere sympathy to Ms. Underwood Jacobs and her family for the loss of her brother.

Mr. Floyd, it is heartbreaking, it is soul-crushing, what we witnessed 2½ weeks ago as the depraved murder of your brother. My sympathy is with you, but, more, my words and my actions will be with you. The world is watching.

Ms. Gupta, I’d like to talk first about the issue of the national registry. There’s been some conversation about it.

I remember the horror of Tamir Rice’s murder in 2014, the anger that we all felt, the dismay, of a police officer who killed a beautiful little boy. That police officer had been deemed emotionally unstable and unfit for duty by the police department he had worked at before joining the Cleveland Police. He never disclosed that information in his application. The Cleveland Police never reviewed his previous personnel file before hiring him.

We must expect agents of government entrusted with the awesome responsibility of protecting and serving but also capable of using brutal and deadly force to be hired under rigorous standards.

Do we know how pervasive this problem is of not knowing the background of police officers as they are hired?

Ms. GUPTA. There are some registries that associations, regional associations, have created, but there is no national registry of the sort that is being proposed in this really important legislation.

This is why it is high time that this provision and the Justice in Policing Act be passed. It’s time to have a national registry that has this information that could save lives and frankly, also promote community trust.

This national registry would have misconduct complaints, it would have discipline/termination records, it would have records of certification. It contains conditions for money, for funds, so that agencies actually have to put in inputs before they can access Federal money.

It is high time for this to happen.

Ms. DEAN. I was talking this week with my own attorney general, Josh Shapiro of Pennsylvania, about the issue of a national registry. He, too, supports that. I do know that he has also, as attorney general, worked with and announced that he wishes to establish and have the legislature in Pennsylvania establish a State registry. I think it’s important that my home State is considering that.

Should the tracking of disciplinary and performance records of law enforcement be left to the States alone? Is that sufficient? Or does it mean that we should do both?

Ms. GUPTA. If you just have a patchwork of States that do this—and it’s good that States are standing up, because right now is a moment where people are demanding change, and so States are beginning to take action. You will end up with a patchwork that will not be sufficient to actually achieve the bottom-line goal of having a registry that would be national.

People move around.

Ms. DEAN. Right.

Ms. GUPTA. They look at jobs in other jurisdictions. So, it isn't enough to have this patchwork. It's time for Congress to Act and to create a national rubric for this.

Ms. DEAN. Absolutely.

Mr. Floyd, I'd like to end with you, to thank you for your strength, for being here today. We can't imagine the exhaustion, the fatigue and grief. We are here with you, and the world supports you. I hope that offers you some consolation.

Your brother will be remembered worldwide for a very, very, very long time to come. As your niece and his daughter said, "My daddy changed the world." He has and I'm confident he will.

I'd like to give you an opportunity to tell us not about his death but about his life. What did you know and love about your big brother? What should we know about his life?

Mr. FLOYD. He was a role model for me and a lot of guys coming out the neighborhood because he was the first one to get a scholarship. We all wanted scholarships, and he was the first one, because it was just hard. You had to get an either academic scholarship or you would get one playing sports. He had got a scholarship, and it made everybody else feel like they could get one too.

Ms. DEAN. He was a talented athlete.

Mr. FLOYD. Yes, ma'am.

Ms. DEAN. I think he was a coach to people, wasn't he?

Mr. FLOYD. Yes, ma'am, he was a coach.

There's just so much about him. Talking with [inaudible]—I don't know if you know him, but anyway. He talked to a lot of kids. He went to a lot of different places, met a lot of people. He went to China and played with Yao Ming—against Yao Ming.

He did a lot of different things. He'd come back, and he'd share information with us. We'd get excited to see him every time, because he showed us so much. He was just a big, gentle giant.

He took us to a lot of places. We went to Orlando, went down there, and watched basketball games. He had a lot of friends that's athletes. We just vibed and he showed us that there's other places in life besides being in the neighborhood.

Ms. DEAN. Thank you, Mr. Chair, and thank you, Mr. Floyd. I see my time has expired.

Mr. FLOYD. Yes, ma'am.

Chair NADLER. The gentlelady yields back.

Ms. Mucarsel-Powell.

Ms. MUCARSEL-POWELL. Thank you so much, Mr. Chair.

I want to start my 5 minutes with a video that I came across, and it really struck a chord. This happened in Miami. The women in the video were worried. They had been threatened by a neighbor who had a shotgun and was making racist slurs. They called 911 for safety and for protection. Instead, they were met with force.

[Video played.]

Video is available at the following link:

<https://www.dropbox.com/s/45jeoq8bypylqi2/6%20Mucarsel%20Powell%20Video.mp4?dl=0>

Ms. MUCARSEL-POWELL. Conduct like this is never acceptable. The woman was unarmed. She called 911 because she felt threatened. She called 911 hoping that police officers would come to protect her. Instead—you saw those images.

The officer in this video later lied about what happened on the police report and is now facing charges of misconduct and battery.

Let me tell you, this happened only 2 months ago. There was no reason to subject someone to excessive force because of the color of their skin.

The reality is that people of color live and face these prejudices throughout their entire lives. They face discrimination. It's ingrained in our culture since the very founding of our country. We have to confront this crisis head-on.

Currently, right now, there is absolutely no national standard to require police officers to deescalate and avoid the use of excessive force.

We have to eliminate the injustices that Black men and women and communities of color face everywhere—in our government, in our society, in our healthcare system, and, specifically, in the police systems that we have seen for decades.

I can also tell you that, from my own personal experience, this is not representative of every police officer. I have very close relationships with law enforcement in Miami. Officer Tuks Makambe (ph), Officer Tams (ph), they are part of the community. They have earned the trust of the community.

We have to start by accepting that there is racial bias in our police system. We have to accept that. I continue to hear from Members of this Administration that there's no racism, that there's no racial bias. That is not true. Racism is systemic, and we have to hold our police departments accountable and demand transparency.

To do that, we have to engage with the community through civilian oversight. Civilian oversight boards build bridges between police and communities by giving the people a voice in the policies that affect them. They ensure officer accountability through fair and open investigation. Over time, they build trust.

Civilian oversight has to be done correctly, however. They have to be independent. They have to have subpoena power. They must have the authority to conduct investigations into police misconduct.

Most importantly, civilian oversight boards have to represent the diversity in the community. Its seats need to be filled not by political appointees but with local citizens and the leaders of local organizations focused on community policing and accountability.

So, I'm proud that the Justice in Policing Act promotes civilian oversight and allows Federal funding to go toward building civilian review boards.

So, my first question is to Mr. Ron Davis.

I wanted to ask you, you mentioned in your testimony the need for police to collaborate with the community to redefine and reimagine policing. That includes a new system that fosters civilian oversight.

Can you please explain why civilian oversight is an important factor in preventing police brutality and is effective in holding police accountable?

Mr. DAVIS. Yes, Congresswoman, and thank you for the call.

I'll refer back to, I think as one of your colleagues mentioned, Sir Robert Peel, the 10 principles, or some call it the 9 principles of law enforcement. One of them says that police can only use their authority with the consent of people.

The best way to have consent is you need the checks and balances to make sure that those, our police officers, myself included when I was serving, that have such enormous and awesome power, the power to take freedom, the power to take life, are held accountable with a check-and-balance system so that there is trust that there's legitimacy and that there's accountability.

So, civilian oversight provides that extra layer, the same way we want independent prosecutors, independent investigations. To have an independent civilian oversight body is the checks and balance so that the awesome power that the police are given by the community is accountable, we're accountable for that, and that we then police with the consent of the people, and that's the only way we can be effective.

So, there are varying models with it, but in general, the core principles of civilian oversight does go towards community policing. It makes the police in the community, which produces the public safety—both responsible, both being accountable. That's the best form of oversight that you can have.

Ms. MUCARSEL-POWELL. Thank you, Mr. Davis.

Mr. Floyd, thank you so much for joining us today. Losing someone in a violent manner and having footage of that has to be the most devastating way of losing someone. So, I share with all my colleagues here today my deepest condolences to you and the family. We're here for anything that you need.

Thank you, Mr. Chair. I yield back.

Chair NADLER. The gentlelady yields back.

Mr. Cicilline.

Mr. CICILLINE. Thank you, Mr. Chair.

Thank you to all the Witnesses who appeared today.

I, too, extend my condolences to Ms. Underwood Jacobs on the loss of her brother and to you, Mr. Floyd, on the loss of your brother and will continue to keep you and your family in my thoughts and prayers.

I hope you recognize, Mr. Floyd, that the brutal murder of your brother has awakened the conscience of this country. It has resulted in people all across America raising their voices and demanding an end to racial injustice, an end to police brutality, particularly against Black Americans and other communities of color, and for the creation of a safe, effective policing model for every single person in this country that will improve public safety and also the safety and effectiveness of police work.

The tragedy is that these are not new problems that we're experiencing. Your brother's death is only the most recent example of ugly racism and police brutality that have been a stain on the soul of this Nation since our founding.

I think everyone in this hearing brings their own experiences. So, before I was in politics, I was a civil rights lawyer, and most of my cases were police brutality cases. So, many of the hurdles that I faced in bringing those cases and seeking justice are addressed in the Justice in Policing Act.

I then became mayor of the city of Providence and inherited a police department that was under a pattern-or-practice investigation by the Department of Justice, a police department that was really at war with the community. Crime was on the increase, and the public had lost confidence in that community.

One of the things that was so effective in turning around that was the participation of the community, working in partnership with the police. We produced the lowest crime rate in 40 years. We became a fully accredited police department. The police officers became integrated into the communities they served.

So, one of the things that I'm really concerned about is, the Trump Administration has changed the policies about these patterns-or-practice investigations. It was one of the things that we were able to use to force change that the chief of the department and I, as the mayor, wanted.

Under the Obama Administration, the Justice Department opened 25 investigations into police departments, signed and enforced over a dozen consent decrees in places as diverse as Ferguson, Seattle, New Orleans, and had several open investigations. The Trump Administration then came in and really changed positions on that.

I know, Ms. Gupta, you're familiar with that. What has been the impact of the decision of the Trump Administration not to pursue patterns-and-practice investigations?

This legislation not only strengthens the ability of DOJ to do that but also gives that responsibility to the State Attorneys General. Can you speak a little bit about why that's necessary and why this is such a powerful mechanism for changing police departments and reforming police departments?

Ms. GUPTA. Yeah. The Trump DOJ has essentially abandoned and abdicated a mandate that was given by Congress in 1994 to investigate patterns and practices of systemic unconstitutional policing in police departments around the country.

Since the Administration began, there has been the opening only of 1, on a very tiny issue in a police department out of Springfield, Massachusetts, compared to 25 in the Obama Administration and many others in Republican and Democratic Administrations prior to that.

So, what that has meant is that the tool of these investigations, the tool of the consent decrees, has just been lying dormant.

Typically, when I oversaw the Civil Rights Division, we had mayors and police chiefs that really, in numerous instances, were actually asking the Justice Department to come in because they needed Federal help in very bad situations. So, jurisdictions have not been able to rely anymore on the Justice Department to support these efforts.

I think this bill, Justice in Policing, does a lot to strengthen the Civil Rights Division's authority, giving it subpoena power, giving it resources. It also gives State Attorneys General the ability to do these pattern-and-practices, where they have already State laws that allow them to do it as well. That's, of course, in this moment, with a Justice Department that is very disengaged from these issues, an important thing.

Mr. CICILLINE. Thank you.

For Mr. Butler, very quickly, because I only have a little time left, I'm also very interested in the accreditation model, because I think that's a way to help transform police departments across the country quickly.

I'm wondering whether or not you have a view as to whether or not the provisions that provide for training to end racial bias and to end racial profiling, whether there are really high-quality components of an accreditation system that can really effect systematic change?

Mr. BUTLER. I think they're essential. We've gotten away from being tough on crime; we're now about being smart on crime. It's evidence-based practices. The evidence suggests that police can do better with appropriate training.

Mr. CICILLINE. Thank you.

Mr. Chair, I have a unanimous consent request. I ask unanimous consent that an article entitled, "It's Official: The Trump Administration Will 'Pull Back' from Investigating Police Abuses" be made part of the record.

Another article, entitled, "The Trump Administration Gave Up on Federal Oversight of Police Agencies—Just as It was Starting to Work."

A final article, entitled, "Trump and Sessions Released Cops from Federal Oversight. Now We See the Results."

Chair NADLER. Without objection.

[The information follows:]

MR. CICILLINE FOR THE RECORD

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It's official: the Trump administration will "pull back" from investigating police abuses

Obama's Justice Department uncovered horrible abuses at police departments. Trump's attorney general said they'll "pull back" from such investigations.

By German Lopez | @germanlopez | german.lopez@vox.com | Updated Feb 28, 2017, 2:54pm EST



Win McNamee/Getty Images

Over the past several years, the US Department of Justice played a key role in exposing abuses from local police departments, exposing everything from unjustified shootings to a broader pattern of racism in a police force. But on Tuesday, Attorney General Jeff Sessions confirmed that all of that work will come to an end — **saying** that the Justice Department will "pull back" on civil rights lawsuits and investigations against police.

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It's official: the Trump administration will "pull back" from investigating police abuses - Vox

Under President Barack Obama, the Justice Department took on more civil rights investigations of local police departments than Obama's two predecessors — including President Bill Clinton, who signed the law in the 1990s allowing these types of investigations by the Justice Department. By the last count, the Obama Justice Department has investigated nearly two dozen police departments, from Baltimore to Ferguson, Missouri to Chicago — uncovering a wide range of abusive, even racist, police practices.

With Sessions's announcement, those investigations will likely come to an end.

The news isn't unexpected. On the campaign trail, President Donald Trump consistently decried what he characterized as the Obama administration's aggressive attitude toward the police. Trump **argued** that the administration's policies have fostered a broader anti-police sentiment, enabling more crime and violence against cops. And he **suggested** that he would allow police to be even more aggressive than they are today.

Sessions expressed a similar view. "There is a perception, not altogether unjustified, that this department, the Civil Rights Division, goes beyond fair and balanced treatment but has an agenda that's been a troubling issue for a number of years," Sessions **said** during a November 2015 Senate hearing called "**The War on Police.**"

When you put it all together, it always looked like the Trump administration would be less likely to launch investigations into local police departments. But it's still a huge shame. These investigations, although limited in their scope and outcomes, offered crucial insight into just how destructive American policing can be — particularly for communities of color.

We learned of some pretty terrible police abuses thanks to Obama's Justice Department

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It's official: the Trump administration will "pull back" from investigating police abuses - Vox



Former US Attorney General Eric Holder. | Chip Somodevilla/Getty Images

The Justice Department, with limited staff and resources, could never have investigated every police department in America. But under the Obama administration, it took a much more aggressive approach to investigating police departments, typically after a high-profile police shooting. And the findings were often horrifying.

In Ferguson, Missouri, for example, the Justice Department **found** a police department that was encouraged to crack down on petty offenses to raise as much revenue from fines and court fees as possible — often in a way that targeted black residents. Much of this effort led to totally frivolous policing, the Justice Department noted:

Officers frequently arrest individuals under Section 29-16(1) on facts that do not meet the provision's elements. Section 29-16(1) makes it unlawful to "[f]ail to comply with the lawful order or request of a police officer in the discharge of the officer's official duties where such failure interfered with, obstructed or hindered the officer in the performance of such duties." Many cases initiated under this provision begin with an officer ordering an individual to stop despite lacking objective indicia that the individual is engaged in wrongdoing. The order to stop is not a "lawful order" under those circumstances because the officer lacks reasonable suspicion that criminal activity is afoot. ... Nonetheless, when individuals do not stop in those situations, FPD officers treat that conduct as a failure to comply with a lawful order, and make arrests.

In Cleveland, another Justice Department investigation **found** that police frequently used excessive force. Just take this one example from the Justice Department's report, in which police shot at a man in his underwear who was actually a victim of a crime:

An incident from 2013 in which a sergeant shot at a victim as he ran from a house where he was being held against his will is just one illustration of this problem. "Anthony" was being held against his will inside a house by armed assailants. When officers arrived on scene, they had information that two armed assailants were holding several people inside the home. After officers surrounded the house, Anthony escaped from his captors and ran from the house, wearing only boxer shorts. An officer ordered Anthony to stop, but Anthony continued to run toward the officers. One sergeant fired two shots at him, missing. According to the sergeant, when Anthony escaped from the house, the sergeant believed Anthony had a weapon because he elevated his arm and pointed his hand toward the sergeant. No other officers at the scene reported seeing Anthony point anything at the sergeant.

The sergeant's use of deadly force was unreasonable. It is only by fortune that he did not kill the crime victim in this incident. The sergeant had no reasonable belief that Anthony posed an immediate danger. The man fleeing the home was wearing only boxer shorts, making it extremely unlikely that he was one of the hostage takers. In a situation where people are being held against their will in a home, a reasonable police officer ought to expect that someone fleeing the home may be a victim. Police also ought to expect that a scared, fleeing victim may run towards the police and, in his confusion and fear, not immediately respond to officer commands. A reasonable officer in these circumstances should not have shot at Anthony.

In Baltimore, the Justice Department **found** a police department that regularly violated residents' constitutional rights throughout virtually every aspect of policing, at times encouraged racist practices, and frequently did nothing when it uncovered wrongdoing within its ranks. Black residents suffered the most as a result, the Justice Department concluded:

BPD disproportionately stops African-American pedestrians. Citywide, BPD stopped African-American residents three times as often as white residents after controlling for the population of the area in which the stops occurred. In each of BPD's nine police districts, African Americans accounted for a greater share of BPD's stops than the population living in the district. And BPD is far more likely to subject individual African Americans to multiple stops in short periods of time. In the five and a half years of data we examined, African Americans accounted for 95 percent of the 410 individuals BPD stopped at least 10 times. One African American man in his mid-fifties was stopped 30 times in less than 4 years. Despite these repeated intrusions, none of the 30 stops resulted in a citation or criminal charge.

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These are only three of many more investigations by the Justice Department, ranging from **Chicago** to New Orleans. Time and time again, the Justice Department found big problems: a pattern of excessive use of force, racial bias, outright discrimination, and more.

These police departments were enormously troubled. The cities' residents were outright terrorized by police departments that were far more interested in looking "tough" with higher arrest numbers or collecting budget revenue for their local governments than improving public safety. Yet we would have never known about just how bad these problems were without the deep, months-long Justice Department investigations.

The investigations weren't perfect. They typically resulted in "consent decrees" in which the local government and Justice Department agree to a certain set of reforms that are supervised by the courts. But these agreements, an investigation by *Frontline* and the Washington Post **found**, have a mixed record of success, often failing to reach many of their goals because the financial costs imposed on local governments are just too high for a budget-strained city to afford.

Still, the Justice Department at least helped show that there really is a problem with how policing works not just in these cities but potentially America more broadly. And while the exact solutions that the Justice Department came up with may not have always worked out, we're definitely never going to find solutions if we don't accurately identify the problem in the first place.

Trump's Justice Department likely won't investigate the police

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It's official: the Trump administration will "pull back" from investigating police abuses - Vox



Jeff Swensen/Getty Images

So what will Trump's Justice Department do?

On the campaign trail, Trump **described** himself as "tough on crime." He advocated for more police departments to adopt **stop and frisk**, which was ruled unconstitutional in New York City because it was used to target minority residents. He **said** at a debate in February that police officers are "absolutely mistreated and misunderstood." He even **suggested** that Black Lives Matter protesters may need to be investigated by the Department of Justice. And Sessions, Trump's attorney general, is vocally skeptical of investigations into local police departments, saying that his Justice Department will "pull back" on these kinds of investigations.

So Trump's administration will take a more sympathetic approach and less investigative one to the police.

It wouldn't be the first time that the Justice Department's Civil Rights Division was effectively gutted by an administration. As **Ryan Reilly reported for the Huffington Post**, the Bush administration between 2001 and 2009 severely weakened the agency's ability to investigate *any* civil rights violations, much less police departments'. And the result is Americans were by and large left in the dark about some of the worst abuses from law enforcement and other government officials.

The Washington Post

Democracy Dies in Darkness

+

The Trump administration gave up on federal oversight of police agencies — just as it was starting to work

By **Radley Balko**

Jan. 28, 2019 at 7:01 a.m. EST

Over at National Review, Walter Olson has written a partial defense of Attorney General Jeff Sessions's last official act, a memo that put new restrictions on the use of consent decrees. Olson also adds in some criticism of the media, which he writes was "primed . . . to fit Sessions's every move into a pre-set frame of criticism" — which is to say, defending cops from accusations of abuse. Olson is a senior fellow at the Cato Institute and co-founder of the Overlawyered blog. He's also a very smart guy and a friend. But I think his article gets some important things wrong. It's also the most concise and well-argued piece in opposition to consent decrees, so it's worth addressing at length.

A consent decree is a binding agreement between the Justice Department and some large or official entity, usually coming after the agency has found evidence of ongoing wrongdoing. The other party to a consent decree can sometimes be a corporation, but more often it's a local or state government. The most well-known variety are consent decrees aimed at reforming police departments, but there are lots of others. Most, including all of those associated with policing, aim at correcting mass violations of constitutional rights, although they can also be used to force compliance with environmental, labor or other regulations.

Olson makes some good points on the problems with how consent decrees are implemented. He's also right that public discussion of consent often focuses on their application to policing, and tends to overlook their use — and often misuse — in other areas. But his piece also overreaches, particularly in his criticism of media reaction to Sessions's order and his dismissal of the fear that the order will make it difficult to target systemic police abuse. His article is also a useful vehicle to examine Sessions's orders in more detail, as well as to take a closer look at the costs and benefits of the consent-decree model for police reform. As you might guess, contrary to Olson, I think they do a lot of good.

AD

Let's start with Olson's media criticism. He writes that "Critics promptly assailed [Sessions's order] as motivated by a wish to let brutal police off the hook," then notes:



"If you look at a copy of the order itself though you may be struck by something: Not

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If you look at a copy of the order itself, though, you may be struck by something: Not once in its seven pages does the word “police” even appear. That’s a clue that the press missed much of the story.

The debate in policy and legal circles over consent decrees goes back decades, and has only recently begun to overlap with the debate over police misconduct. The Justice Department’s website lists numerous decrees its negotiations have extracted from state and local governments, few of which have anything to do with cops.

Olson also correctly points out that Sessions has long objected to consent decrees, and in the past has decried their effects on all sorts of agencies that have nothing to do with law enforcement.

All of these things are true. And yet it wasn’t unfair for the media to speculate that halting federal oversight of police agencies specifically was Sessions’s primary motivation for his order. Why? Because of Sessions’s record. While he has issued broader condemnations of consent decrees from the campaign trail to the time he took office as attorney general, Sessions made it clear that one of his primary goals was to dramatically scale back federal oversight of law enforcement. He explicitly said he thinks consent decrees both increase crime and hurt officer morale. He also objected to the very notion that there could be systemic problems in police departments (such as in, say, Little Rock). He said in his confirmation hearing that mere criticism of a police department damages all police departments and, therefore, hinders effective policing.

AD

One of Sessions's first acts upon taking office was a memo ordering a review of all current agreements between the Justice Department and police departments across the country, from joint task forces to information-sharing agreements to consent decrees. The memo laid down a set of priorities that department personnel should emphasize when conducting such reviews. Among them: promoting "officer morale" and "public respect for their work." The memo also prioritized "local control" and "local accountability," emphasized that "it is not the responsibility of the federal government to manage non-federal law enforcement agencies" and cautioned that the "misdeeds of individual bad actors" shouldn't malign the honor and hard work of law enforcement agencies.

This is a central tenet of what you might call the "bad apple theory." Sessions doesn't deny that some police officers can be abusive. In fact, during his time at the Justice Department, Sessions was fairly proactive at bringing federal civil rights charges against individual officers, particularly with respect to abuses at county jails. But Sessions has rejected the idea that there might systemic abuse in some departments.

Again, the memo calling for the review of police agreements with the federal government was one of Sessions's first actions as attorney general. So it doesn't seem unfair to speculate that the priorities underlying his first memo may have motivated his last. (I also looked for examples of Sessions criticizing other types of consent decrees after he became attorney general. Perhaps they exist, but I couldn't find them. They certainly weren't a high enough priority for him to spend much time on them in public appearances.)

AD

Olson is right that Sessions's orders will affect all consent decrees, not just those associated with policing. But he also suggests near the end of his article that the alarm over how the orders will affect police oversight was overblown, and he makes several other more general criticisms of consent decrees, as they apply to policing. He writes:

They let outside critics manage (and micro-manage) local agencies. Decrees, which may be hundreds of pages long, install DOJ (or some other lawsuit-filer) to oversee and second-guess the operations of the sued city or state, in an enviable position of power without accountability. The deal often includes the appointment of a monitor who might even move in to the subject agency's offices on a full- or part-time basis.

It isn't clear to me why this is inherently a bad thing. The police culture described in Justice Department reports from Ferguson, Mo., Chicago, Baltimore and elsewhere (which Sessions criticized but later conceded he hadn't bothered to read) has existed for years or even decades. Any professional culture ingrained for that long will resist change. It's hard to see the harm in putting new people on the ground to oversee that change.

One of the independent monitors' key responsibility is to hold regular meetings with the public to assess where new policies are succeeding and failing. Where the police relationship with some marginalized communities is particularly bad, members of those communities may feel more comfortable talking to an independent monitor than with a representative of the same department they feel has been disrespectful or abusive. Monitors also meet with rank-and-file officers to talk about how the policies are affecting them — again, officers whose opinions differ from the status quo would presumably be more comfortable talking honestly to someone from outside the agency than inside of it. In an interview for this piece, Christy Lopez, who worked in the Justice Department's Office of Civil Rights under President Barack Obama and led the investigation into the Ferguson police department, said that of the jurisdictions in which consent decrees have failed to significantly change how policing is conducted, most were decrees that were not enforced by independent monitors.

AD

Here's another Olson criticism:

They last and last. Having acquired this valuable power, the feds or other plaintiffs can be leisurely about relinquishing it. Definitions of what constitutes compliance can be vague, complex, and doubtfully practical, and even if the defendants manage to show that they have crossed every “t” and dotted every “i,” they may still need to prove that they are not likely to backslide when taken off the hook. So the process drags on — sometimes for decades, sometimes indefinitely.

There are definitely some compelling examples of this, particularly in the reports and congressional testimony that Olson cites (though most do not involve law enforcement agencies). And I share his concerns that the incentives here can be problematic — a monitor who declares an agency to be “fixed” also ends his or her job as a monitor.

But it may also be that in some of these examples, the decree dragged on because the local agency failed to improve. The Post reported in 2015 that this was true of several early consent decrees with police agencies. A number of jurisdictions, including Detroit, Los Angeles and Prince George’s County, Md., had been under decrees for up to or more than 10 years, at considerable expense to those cities and the county. That may be because the policies aren’t working, but it could also be because police culture is difficult to change overnight. But the early examples also came as the program was just getting started (Congress didn’t authorize the use of consent decrees to reform police departments until 1994), and organizers were still trying to figure out which policies work, which don’t and even how to measure effectiveness.

In a more positive 2017 report, the Justice Department noted that the duration of policing consent decrees grew significantly shorter during the Obama administration. The report also referenced independent research that found notable improvements in policing after decrees in, among other places, Pittsburgh, Cincinnati, Washington, Seattle and New Jersey.

More from Olson:

Things get done behind closed doors . . . ordinary taxpayers, parents, and other affected interests are sure to wind up on the outside.

This may be true when cities form agreements in response to litigation from private groups or nonprofit advocacy groups, but city and state agreements with the Justice Department generally come with a period of public comment. The Chicago Police Department agreement, for example, came with a guaranteed two to four weeks for public input. On the first day, more than 200 people came to offer their comments before the federal judge who considered it. The public comment period almost didn't happen, not because the city, the DOJ's staff or the ACLU wanted to keep it all secret, but because the police unions and Sessions himself tried to get the agreement thrown out, then attempted to drag out litigation well into the period of public debate.

AD

Back to Olson:

They frustrate democracy. Who answers to local voters? Not the control group, as it has been termed, of federal civil servants or other plaintiffs managing the decree. As for the local agency, once its hands are legally tied, mayors and city councils can come and go and it doesn't matter: It's unlawful to change direction even if local voters want to.

At least with policing, a consent decree comes only after a Justice Department investigation has revealed practices of policing that cause large-scale violations of constitutional rights — revelations that, if disputed, must also then be proven in court. Under the 14th Amendment, the federal government has an obligation to protect the constitutional rights of U.S. citizens when state or local officials either violate those rights or fail to adequately protect them. This is true even if a majority of voters or local elected officials support the violations, don't believe violations are occurring, or simply don't care. We don't and shouldn't subject constitutional rights and their enforcement to a popular vote.

“You have to understand that the courts role in a consent decree is to protect people who don't have access to political power,” Lopez says. “They're used in places where we've had to prove that local officials have repeatedly and systematically failed to protect people, where marginalized groups have been failed by the political process.” Taking decision-making power away from those officials — at least those decisions that pertain to constitutional policing — is precisely the point.

AD

Furthermore, the “local power” argument is particularly difficult to apply to Sessions, who is hardly a principled advocate for local control. He violated the wishes of local voters and local officials when it suited other priorities. The best example is Sessions’s threat to withhold federal funding from sanctuary cities, despite the fact that police leaders in those cities say enforcing federal immigration law would make their cities less safe. (And there’s data to back them up.)

Interestingly, Sessions could have taken a similar approach to police abuse. He could have threatened to withhold funding to police agencies that have shown a pattern of abuse, and he’d likely have been on firmer legal ground. That he only went this route for immigration enforcement tells us something about his priorities. Sessions also fought to throw out the consent decrees in Chicago and Baltimore even though local officials — including the heads of those cities’ police departments — wanted them.

It may seem counterintuitive for local officials to welcome Justice Department scrutiny, but it isn’t uncommon. The city of Elkhart, Ind., also recently asked for a DOJ investigation after ProPublica reported shockingly high rates of misconduct and police shootings there. There are also good reasons for some local leaders to welcome federal oversight. As former Seattle police chief Norm Stamper wrote in his book “Breaking Rank,” when mayors, city managers and other local officials negotiate police contracts, they’re often faced with a limited budget. So they’ll often compensate with other benefits, such as increased job protections for cops accused

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of misconduct, a “police officer bill of rights,” or sending disciplinary cases to officer-friendly arbitrators. They and their successors are then bound to these contracts, which can help enforce the “blue wall of silence” and contribute to destructive police culture. To get a federal court to toss them out as part of a consent decree may often be the only way out. Yet when city leaders wanted that option, Sessions fought them.

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Sessions also altered a program in which cities could voluntarily ask the Justice Department to review their police agencies to ensure they’re using the best practices and policies to protect the constitutional rights of the people they serve. Sessions didn’t change the program out of some devotion to federalism or limited government. Instead, he refocused the program toward providing grants for traditional policing such as anti-drug and anti-gang enforcement. The program still pushes federal policy on local police, but instead of offering an incentive for reform, it offers an incentive to continue with more aggressive, reactionary policing.

Olson closes his article by arguing that Sessions’s orders are “modest,” and paints them as common-sense proposals aimed at reining in consent decrees that have outlived their purpose. Again, I can only speak to the orders as they apply to policing, but it seems clear that the orders will make it more difficult for the Justice Department to investigate and oversee problematic police agencies.

For example, one order requires that “provisions of the consent decree must be narrowly tailored to remedy the injury caused by the alleged legal violation.” Strictly interpreted, this means that Justice Department investigators would be unable to pursue any tangential issues or underlying causes that may be causing the constitutional violations. For example, in Ferguson the police targeting of black residents for petty infractions was driven by a dizzying, predatory system in which municipalities in St. Louis counties are heavily incentivized to supplement their budgets with revenue from city courts — and that revenue largely comes from fines for traffic violations and other petty crimes. If Justice Department investigators had been limited to investigating only violations of the Fourth and 14th amendments, they could well have been prevented from ever delving into the role of the municipal courts. “I think we succeeded in showing there was a direct connection between the municipal courts and how the police were violating the rights of Ferguson residents,” Lopez says. “But under Sessions’s memo and the spirit in which it was written, we would not have been able to address the courts’ role. I’m confident that the current administration never would have let that through.”

Chiraag Bains, who co-authored the Ferguson report, agrees. “Under this memo and this administration, there would never have been either an investigation or a consent decree in Ferguson,” he says. “The problem with limiting an investigation or an agreement to a specific issue like shootings or the use of police dogs is that you can’t get to the underlying culture and systemic problems that give rise to those issues. In some of these departments, you need a multi-pronged approach. Without that, the same problems are going to crop up as soon as you leave.”

Another part of Sessions's order requires that consent decrees and settlements be approved by "senior department leadership." Olson characterizes this as an effort stop "underlings" from cutting "consent-decree deals without high-level supervision." But it isn't about supervision so much as it's about putting the ultimate decision about consent decrees with high-level political appointees who, in this administration, tend to be pretty adamantly opposed to consent decrees. On the one hand, there's the argument that elections have consequences, and a president is entitled to put important policy decisions in the hands of the policymakers he appoints. But once again, the counterargument here is that constitutional rights are not beholden to the whims of voters.

Olson also complains about the inflexibility of agreements as they're currently enforced, and it's a fair criticism. But Sessions's order actually makes it *more* difficult to alter an agreement once it's in place. "The order significantly raises the bar if you want to modify an existing agreement," Lopez says. "It's already really difficult. This would make it nearly impossible. As a result, there would be a strong incentive to sue instead of to settle, and that can be very expensive, for both the federal government and the city."

One final and particularly problematic part of the order is, somewhat paradoxically, the one way it would make it *easier* for the Justice Department to pursue consent decrees — the restrictions are relaxed if a consent decree would protect a city from a third-party lawsuit. Lopez explains. "Let's say the DOJ knew that the ACLU or NAACP was about to file a lawsuit against a city's police department," she says. "And they know that if successful, the lawsuit would bring reforms that someone

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like Sessions thinks are excessive or burdensome to police officers. This allows the federal government to hastily offer a consent decree that would essentially shield the city from the third-party lawsuit.” That doesn’t seem very democratic, either.

Perhaps the most important question concerning consent decrees is — do they work? The evidence is mixed. The 2015 Post investigation made a compelling case that some of the longer-lasting agreements weren’t achieving much change. But Lopez points out that in addition to the fact that most of the examples from that investigation began in the 1990s, critics also cited metrics that may not be the best way to measure success. “I’ll give you one example,” she says. “We often see people cite use of force incidents as a way to measure whether a consent decree is working. But one of the most common problems we see in police departments is a failure to report uses of force, and one of the most common reforms is a requirement that force be well-documented, with punishment for officers who fail to do so. So we should see use of force incidents *go up* after a consent decree, particularly in the short term.”

Bains agrees: “I don’t think it’s fair to look at the longest-lasting decrees and cite them to say the entire program isn’t working. There’s a reason those agreements lasted so long. They tended to have the least amount of cooperation from local officials and police leaders. One thing we tried to do in the Obama administration was get input and support at the local level, not just from politicians, but also from civic groups and activists. It makes a huge difference.”

The bulk of the timeline for those early, long-lasting consent decrees also came during the George W. Bush administration, which, like the Trump administration, wasn’t particularly friendly to the sort of systemic reviews undertaken during the Obama years.

But more recently, three years after Seattle's consent decree went into effect in 2013, public trust in the police rose from 60 percent to 72 percent. More importantly, trust among blacks rose from 49 percent to 62 percent, and among Latinos from 54 percent to 74 percent. After the New Orleans consent decree in 2013, public trust in the police soared. A 2016 poll found that 69 percent of residents thought the city police culture had improved since the decree. A 2018 poll that 87 percent of respondents said their interaction with a New Orleans police officer had been safe and courteous, and 83 percent felt safe in their own homes. The city still has a high crime rate, and there's still dissatisfaction with response times, but both could be attributed at least in part to the department's shortage of personnel.

Lopez says this metric — public trust, particularly among minority communities — is the most effective measure of success. “There are just way too many variables that can affect use of force incidents, or crime rates, or officer shootings,” she says. “Even surveys can be misleading, but I think they’re much more valuable. We do surveys of the community in general, of marginalized communities, and of police officers. If we can show that community-officer relations have improved, then we’re on the right track. And since New Orleans, nearly all of our agreements have shown improvement in that area.”

More trust means people are more willing to cooperate with police to report and help solve crimes. It also means more appreciation for police, which can only be good for morale, even if, as Sessions insists, morale takes a temporary hit at the thought of more oversight, paperwork or criticism. That may be why city leaders in

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[places such as Detroit and East Haven, Conn., were supporters of consent decrees](#)
[by the time those agreements ended.](#)

If Trump were to lose in 2020, a Democratic administration could easily revoke Sessions's order, but in the meantime, not only will the administration cease investigating new police departments, but existing decrees could also be left to atrophy. If consent decrees were any other policy area, it would be easy to cite their mixed results, note their expense and ridicule the fact that even the people implementing them have acknowledged that they've been figuring it out as they go. But this isn't just any policy area. The Justice Department reports from [Chicago](#), [Ferguson](#), [Baltimore](#), [Cleveland](#), [New Orleans](#) and other cities documented systematic abuse, some of it jaw-dropping. Those allegations have been supported by journalists, activists and lawsuits. Legally, the federal government isn't just authorized to investigate and try to correct these problems, there's a good argument that it's obligated to do so. But morally, the case is even clearer. Given what's at stake, the fact that these agreements haven't always been successful doesn't relieve of us of the imperative to keep trying.

Read more:

[Video: Exposing police misconduct in Little Rock isn't hard. Finding justice is.](#)

[Radley Balko: Jeff Sessions, the doughty bigot](#)

[Kimbriell Kelly, Sarah Childress and Steven Rich: Forced reforms, mixed results](#)

[Radley Balko: Consent decrees have a mixed record of success, but Sessions's plan to end them is still worrisome](#)

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Trump and Sessions Released Cops From Federal Oversight. Now We See the Results. — Mother Jones

Mother Jones

CRIME AND JUSTICE JUNE 2, 2020

Trump and Sessions Released Cops From Federal Oversight. Now We See the Results.

George Floyd's death took place under an administration that's given a green light to police brutality.

PEMA LEVY



Jay Mallin/ZUMA

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The civil unrest rocking the country in the wake of George Floyd's death under the knee of a Minneapolis police officer has many catalysts. Among the more immediate is President Donald Trump and his first attorney general, Jeff Sessions, who freed local police departments from federal oversight and signaled that police brutality was no longer a problem that the federal government had an interest in solving. For police officers and departments with histories of terrorizing people rather than building relationships with communities they are supposed to protect, that message was heard loud and clear.

After the police officers who beat Rodney King in March 1991 in Los Angeles were acquitted, leading to the Los Angeles riots, Congress took action by giving the federal government oversight of local police departments. As *Mother Jones* reported in 2017, on the 25th anniversary of those riots:

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Since then, the Justice Department has launched 70 investigations into state and local law enforcement agencies and has negotiated 40 reform agreements, half of which are court-enforced consent decrees. The Obama administration was particularly active with this policy, enforcing 14 consent decrees for troubled police agencies, from Ferguson, Missouri, to Baltimore.

The riots' 25th anniversary also happened to mark the beginning of the Trump administration. Jeff Sessions, newly installed as attorney general, immediately set out to undo years of progress on police and criminal justice reform. In April of 2017, a federal judge approved a consent decree—a legally-binding agreement between the Justice Department and a police department mandating reforms that is enforced by a federal judge—in Baltimore, finding that Sessions' objections to an agreement made under the Obama administration came too late. "I have grave concerns that some provisions of this decree will reduce the lawful powers of the police department and result in a less safe city," Sessions said at the time. "Make no mistake, Baltimore is facing a violent crime crisis."

"We will have to look to the courts, to local governments and to grass-roots political protest and pressure to protect our civil rights from police abuse."

Though stymied from preventing Baltimore's consent decree from going into effect, that same week he had ordered an internal review of all existing consent decrees nationwide. Even as Sessions' relationship with the president turned sour over his refusal from the investigation into Russian election interference, the attorney general kept his head down and pulled back on criminal justice reforms, returning to a tough-on-crime policies that Sessions, a former prosecutor in Alabama, felt should never have ended. (Sessions is running for his old Senate seat in Alabama, but without the support of Trump he is not expected to win the Republican nomination in a July runoff.) The government's police reform work came to a halt, while criminal justice policies reverted to harsher iterations.

When Trump finally fired Sessions in November 2018, the outgoing attorney general had one final trick up his sleeve. Before leaving the Justice Department, he quietly signed a memorandum in one of his last official acts all but ending the department's oversight of police departments. The memorandum made the Trump administration's de facto policy against new consent decrees official, while extending the same hands-off policy to other areas of federal enforcement involving state responsibilities in areas like pollution and voting rights. Experts predicted that even departments already under current federal oversight might once again act with impunity because the memo undercut the authority of civil rights attorneys to enforce them. Sessions' memo set policy, but it also sent a message to police departments that they would no longer have to answer to the federal government—not even when officer shootings draw national attention.

This message was sent not just in the order to pare back enforcement, but in the states' rights language framing the 7-page document that has historically signaled support for state repression over the rights of black people. "Sessions' memo also takes pains to emphasize that states are 'sovereign' with 'special and protected roles' and that, when investigating them, the Justice Department must afford states the 'respect and comity deserving of a separate sovereign,'" Christy Lopez, who oversaw investigations by the department into local police agencies during the Obama administration, wrote at the time the memo was issued. "In his view, the Justice Department should be more concerned about protecting states from the burden of abiding by federal law than about protecting individuals from being hurt or killed by the state."

Lopez then made a prescient prediction: "As has so often been the case with this administration, we will have to look to the courts, to local governments and to grass-roots political protest and pressure to protect our civil rights from police abuse. Because, as the Sessions memo confirms, this Justice Department has no intention of letting its civil rights division protect us from abuse by the state."

Officer Derek Chauvin calmly knelt on George Floyd's neck until his body went limp after nearly four years of an administration that turned its back on police reforms and gave cops the green light to use excessive force. His actions showed the country the impunity some police officers still feel in 2020 to mistreat and even murder black people. That remains obvious in how some officers across the country have responded to the protests with unlawful action and more excessive force, all as the cell phone cameras are rolling. Perhaps they took

session in what the moment attorney general William Barr said in a speech just a few weeks ago: "If you're a police officer, don't show up first."

<https://www.motherjones.com/crime-justice/2020/06/jeff-sessions-george-floyd/>

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6/10/2020 Trump and Sessions Released Cops From Federal Oversight. Now We See the Results. – Mother Jones
 comfort in what the current attorney general, William Barr said in a speech just a few months ago: “If communities don’t give [police] support and respect, they might find themselves without the police protection they need.”

The security forces in Minneapolis this weekend who ordered people to move from their porches into their houses and shot paint canisters at those who lingered may have felt protected by the friendship between Trump and the head of their police union, Bob Kroll, an officer with a long disciplinary record and history of discrimination who nevertheless rose to be the union’s president. When Trump traveled to Minnesota for a rally last October, Kroll took the stage in a “Cops for Trump” t-shirt and praised the president for liberating his officers from the constraints placed on them by the previous administration. “The Obama administration and the handcuffing and oppression of police was despicable,” he said. “The first thing President Trump did when he took office was turn that around, got rid of the Holder-Loretta Lynch regime and decided to start letting the cops do their job, put the handcuffs on the criminals instead of us.”



Uncovered: Last October, the head of the Minneapolis police union — which days ago warned against a “rush to judgment” of the officers involved in George Floyd’s death — spoke at a Trump rally and praised him for ending the “handcuffing and oppression” of police under Obama.



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No one knows if actions by Trump and Sessions led to George Floyd’s death or not. But neither his death nor the widespread unrest began in a vacuum. Trump, who often says the quiet part loud, has urged police to use excessive force in tweets from the White House. On Monday, Trump told governors on a call that “you have to dominate” protesters. If police were listening, they once again heard that the administration would do nothing to discourage their worst behavior.

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Mr. CICILLINE. With that, Mr. Chair, I just want to end where I began, with deep gratitude to Mr. Floyd for the courage and the grace that you have shown and for being such an inspiration to us.

I only pray and hope that my colleagues in the Congress of the United States will have the same courage and will be inspired to do the right thing and to respond in this historic way to really change the way communities and police relate and that it will all be done to honor the life and legacy of your brother.

With that, Mr. Chair, I yield back.

Chair NADLER. The gentleman yields back.

Without objection, the following materials concerning the Justice in Policing Act and related issues, which have been submitted to the Committee's electronic repository, will be included in the record. A number of leading civil rights organizations, statements by the Fraternal Order of Police, the Constitutional Accountability Center, the Players Coalition, the YWCA, Adobe, Third Way, the National Partnership for Women and Families, the Blue Dog Coalition, and articles in Reuters and Boston Globe will be admitted into the record, without objection.

[The information follows:]

MR. NADLER FOR THE RECORD

FOR IMMEDIATE RELEASE / [LINK](#) / [TWEET THIS](#)

June 8, 2020

Contact:

Shin Inouye, The Leadership Conference on Civil and Human Rights, 202.869.0398,

inouye@civilrights.org

Don Owens, Lawyers' Committee for Civil Rights Under Law, 202.934-1880,

dowens@lawyerscommittee.org

Marc Banks, NAACP, 443.608.4073, dbanks@naacpnet.org

Rachel Noerdlinger, National Action Network, 212.681.1380, rnoerdlinger@mercurylc.com

Lon Walls, The National Coalition on Black Civic Participation, 301.996.1669, lwalls@wallscomm.com

Teresa Candori, National Urban League, 212.558.5362, tcandori@nul.org

Phoebe Plagens, NAACP Legal Defense and Educational Fund, 212.965.2235, pplagens@naacpldf.org

Civil Rights Leaders' Statement on *Justice in Policing Act*

WASHINGTON -- *Leading national racial justice organizational leaders today issued a joint statement on the bicameral introduction of the Justice in Policing Act:*

"This nation is facing another crisis of police killing Black people. While these killings underscore how much systemic racism endures in our nation, this moment has been met with a movement of people across the country demanding transformative change. Our organizations, along with national and local partners, have long worked for robust reforms and police accountability, and Congress is now taking action.

"We support Congress taking an important step toward police accountability by introducing the *Justice in Policing Act*. In the aftermath of the recent police killings of Black people, we sent Congress [a strong police accountability framework](#) that is reflected in this legislation. The bill takes on critical issues such as redefining police misconduct, establishing a national use of force standard, increasing the U.S. Department of Justice's authority to prosecute misconduct by law enforcement officers, and more. This legislation makes clear that police brutality, misconduct, harassment, and killing have no place in America. Many provisions in the bill reflect the insights of national and local civil rights organizations that have worked for years on these issues. As the bill advances toward passage, we will continue to work to improve it to ensure that real and meaningful change is achieved.

"We express appreciation to Speaker Pelosi, Leader Schumer, Congressional Black Caucus Chair Bass, Chairman Nadler, and Senators Booker and Harris, for their leadership to quickly and substantively meet this moment and address this pressing issue. If Congress truly represents the will of the people, they must take action swiftly to ensure equality and justice for all."

The following leaders signed the statement:

- Melanie L. Campbell, president and CEO, National Coalition on Black Civic Participation, Convener, Black Women's Roundtable
- Kristen Clarke, president and executive director, Lawyers' Committee for Civil Rights Under Law
- Vanita Gupta, president and CEO, The Leadership Conference on Civil and Human Rights

- Sherrilyn Ifill, president and director-counsel, NAACP Legal Defense and Educational Fund, Inc.
- Derrick Johnson, president and CEO, NAACP
- Marc H. Morial, president and CEO, National Urban League
- Reverend Al Sharpton, president and founder, National Action Network

BACKGROUND

The civil and human rights community was successful in ensuring that a strong police accountability framework, which reflects calls for national and local civil rights organizations, was included in the legislation. The bill tackles critical issues such as redefining police misconduct, prohibiting no knock warrants in drug cases, and addressing militarization, among others. Many of these provisions were [called for](#) by more than 430 civil rights groups last week.

The Lawyers' Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. Now in its 56th year, the Lawyers' Committee for Civil Rights Under Law is continuing its quest to "Move America Toward Justice." The principal mission of the Lawyers' Committee for Civil Rights Under Law is to secure, through the rule of law, equal justice for all, particularly in the areas of criminal justice, fair housing and community development, economic justice, educational opportunities, and voting rights.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the rights of all persons in the United States. The Leadership Conference works toward an America as good as its ideals. For more information on The Leadership Conference and its member organizations, visit www.civilrights.org.

Founded in 1909, the NAACP is the nation's largest and foremost grassroots civil rights organization. The mission of the NAACP is to secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons. Members throughout the United States and the world are the premier advocates for civil rights and social justice in their communities. You can read more about the NAACP's work by visiting naacp.org

Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF's Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.

National Action Network is one of the leading civil rights organizations in the Nation with chapters throughout the entire United States. Founded in 1991 by Reverend Al Sharpton, NAN works within the spirit and tradition of Dr. Martin Luther King, Jr. to promote a modern civil rights agenda that includes the fight for one standard of justice, decency and equal opportunities for all people regardless of race, religion, nationality or gender. For more information go to www.nationalactionnetwork.net

The National Coalition on Black Civic Participation (NCBCP), founded in 1976, is one of the most active civil rights and social justice organizations in the nation “dedicated to increasing civic engagement, economic and voter empowerment in Black America.” The Black Women’s Roundtable (BWR) is the women and girls empowerment arm of the NCBCP. At the forefront of championing just and equitable public policy on behalf of Black women, BWR promotes their health and wellness, economic security & prosperity, education and global empowerment as key elements for success. Visit www.ncbcp.org and follow us on Twitter @ncbcp and Instagram @thenationalcoalition.

The National Urban League is a historic civil rights organization dedicated to economic empowerment in order to elevate the standard of living in historically underserved urban communities. The National Urban League spearheads the efforts of its 90 local affiliates through the development of programs, public policy research and advocacy, providing direct services that impact and improve the lives of more than 2 million people annually nationwide. Visit www.nul.org and follow us on Twitter and Instagram: @NatUrbanLeague.



PATRICK YOE
National President

NATIONAL FRATERNAL ORDER OF POLICE

328 MASSACHUSETTS AVENUE NE, WASHINGTON, DC 20002

JIM PASCO
Executive Director

FOR IMMEDIATE RELEASE
9 JUNE 2020

CONTACT: TIM RICHARDSON
(202) 547-8189

NATIONAL FOP PRESIDENT STATEMENT ON THE JUSTICE IN POLICING ACT

The National FOP has completed an initial review of the legislation entitled the “Justice in Policing Act.” We were heartened to see that there were provisions in the bill that we believe, after good faith discussions, will create a law that will have a positive impact on law enforcement and policing in our country.

We share the sentiments of Congress and the public we are sworn to protect with respect to policing reform. All of us have a stake in safe communities. When our citizens do not feel safe in the presence of police, that’s a problem—and the FOP intends to be part of the solution.

We look forward to engaging with the Administration, with Members of the House and Senate, and stakeholder groups, in the coming days to find consensus on issues of vital national concern and produce a bill that can pass, not just the House, but also the Senate with broad and bipartisan support.

We made history when we passed the First Step Act together and now have another opportunity to make historic changes to policing in America. Let’s not let it pass us by.

The Fraternal Order of Police is the largest law enforcement labor organization in the United States with more than 351,000 members.

—BUILDING ON A PROUD TRADITION—





Statement of the Constitutional Accountability Center
Oversight hearing on “Policing Practices and Law Enforcement Accountability”
Committee on the Judiciary
United States House of Representatives
June 10, 2020

The Constitutional Accountability Center (CAC) is a non-profit law firm, think tank, and action center dedicated to the text, history, and values of the Constitution. We work in our courts, through our government, and with legal scholars to preserve the rights and freedoms of all and to protect our judiciary from politics and special interests. Through our expert commentary, issue briefs, narratives, and testimony to Congress, we provide the public and America's elected leaders with analysis of pressing topics in modern constitutional and federal law.

CAC submits this testimony to the House Judiciary Committee to make two points.

First, Congress has broad powers to curb unjustified police use of force pursuant to its express constitutional power to enforce the Fourteenth Amendment. Indeed, as explained below, the Fourteenth Amendment was passed by Congress and ratified by the American people against the backdrop of horrific massacres in which white police officers killed hundreds of African Americans in cold blood. Eliminating police killing and brutality is one of the critical purposes of the Fourteenth Amendment. As the case of George Floyd tragically highlights, we as a nation have failed to do justice to this critical part of our Constitution. One of the reasons for this failure is that the courts have never given this part of the Fourteenth Amendment its due. The Supreme Court has never once recognized that the Fourteenth Amendment was ratified against the backdrop of brutal killings of people of color by the police. Getting this history right is essential to correcting police abuses today.

Second, far too often individuals cannot obtain redress for brutal police conduct because of the judicially invented doctrine of qualified immunity. Section 1983, one of the most important civil rights laws enacted by Congress, has been rewritten by the Supreme Court to keep many suits against the police out of court. Because of this doctrine, when individuals go to court to redress police abuse of power, they almost always find that the courthouse doors are bolted shut. Congress should eliminate qualified immunity, which has eroded the enforcement of constitutional rights, undermined the rule of law, and denied justice to those victimized by the police. The lack of redress removes any incentive for police departments to properly train their officers, letting the cycle of police violence and brutality repeat over and over again. The long line of police killings of unarmed people of color, and particularly of African American men—George Floyd being just the most recent—is the result of a system that breeds police unaccountability.

Constitutional Accountability Center

1200 18th Street NW, Suite 501, Washington, D.C. 20036
 Phone: 202-296-6889 | Twitter: @MyConstitution

theconstitution.org

Kristine A. Kippins, Director of Policy
kristine@theconstitution.org

I. *Racial Police Violence and the Text and History of the Fourteenth Amendment*

The Fourteenth Amendment was the nation's response to abuses in the South in the wake of the end of slavery. In the aftermath of the Civil War, the South sought to reimpose the racist oppression of slavery, though the institution itself had been formally abolished by the Thirteenth Amendment, and deny to African Americans their newly won freedom. Police abuse lies at the core of what the Fourteenth Amendment sought to prohibit, as CAC has detailed in a new paper.¹ Police aggressively enforced vagrancy laws contained in Black Codes, making mass arrests to keep African Americans in subordinate status.² Police broke into the homes of African Americans and sought to steal their guns and personal property.³ Police beat and killed African American people, while turning a blind eye to crimes committed against them.⁴ The Fourteenth Amendment's substantive guarantees of liberty and equality were a response to these abuses of official authority, designed to vindicate the demands of African Americans newly freed from bondage that "now that we are free we do not want to be hunted," we want to be "treated like human[] beings."⁵

Congress' Joint Committee on Reconstruction, which authored the Fourteenth Amendment, catalogued the conditions in the South that necessitated new constitutional guarantees to secure "the civil rights and privileges of all citizens in all parts of the republic."⁶ The Joint Committee's report laid out, often in gruesome detail, how white police officers were engaged in a campaign of unending violence against African Americans. Even these horrific instances were just a fraction of the violence visited on those seeking to enjoy freedom for the first time in their lives. As historian Leon Litwack has written, "[h]ow many black men and women were beaten, flogged, mutilated, and murdered in the first years of emancipation will never be known."⁷

Witness after witness recounted gratuitous, violent seizures by police officers, who were a "terror to . . . all colored people or loyal men."⁸ In North Carolina, the Joint Committee learned, the police "have taken negroes, tied them up by the thumbs, and whipped them unmercifully."⁹ A federal officer, who worked for the Freedman's Bureau, which was charged with protecting the rights of the newly freed people in the South, recounted an incident in which "[a] sergeant of the local police . . . brutally wounded a freedmen when in his custody, and while the man's arms were tied, by striking him on the head with his

¹ David H. Gans, "We Do Not Want to be Hunted": *The Right to be Secure and Our Constitutional Story of Race and Policing* (June 8, 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3622599.

² Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, at 199-202 (1988).

³ William McKee Evans, *Ballots and Fence Rails: Reconstruction on the Lower Cape Fear* 71-72 (1967).

⁴ Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* 79 (2019) (observing that "in the context of the violence sweeping the postwar South, the word 'protection,' in the Fourteenth Amendment conjured up not simply unequal laws but personal safety").

⁵ Letter from Mississippi Freedpeople to the Governor of Mississippi (Dec. 3, 1865), reprinted in *Freedom: A Documentary History of Emancipation, 1861-1867*, ser. 3: vol. 1 *Land and Labor, 1865*, at 857 (Steven Hahn et. al. eds. 2017).

⁶ Rep. of the Joint Committee on Reconstruction, 39th Cong., 1st Sess. xxi (1866).

⁷ Leon F. Litwack, *Been in the Storm So Long: The Aftermath of Slavery* 276-77 (1979).

⁸ Rep. of the Joint Committee on Reconstruction, pt. II, at 271.

⁹ *Id.* at 185.

gun, coming up behind his back; the freedman having committed no offense whatsoever."¹⁰ This beating was so bad that "[t]his freedman lay in the hospital . . . at the point of death, for several weeks."¹¹ The same sergeant, after a search of a freedman's house turned up no evidence of wrongdoing, "whipped him so that from his neck to his hips [to] his back was one mass of gashes."¹² Another witness told the Joint Committee about how a "policeman felled [a] woman senseless to the ground with his baton" and about another incident in which a "negro man was so beaten by . . . policemen that we had to take him to our hospital for treatment."¹³ A Freedman's Bureau officer from New Orleans recounted, to rousing cheers, that "one of the police officers of the city, in front of the same block where my headquarters were, went up and down the street knocking in the head every negro man, woman, and child that he met, tumbling some of them in the gutter, and knocking others upon the sidewalks."¹⁴

Police brutality and murder flared up in the summer of 1866 as Congress completed its work on the Fourteenth Amendment and the American people considered whether to ratify the Amendment. These tragic events served as a reminder that state governments would not respect the fundamental rights of African Americans and that racial violence and discriminatory policing would continue unchecked without new constitutional protections. These bloody events convinced the American people that the Fourteenth Amendment was necessary to vindicate our bedrock constitutional promises of liberty and equality. The Fourteenth Amendment emerged out of these horrific incidents of murder and brutality.

In Memphis, Tennessee, on May 1, 1866, clashes between recently discharged Black Civil War soldiers and white police officers exploded in three days of racial violence. The result was a killing spree led by the Memphis police force to destroy African Americans and the community they had built. The conflict, as a subsequent congressional investigation concluded, "was seized upon as a pretext for an organized and bloody massacre of the colored people of Memphis" and was "led on by sworn officers of the law."¹⁵ The congressional investigation highlighted the gruesome attacks perpetrated by the Memphis police, an all-white police force that had long abused African Americans in the city.¹⁶ As the House report explained, "[t]he fact that the chosen guardians of the public peace . . . were found the foremost in the work of murder and pillage, gives a character of infamy to the whole proceeding which is almost without parallel in all the annals of history."¹⁷ It detailed one unspeakable act after another: "policemen firing and shooting every Negro they met," "policemen shooting" at Black people and "beating [them] with their pistols and clubs," high-ranking police officers exhorting the mob that all African Americans "ought to be

¹⁰ *Id.* at 209.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 271.

¹⁴ *Id.*, pt. IV, at 80.

¹⁵ *Memphis Riots and Massacres*, H.R. Rep. No. 39-101, at 5 (1866).

¹⁶ *Id.* at 6 ("[W]henver a colored man was arrested for any cause, even the most frivolous, and sometimes with cause by the police, the arrest was made in a harsh and brutal manner, it being usual to knock down and beat the arrested party."); *id.* at 30 (describing a case in which "a negro was most brutally and inhumanely murdered publicly in the streets by a policeman"); *id.* at 156 (testimony that "[w]hen the police arrested a colored man they generally were brutal towards him. I have seen one or two arrested for the slightest offence, and instead of taking the man quietly to the lock-up, as officers should, I have seen them beat him senseless and throw him into a cart.");

¹⁷ *Id.* at 34.

all killed," and policemen "firing into a hospital."¹⁸ Under pretext of effectuating arrests or searching for weapons, police officers brutally raped African American women.¹⁹ The police ransacked houses, broke open doors and trunks, robbed people of hard-earned money, and burnt down schoolhouses and churches.²⁰ In all these ways "the Memphis massacre had the sanction of official authority; and it is no wonder that the mob, finding itself led by officers of the law, butchered miserably and without resistance every negro it could find."²¹

Twelve weeks later, in New Orleans, local police led another massacre of African Americans, this one growing out of an attempt to reconvene the Louisiana constitutional convention of 1864 in order to guarantee voting rights to Black Louisianans and establish a new state government. On July 30, 1866, a small cadre of delegates gathered at the Mechanics Institute, joined by a group of African American supporters. Under the pretext of quashing what they viewed as an illegal assembly, the police, joined by a white mob, mercilessly murdered innocent Americans. It was, as Major General Phillip H. Sheridan wrote, "an absolute massacre by the police," in which Black people were brutally gunned down, even as they attempted to surrender.²² By the time federal troops arrived, more than one hundred and fifty African Americans and twenty of their white allies had been killed or wounded.

A congressional committee once again investigated and issued a comprehensive report detailing how, on the morning of the convention, "the combined police headed by officers and firemen, . . . rushed with one will from the different part of the city towards the Institute, and the work of butchery commenced."²³ Police officers, who had been armed that morning, were instructed to shoot to kill,²⁴ and "the slaughter was permitted until the end was gained."²⁵ As the report laid out in sickening detail, "[f]or several hours, the police and mob, in mutual and bloody emulation, continued the butchery in the hall and on the street, until nearly two hundred people were killed and wounded."²⁶ "[M]en who were in the hall, terrified by the merciless attacks of the armed police, sought safety by jumping from the windows, . . . , and as they jumped were shot by police or citizens. Some, disfigured by wounds, fought their way down to the street, to be shot or beaten to death on the pavement. Colored persons, at distant points in the city, peaceably pursuing their lawful business, were attacked by the police, shot and cruelly beaten."²⁷ The scale of the cruelty and terror inflicted is hard to fathom. "[M]en were shot while waving handkerchiefs in token of surrender and submission; white men and black, with arms uplifted praying for life, were answered by shot and blow from knife and club."²⁸ Without new protections, the report

¹⁸ *Id.* at 8, 9, 10.

¹⁹ *Id.* at 13-15.

²⁰ *Id.* at 10, 25.

²¹ *Id.* at 34.

²² *New Orleans Riots*, H.R. Exec. Doc. 39-68, at 11 (1867).

²³ *New Orleans Riots*, H.R. Rep. No. 39-16, at 17 (1867).

²⁴ *Id.* at 143 ("[W]e were ordered to march double-quick, and everybody commenced firing at the Institute, and at the negroes in the street, no matter whether they were innocent or not; and when a negro ran, they followed him till they killed him.").

²⁵ *Id.* at 17.

²⁶ *Id.* at 11.

²⁷ *Id.* at 10.

²⁸ *Id.*

concluded, “the whole body of colored people” would continue to be “hunted like wild beasts, and slaughtered without mercy and with entire impunity from punishment.”²⁹

The American people ratified the Fourteenth Amendment against the backdrop of these horrific instances of police beatings and murder, recognizing that new constitutional protections were necessary to ensure the right to life, basic dignity, and personal security for all, regardless of race. As this history shows, ending unjustified racial police violence lies at the core of the Fourteenth Amendment. The Fourteenth Amendment’s guarantees of liberty and equality require eliminating unjustified police killings and violence that have long been visited disproportionately on communities of color. George Floyd’s tragic death should serve as a reminder that Congress can and should use its enforcement powers to enact police reforms to check police violence against communities of color and ensure that the police are held accountable when they violate our most basic rights.

II. ***The Qualified Immunity Doctrine Invented by the Supreme Court Closes the Courthouse Door to Victims of Police Violence***

Under 42 U.S.C. § 1983, a person whose constitutional rights were violated by state or local officials can sue those officials in federal court for damages. Congress enacted this law nearly a century and a half ago—a mere three years after ratifying the Fourteenth Amendment—to deter constitutional violations by imposing financial liability on the offenders. Yet the modern Supreme Court has made it nearly impossible for many victims to seek redress under Section 1983. The qualified immunity doctrine now enables officials to have such suits dismissed at the outset, as long as their conduct did not violate “clearly established statutory or constitutional rights.”³⁰ In practice, this has come to mean that injured plaintiffs cannot proceed with their suits unless they can point to a prior decision establishing that precisely the same conduct violates the law.³¹ Worse still, when a court determines that the illegality of an official’s conduct is not “clearly established,” the court can dismiss the suit without determining whether that conduct actually violated the law.³² This means that the next time an official harms someone through the same conduct, there will still be no clearly established law for the victim to rely on—and it will still be impossible to hold anyone liable for violating the Constitution. As a result, the law remains frozen in place and justice is denied to victims of police abuse of power.

Qualified immunity lets police officers commit flagrant constitutional violations with impunity. In one recent case, *Jessop v. City of Fresno*,³³ individuals sued police officers in Fresno, California, alleging that the police had stolen their property in the course of executing a search warrant. The federal court of appeals refused to permit the case to go forward, reasoning that there was no case that told the officers that stealing property violated the Constitution. Last month, the Supreme Court refused to review the decision. There are a host of other rulings awaiting Supreme Court review—many with similar egregious fact patterns—but the Supreme Court so far has been unwilling to curb its qualified immunity doctrine.

²⁹ *Id.* at 35.

³⁰ See *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015); *District of Columbia v. Wesby*, 138 S. Ct. 577, 589-90 (2018).

³¹ *Ashcroft v. Al-Kidd*, 563 U.S. 731, 741 (2011) (stating that qualified immunity permits liability only when “existing precedent” is so clear that the “constitutional question” is “beyond debate”).

³² *Pearson v. Callahan*, 555 U.S. 223 (2009).

³³ *Jessop v. City of Fresno*, 936 F.3d 937 (9th Cir. 2019), *cert. denied*, 2020 WL 2515813 (U.S. May 18, 2020).

On the contrary, virtually every qualified immunity ruling from the Roberts Court ends the same way: the police are immune and cannot be sued. The Court has simply been unwilling to permit the police to be held liable even for brutal conduct.

Qualified immunity allows many types of government illegality to go unchecked, but its effects are especially pernicious when it comes to unjustified shootings and other abuses committed by police officers, as a recent report by Reuters demonstrated.³⁴ These types of incidents involve a myriad of factual variations, making it extremely difficult for victims to identify a previous case involving the exact same scenario. The result is a nearly impenetrable barrier to recovery for people who are harmed without justification during police encounters. And because states and localities rarely have to shell out money in damages for the actions of their law enforcement officers, they have little financial incentive to institute the kinds of trainings and policies that might prevent unnecessary shootings and other incidents of excessive force. As dissenting opinions by Justices Sonia Sotomayor have argued, qualified immunity has become "an absolute shield for law enforcement officers,"³⁵ that has sanctioned "a shoot first, think later approach to policing."³⁶ This result has no basis in Section 1983. Rather, as Justice Clarence Thomas has observed, the Court "substituted . . . its own policy preferences" and disregarded the "mandates of Congress" reflected in Section 1983.³⁷

Congress enacted Section 1983 several years after the Fourteenth Amendment's ratification, finding that southern states continued to "permit the rights of citizens to be systematically trampled upon."³⁸ Recognizing that a means of enforcing the constitutional rights guaranteed by the Fourteenth Amendment was needed, Congress passed "An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes,"³⁹ the first section of which is codified as 42 U.S.C. § 1983. To safeguard fundamental liberties, lawmakers concluded that the nation needed to "throw[] open the doors of the United States courts to those whose rights under the Constitution are denied or impaired."⁴⁰ Against the backdrop of systemic discrimination in the criminal justice system,⁴¹ Congress provided that an "injured party should have an original action in our federal courts, so that by injunction or by the recovery of damages, he could have relief against the party who under color of law is guilty of infringing his rights."⁴² This would "carry into execution the guarantees of the Constitution in favor of personal security and personal rights."⁴³ Section 1983 reflected the idea—fundamental to the rule of law—that "judicial tribunals of the country are the places to which the citizen resorts for protection of his person and his property in every case in a free Government."⁴⁴

³⁴ Andrew Chung, et al., *For Cops Who Kill Special Supreme Court Protection*, Reuters (May 8, 2020), <https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus/>.

³⁵ *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting).

³⁶ *Mullenix*, 136 S. Ct. at 316 (Sotomayor, J., dissenting).

³⁷ *Ziglar v. Abassi*, 137 S. Ct. 1843, 1872 (2017) (Thomas, J., concurring).

³⁸ Cong. Globe, 42nd Cong., 1st Sess. 375 (1871).

³⁹ 17 Stat. 13 (1871).

⁴⁰ Cong. Globe, 42nd Cong., 1st Sess. 376 (1871).

⁴¹ Donald H. Zeigler, *A Reassessment of the Younger Doctrine in Light of the Legislative History of Reconstruction*, 1983 Duke L.J. 987, 1013 (1983) (discussing the Reconstruction Congress's "repeated familiar complaints concerning the widespread, systemic breakdown in the administration of southern justice").

⁴² Cong. Globe, 42nd Cong., 1st Sess. 501 (1871).

⁴³ *Id.* at 374.

⁴⁴ *Id.* at 578.

The qualified immunity doctrine invented by the Supreme Court does not serve this purpose and has no basis in law. The text of Section 1983 does not provide any immunity from suit, and for good reason. Congress wrote Section 1983 to enforce the Fourteenth Amendment by holding state officials accountable for the violation of constitutional rights, not to give them a free pass. It sought to remedy constitutional wrongs, not immunize officers bent on denying African Americans the promise of freedom and equal citizenship. But the sweeping grant of immunity created by the Supreme Court guts the congressional objective to make the Fourteenth Amendment's guarantees that safeguard the individual from oppression at the hands of state authorities a reality. Further, the clearly established law requirement ignores the context in which the statute was passed. In 1871, the Fourteenth Amendment was only a few years old and the Supreme Court had not yet interpreted its sweeping guarantees. The idea that victims of abuse of power would be required to show that those acting under color of law violated clearly established legal precedents would have strangled the statute at birth.

The Supreme Court established the defense of qualified immunity based on the idea that the Congress that enacted Section 1983 gave "no clear indication" that it "meant to abolish wholesale all common-law immunities."⁴⁵ But the contours of qualified immunity have nothing to do with the common law. In the early Republic, government actors were strictly liable for their legal violations, a principle grounded in English common law. No good faith defense existed at the time of Section 1983's enactment.⁴⁶ Strict liability did not typically require officials acting in good faith to personally bear the brunt of compensating their victims. Rather, these officials were generally indemnified.⁴⁷ The Supreme Court displaced our constitutional system of government accountability—an idea that was foremost in the minds of the Reconstruction Congress that enacted Section 1983—with one designed to keep suits against the police out of court.

By insulating officials from accountability for constitutional violations, the modern qualified immunity doctrine subverts a key aim of the Fourteenth Amendment: checking state-sponsored racial police violence. Notably, people of color are hit particularly hard by the effects of qualified immunity, as they continue to be disproportionately victimized by police misconduct. Today, for example, Black people are more likely than white people to be the victims of excessive force by police officers.⁴⁸ In Minneapolis,

⁴⁵ *Pierson v. Ray*, 386 U.S. 547, 554 (1967).

⁴⁶ David E. Engdahl, *Immunity and Accountability for Positive Governmental Wrongs*, 44 U. Colo. L. Rev. 1, 19 (1972) (discussing the "insistence of nineteenth century courts upon [a] strict rule of personal official liability" and noting that the fact that "an officer personally could be separately liable where the wrong was equally a wrong by the state, is what gave the principal of personal official liability its major importance"); Albert Alschuler, *Herring v. United States: Minnow or Shark?*, 7 Ohio St. J. Crim. L. 463, 501 (2009) (observing that at the time of the framing of the Fourth Amendment, "officers who conducted illegal searches and seizures were held strictly legal in damages" and "had no immunity from civil lawsuits").

⁴⁷ James E. Pfander & Jonathan L. Hunt, *Public Wrongs and Private Bills: Indemnification and Government Accountability in the Early Republic*, 85 N.Y.U. L. Rev. 1862, 1906-07 (2010) (surveying early petitions to Congress for indemnification and finding that where officers acted in good faith and within the boundaries conferred by law or their instructions, "Congress concluded that the government should bear responsibility for the loss").

⁴⁸ Phillip Atiba Goff et al., Center for Policing Equity, *The Science of Justice: Race, Arrests, and Police Use of Force* 21 (July 2016), <https://bit.ly/2wjdTMW>; see, e.g., U.S. Dep't of Justice Civil Rights Division & U.S. Attorney's Office Northern District of Illinois, *Investigation of the Chicago Police Department* 145 (Jan. 13, 2017), <https://bit.ly/2wHvzIW> ("the raw statistics show that CPD uses force almost ten times more often against blacks

where police officers killed George Floyd, statistics show that communities of color bear the brunt of police violence. "About 20 percent of Minneapolis's population of 430,000 is Black. But when the police get physical—with kicks, neck holds, punches, shoves, takedowns, Mace, Tasers or other forms of muscle—nearly 60 percent of the time the person subject to that force is Black."⁴⁹ Thus, qualified immunity closes the courthouse doors to the very group of people that Congress most wanted to help when it passed Section 1983. And in so doing, it prevents enforcement of a critical part of the Fourteenth Amendment.

III. Conclusion

The only way to fix qualified immunity doctrine is to end it. Ending the qualified immunity doctrine would make the promise of the Fourteenth Amendment closer to a reality, enhance government accountability, encourage courts to play their historic role of redressing abuse of power, punish wrongdoing by those sworn to uphold the law, and create an incentive for governments to properly train their officers to avoid unnecessary use of force. If the judiciary is unwilling to fix its own mistake, Congress must step in to make clear that the police should be held accountable when they violate people's constitutional rights.

Furthermore, we must ensure that all of the judges that the Senate confirms to federal judgeships are faithful to the text, history, and values of the whole Constitution, as well as the text and history of the laws Congress passes. The Supreme Court has enabled horrific police violence by ignoring our constitutional history and the text and history of Section 1983. Ending police violence and the killing of African Americans was one of the critical purposes of the Fourteenth Amendment, and Congress passed Section 1983 to help people vindicate their rights under the Constitution by holding state and local officials accountable for their constitutional violations.

than against whites"); U.S. Dep't of Justice Civil Rights Division, *Investigation of the Ferguson Police Department* 62 (Mar. 4, 2015), <https://bit.ly/2TRWNog> ("African Americans have more force used against them at disproportionately high rates, accounting for 88% of all cases").

⁴⁹ Richard A. Oppel, Jr. & Lazaro Gamio, *Minneapolis Police Use Force Against Black People at Seven Times the Rate of Whites*, N.Y. Times (June 3, 2020), <https://www.nytimes.com/interactive/2020/06/03/us/minneapolis-police-use-of-force.html>.



June 10, 2020

Re: Amash-Pressley Ending Qualified Immunity Act

Dear Members of the United States Congress:

We are more than 1,400 current and former professional athletes and coaches from across the National Football League, National Basketball Association, and Major League Baseball in America. We are tired of conversations around police accountability that go nowhere, and we have engaged in too many "listening sessions" where we discuss whether there is a problem of police violence in this country. There is a problem. The world witnessed it when Officer Chauvin murdered George Floyd, and the world is watching it now, as officers deploy enormous force on peaceful protestors like those who were standing outside of the White House last week. The time for debate about the unchecked authority of the police is over; it is now time for change.

We are writing to ask that you pass the bill to end qualified immunity introduced by Representatives Justin Amash and Ayanna Pressley. Congress passed the Ku Klux Klan Act in 1871 to give ordinary citizens recourse when powerful public officials violate constitutional rights. By passing that Act, codified in 42 U.S.C. 1983, Congress told its citizenry that no one is above the law, especially those who abuse government power. A healthy democracy requires no less; citizens must know that if those who promise to uphold the law and protect the community fail to do so, there is a remedy available. The law, [as one author has noted](#), is "a bulwark of American liberty."

The Supreme Court has caused irreparable harm to public trust by creating and then expanding the doctrine of qualified immunity, which often exempts police officers and others from liability, even for shocking abuse. Under that doctrine, first developed in 1967 and widened ever since, plaintiffs must show that government officials violated "clearly established" law to receive damages for harm. A plaintiff wins only if a prior Court found an official liable under a nearly identical fact-pattern. This standard is virtually impossible to meet, and the protections promised under section 1983 seem largely symbolic as a result.

Qualified immunity has shielded some of the worst law enforcement officials in America. The 8th Circuit applied it to an officer who wrapped a woman in a bear hug, slammed her to the ground, and broke her collarbone as she walked away from him. The 9th Circuit [applied the doctrine](#) to two officers who allegedly stole \$225,000 while executing a search warrant. The Eleventh Circuit [applied the doctrine](#) to protect an officer who unintentionally shot a ten-year old while firing at the family dog (who, much

like the child, posed no threat). The list of officers who suffered no consequences because of this doctrine could fill a law book.

It is time for Congress to eliminate qualified immunity, and it can do so by passing the Amash-Pressley bill. When police officers kill an unarmed man, when they beat a woman, or when they shoot a child, the people of this country must have a way to hold them accountable in a court of law. And officers must know that if they act in such a manner, there will be repercussions. A legal system that does not provide such a recourse is an illegitimate one. In their grief, people have taken to the streets because for too long, their government has failed to protect them. The Courts and elected officials alike have instead shielded people who caused unspeakable harm. Congress must not be complicit in these injustices, and it should take this important step to show that law enforcement abuse will not be tolerated.

Sincerely,

Players Coalition members, current/former NFL, NBA, MLB players and coaches:

Ameer Abdullah	Obafemi Ayanbadejo	Eric Bieniemy
Matthew Adams	Stevie Baggs Jr.	Adam Bighill
Rodney Adams	Robert Bailey	Andrew Billings
Klayton Adams	Kabeer Baja-Biamila	Joel Bitonio
Sam Adams	Brian Baker	Julian Blackmon
Josh Adams	Doug Baldwin	Ronald Blair
Quincy Adebeyejo	David Ball	Matt Blanchard
Jude Adjei-Barimah	Larry Ball	Rodrigo Blankenship
McTelvin Agim	Carl Banks	Jeff Bleamer
Chidi Ahanotu	Tony Banks	Joe Bleymaier
Eric Alexander	Ben Banogu	Dennis Bligen
Anthony Alford	Shawn Barber	David Blough
Raul Allegre	Luq Barcoo	CJ Board
Beau Allen	Kenjon Barner	Joe Bock
Ian Allen	Erich Barnes	Kim Bokamper
Dakota Allen	Ben Bartch	Juran Bolden
Josh Allen	Essang Bassey	Victor Bolden
Ricardo Allen	Daren Bates	Anquan Boldin
Bennie Anderson	Nick Bawden	Ron Bolton
Charlie Anderson	Gary Baxter	Rik Bonness
Tim Anderson	Jarrold Baxter	Jon Borchardt
David Andrews	Kelvin Beachum	Dave Borzonzi
Marty Anthony Lyons	Chris Beake	A.J. Bouye
Kenny Anunike	Tim Beckham	Dwayne Bowe
Chris Archer	Odell Beckham Jr.	Tom Brady
Terron Armstead	Greg Bell	Marcus Brady
Jessie Armstead	Kurt Benkert	Mark Brammer
Arik Armstead	Bene Benwikere	Colin Branch
Amon Arnold	Alex Bregman	Marcelis Branch
Dan Audick	Damien Berry	Delvin Breaux
Denico Autry	Justin Bethel	Drew Brees
Brendon Ayanbadejo	McLeod Bethel-Thompson	Sam Brenner

Michael Brewster	Ron'Dell Carter	Tre Crawford
Lamont Brightful	Tony Carter	JP Crawford
Dezmon Briscoe	Gerald Carter	Jack Crawford
Jacoby Brissett	Jim Carter	Joe Cribbs
Derrick Brooks	Jamal Carter	Chuck Crist
Chet Brooks	Jurrell Casey	Marcus Cromartie
Ethan Brooks	Jonathan Casillas	JC Cross
Terrence Brooks	Jehuu Caulcrick	AJ Cruz
Trent Brown	Dan Chamberlain	Lloyd Cushenberry III
Eric Brown	Chris Chambers	Jonathan Cyprien
Milford Brown	Kam Chancellor	Carl D. Howard Jr.
Evan Brown	Wes Chandler	Brendan Daly
Chris Brown	Sean Chandler	Eugene Daniel
Kris Brown	Steve Christie	Owen Daniels
Donald Brown	Bradley Chubb	Joe Danna
Terrell Brown	Ryan Clady	Matt Darby
Travis Bruffy	Bruce Clark	Najeh Davenport
Austin Bryant	Darion Clark	Tae Davis
DJ Bryant	Will Clarke	Demario Davis
Corbin Bryant	Adrian Clayborn	Carlton Davis
Armonty Bryant	Chris Claybrooks	Todd Davis
DeForest Buckner	Mark Clayton	Tyrone Davis
Daniel Bullocks	Nate Clements	Eric Davis
Jarrold Bunch	Tyrie Cleveland	Billy Davis
Ian Bunting	Steve Clifford	Oliver Davis
Oren Burks	Kameron Cline	Travis Davis
Jason Burns	Randall Cobb	Davion Davis
Jeff Burris	Kendall Coleman	John Davis
Derrick Burroughs	Andre Coleman	Sammy Davis
Noah Burroughs	Henry Coley IV	Tony Davis
Joe Burrow	Jedidiah Collins	Tyler Davis
Deante Burton	Mark Collins	Akeem Davis
Jermion Bushrod	Jalen Collins	Ryan Davis Sr.
Vernon Butler	Marques Colston	Dion Dawkins
LeRoy Butler	Chuck Commiskey	Lawrence Dawsey
Rashad Butler	Jack Conklin	Keyunta Dawson
Victor Butler	Albert Connell	Sheldon Day
Demetrius Butler Sr.	Dan Connor	Fred Dean
Byron Buxton	Curtis Conway	Joe DeCamillis
Kevin Byard	Toi Cook	Travis Demeritte
Keith A. Byars	Logan Cooke	Anthony Denman
Israel Byrd	Brayden Coombs	Delino DeShields Jr.
Erik C. McMillan	Stephen Cooper	Pierre Desir
Shilique Calhoun	Chris Cooper	Ian Desmond
Chris Calloway	Amari Cooper	Toderick Devoe
Greg Camarillo	Russell Copeland	Korey Diede-Jones
Parris Campbell	Doug Costin	Na'il Diggs
Calais Campbell	Mark Cotney	AJ Dillon
Khary Campbell	Ted Cottrell	Josh Dobbs
Tommie Campbell	Nathan Cottrell	Andrew Donnal
Sheldon Canley	John Covington	Kevin Dotson
AJ Cann	Christian Covington	Jamil Douglas
Stephen Carlson	Dameyune Craig	Marcus Dowdell
Chris Carter	James Crawford	Jack Doyle

Tyronne Drakeford	Prince Fielder	Keith Goganious
Pete Draovitch	Yamon Figurs	Nick Goings
Troy Drayton	John Fina	Tony Gonzalez
Davon Drew	Dave Fiore	Julian Good-Jones
Jack Driscoll	Tony Fisher	Donald Goode
Clifton Duck	Jack Flaherty	Niko Goodrum
Rickey Dudley	Timothy Flanders	Marquise Goodwin
Bill Duff	Brian Fleury	CJ Goodwin
Bobby Duhon	Drayton Florence	Melvin Gordon
Ashton Dulin	Christopher Foerster	Dee Gordon
Michael Dumas	Drew Forbes	Melvin Gordon
JoLonn Dunbar	Bernard Ford	Colby Gossett
Jamie Duncan	Daurice Fountain	Jermaine Grace
Keldrick Dunn	Melvin Fowler	Earnest Graham
Justin Dunn	Dexter Fowler	Devin Gray
Keith Dunn	Vernon Fox	Chaz Green
Jon Duplantier	Eric Frampton	Farrod Green
Tim Dwight	Zaire Franklin	Gerri Green
Jeffrey E Faulkner	Byron Franklin	Ahman Green
Michael Early	Parks Frazier	Willie Green
Jacob Eason	Mike Frazier	Ethan Greenidge
Matt Eberflus	Kavon Frazier	Jabari Greer
Samson Ebukam	Dwight Freeney	Steve Gregory
Dwan Edwards	Eddie Fuller	Nick Greisen
David Edwards	Jedidiah G Collins	Michael Griffin
Emeke Egbule	Christian Gaddis	Otis Grigsby
Jake Eldrenkamp	Russell Gage	Jordan Gross
Bruce Elia	Russell Gage	Tori Gurley
Keith Elias	William Gaines	Lawrence Guy
Ben Ellefson	EJ Gaines	Myron Guyton
Emmanuel Ellerbee	Joel Gamble	Jalen Guyton
Porter Ellett	Jonathan Gannon	Tony Gwynn Jr.
Jake Elliot	Malik Gant	John Hagg
Greg Ellis	Kenneth Gant	Dennis Haley
Justin Ellis	Mark Garalczyk	Grant Haley
Elbert Ellis	Jim Garcia	Bryan Hall
Percy Ellsworth	Dr. Leonard Garrett	PJ Hall
Jermaine Eluemunor	Myles Garrett	Adrian Hamilton
Jon Embree	Amir Garrett	Davon Hamilton
Larry English	Rashan Gary	Antonio Hamilton
Zach Ertz	Percell Gaskins	Jakar Hamilton
Jordan Evans	Jordan Gay	Josh Hammond
Demetric Evans	Shaun Gayle	William Hampton
Nate Evans	Tony George	Justin Hardy
Darrynton Evans	Nathan Gerry	Sean Harlow
Harry F. Sydney III	Antonio Gibson	Wade Harman
Zane Fakes	Tony Gilbert	Duron Harmon
Vic Fangio	Joe Giles-Harris	Roman Harper
Wes Farnsworth	Nate Gilliam	Tobias Harris
James Farrior	Reginald Gipson	DeMichael Harris
Jeffrey Faulkner	Jordan Glasgow	Erik Harris
Marlon Favorite	Graham Glasgow	Chris Harris
Tavien Feaster	La'Roi Glover	Deonte Harris
Nick Ferguson	Terry Godwin	Jonathan Harris

Josh Harrison	Charley Hughlett	Donald Jones
John Harty	Akeem Hunt	Brian Jones
Willie Harvey	Tony Hunter	Charlie Jones
Willie Harvey Jr.	Earnest Hunter	Abry Jones
Sam Havrilak	Wayne Hunter	Charles Jones
DJ Hayden	Allen Hurns	Joe Jones
Ke'bryan Hayes	Jalen Hurts	Deion Jones
Alex Haynes	Von Hutchins	JT Jones
Johnny L. Hector	Sidney Hy Abramowitz	Bennie Joppru
Gene Heeter	Duke Ihenacho	Cameron Jordan
Johnny Hekker	Ken Irvin	James Jordan
Thomas Henderson	Kemal Ishmael	Karl Joseph
Othello Henderson	Corey Ivy	Sebastian Joseph-Day
Amari Henderson	Steven Jackson	Yonel Jourdain
Malik Henry	Darius Jackson	Cato June
Mario Henry	Honor Jackson	Luke Juriga
Mo Henry	Maurice Jackson	Kyle Juszczyk
Drew Henson	Ray Jackson	Ryan K. Russell
Tre Herndon III	Malik Jackson	Kevin Kaesviharn
Reggie Herring	Austin Jackson	Mike Kafka
Mark Herzlich	Leon Jacobs	John Kaiser
Jason Heyward	Kendyl Jacox	ND Kalu
Clifford Hicks	Ja'Wuan James	Alvin Kamara
Jordan Hicks	Jeno James	Jevon Kearse
Mike Hiestand	Quentin Jammer	Frank Kearse
Rashard Higgins	Mike Jasper	Khaylan Kearse-Thomas
Dont'a Hightower	Jim Jeffcoat	Case Keenum
Richard Hightower	Malik Jefferson	Keone Kela
Rajon Hill	Roy Jefferson	Joshua Kelley
Anthony Hill	Willie Jefferson	Jim Kelly
Efrem Hill	Jegs Jegede	Matt Kemp
Brian Hill	Malcolm Jenkins	Derek Kennard
Dontrell Hiliard	Ronney Jenkins	Tom Kennedy
Ronnie Hillman	Jarvis Jenkins	Shiloh Keo
TY Hilton	Rashad Jennings	Rex Kern
Brandon Hitner	Jim Jensen	Steve Kerr
Liffort Hobley	Josey Jewell	Tyrone Keys
Alijah Holder	William Joe Jackson	Edward King
Johnny Holland	Marcus Johnson	Jason King
Justin Hollins	Fulton Johnson	Akeem King
Torry Holt	Travis Johnson	Terry Kirby
Robert Holt	Joe Johnson	Christian Kirksey
Rolland Hooks	Jesse Johnson	George Kittle
Austin Hooper	Collin Johnson	Sammy Knight
Bob Horn	A.J. Johnson	Kris Kocurek
Bobby Howard	Sherman Johnson	Bill Kollar
Rich Howell	Isaiah Johnson	Steve Korte
Brian Hoyer	Will Johnson	Chris Kuper
Chris Hubbard	Nico Johnson	Matt LaCosse
Orlando Hudson	Cameron Johnston	Anthony Lamando
Tyrone Hughes	Sidney Jones	Josh Lambo
John Hughes	Dominique Jones	Kendall Lamm
Dante Hughes	Robbie Jones	Jake Lampman
Daymeion Hughes	Garrick Jones	Loren Landow

Jarvis Landry	Joey Mbu Jr.	Nat Moore
Eric Lane	Ben McAdoo	Jordan Moore
Cedrick Lang	Deuce McAllister	Marlon Moore
Jesse Langvardt	Keenan McCardell	Emery Moorehead
Matt Lawrence	Reggie McClain	Patrick Morris
Nate Lawrie	Devin McCourty	Michael Morton
Emanuel Lawson	Jason McCourty	Raheem Mostert
Vonta Leach	Josh McCown	Jamie Mueller
Kari Lee	Lerentee McCray	Al-Quadin Muhammad
James Lee	Marlon McCree	Muhsin Muhammad
Cleo Lemon	Andrew McCutchen	Bill Munson
Laveranues Leon Coles Jr.	Randall McDaniel	Louis Murphy Jr.
Darius Leonard	KC McDermott	Chris Myers
Fred Lester	Tyler McDonald	Picasso Nelson
Jerry Levias	O.J. McDuffie	Quenton Nelson
DeAndre Levy	Leon McFadden	Corey Nelson
Tyquan Lewis	Kimario McFadden	Shane Nelson
Thomas Lewis	Booger McFarland	Steven Nelson
Jermaine Lewis	Tony McGee	Ty Neske
Jeremy Lincoln	Kevin McGill	Ryan Neufeld
Adam Linger	Michael McGruder	Anthony Newman
Chris Long	Guy McIntyre	Tyler Newsome
David Long	Doug McKenney	Nathaniel Newton Jr.
Shed Long	Benardrick McKinney	Parry Nickerson
Jammal Lord	James McKnight	Steven Nielsen
Clarence Love	Rodney McLeod	Roosevelt Nix
Jordan Lucas	Tom McMahon	Jeff Nixon
Cornelius Lucus	Brandon McManus	David Njoku
Sean Lumpkin	Erik McMillan	Derrick Nnadi
Cameron Lynch	Mark McMillan	Josh Norman
Aaron Lynch	Sean McNanie	Moran Norris
Marlon Mack	Tony McRae	Storm Norton
Jordan Mack	Montrel Meander	Carter O'Donnell
Mark Maddox	Dave Merritt	Cornelius O'Donoghue
Sam Madison	Jason Michael	Anthony Oakley
Mike Mallory	Arthur Michalik	Stephen Odom
Doug Marrone	Doug Middleton	George Odum
Leonard Marshall	Jamir Miller	Marques Ogden
Koda Martin	Billy Miller	Larry Ogunjobi
Jason Martin	Rolan Milligan	Michael Ojemudia
Chris Martin	Eugene Milton	Alex Okafor
Gabe Martin	Jonathan Mincey	Bobby Okereke
Eric Martin Jr.	Gardner Minshew	Ogbonnia Okoronkwo
Glenn Martinez	Terrance Mitchell	Deji Olatoye
Robert Mathis	Stump Mitchell	Josh Oliver
Ross Matiscik	Earl Mitchell	Louis Oliver
Chris Matthews	Arthur Moats	Donovan Olumba
Alexander Mattison	Curtis Modkins	Glendora Stephans-Wright on behalf of Gordon Arnold Wright
Brett Maxie	Ty Montgomery	Kenny Onatolu
Marcus Maxwell	DJ Montgomery	Joseph Orduna
Ray May	Kenny Moore	Raheem Orr Sr.
Cameron Maybin	Skai Moore	Matt Orzech
Baker Mayfield	DJ Moore	Jerry Ostroski
Corey Mays	Lance Moore	

James Owens	Patrick Queen	Kei'Varae Russell
Devine Ozigbo	Glover Quin	Mike Rutenberg
John Pagano	Randy R. Beverly, Sr.	Donald Rutledge
Ervin Parker	Eason Ramson	Sean Ryan
Glenn Parker	John Randle	Demeco Ryans
J'Vonne Parker	Thomas Randolph	CC Sabathia
Riddick Parker	Kenyon Rasheed	Nate Salley
J'Vonne Parker	Keith Reaser	Rigo Sanchez
Ron Parker	CJ Reavis	Lonnie Sanders
Zach Pascal	Jason Rebrovich	Lucius Sanford
Dezmon Patmon	Silas Redd	Rick Sanford
Tim Patrick	Cory Redding	Mohamed Sanu
Javon Patterson	JJ Redick	Ricky Sapp
Shea Patterson	Sheldrick Redwine	Eric Saubert
Mark Pattison	Travis Reed	Cedric Saunders
Spencer Paysinger	JR Reed	Joe Schobert
Brashad Peerman	Malik Reed	Dalton Schoen
Mike Pennel Jr.	Ed Reed	Josh Schuler
Donovan Peoples-Jones	Brooks Reed	Tony Scott
Breshad Perriman	Frank Reich	Josiah Scott
Corey Peters	Chris Reis	Trent Scott
Tyrell Peters	Tutan Reyes	Boston Scott
Adrian Peterson	Ed Reynolds	Chris Scott
Patrick Peterson	Ricky Reynolds	George Selvie Jr.
Drew Petzing	LaRoy Reynolds	Andrew Sendejo
Adrian Phillips	Luke Rhodes	Jordan Senn
Shaun Phillips	Alan Ricard	Wasswa Serwanga
Danny Pinter	Ray Rice	Isaac Seumalo
Trey Pipkins	Quentin Richardson	Scott Shanle
Michael Pittman	Wally Richardson	Rickie Shaw
Lafayette Pitts	Jeffrey Richardson Sr.	Justice Sheffield
Chester Pitts	Elston Ridgle	Derrick Shelby
Anthony Pleasant	Charles L. Riggins	Jeremy Shockey
Austen Pleasants	Victor Riley	Brandon Short
Shawn Poindexter	Elijah Riley	Cecil Shorts III
Bill Polian	Bill Ring	Kurt Shultz
DaShon Polk	Derek Rivers	Ricky Siglar
Marcus Pollard	Derick Roberson	Brandon Siler
Ryan Pope	Cordell Roberson	Mark Simmons
Gregg Popovich	Walter Robert Briggs	Justin Simmons
Jackson Porter	Craig Robertson	Jalen Simmons
Daryl Porter	Rob Robertson	Ryan Sims
John Potter	Eugene Robinson	Keith Sims
Jerrell Powe	Mark Robinson	Alshermond Singleton
Dak Prescott	Matt Robinson	Nick Sirianni
Peerless Price	James Robinson	Matthew Slater
Eric Price	Isaiah Rodgers	Connor Slomka
Brian Price	Jake Rogers	Greg Slough
Sheldon Price	Charles Romes	Bobby Slowik
Malcolm Pridgeon	Carlos Rosado	Scott Slutzker
Pierson Prioleau	Marvella Ross	Torrey Smith
Ricky Proehl	Tyson Ross	Rod Smith
Mike Purcell	Lee Rouson	Emmitt Smith
Anthony Q. Newman	Dontavious Russell	Braden Smith

Bruce Smith	Jaquiski Tartt	Oliver Vernon
Derek Smith	Steve Tasker	Jason Verrett
Keith Smith	Jonathan Taylor	Lawrence Vickers
Shaun Smith	Billy Taylor	Jonathan Vilma
Alex Smith	Fred Taylor	Troy Vincent Sr.
Evan Smith	Chris Taylor	Andrew Volpert
Wade Smith	Jawann Taylor	Travis Vornkahl
Kahani Smith	Davion Taylor	Delanie Walker
Cedric Smith	Patrick Taylor	Anthony Walker
Dwight Smith	Jamar Taylor	Jeff Walker
Ito Smith	Quinton Teal	Kenyatta Walker
Keith Smith	Marvell Tell	Michael Walker
Will Smith	Wyatt Teller	Tracy Walker
Sherman Smith	Patrick Terrell	Al Wallace
Reginald Smith II	Keith Thibodeaux	Todd Walsh
Reginald L. Smith II	Marcus Thigpen	Tim Walton
Steve Smith Sr.	Thurman Thomas	Denzel Ward
Ray Snell	Adalious Thomas	DeMarcus Ware
Katie Sowers	Blair Thomas	George Warhop
Denard Span	Hollis Thomas	Kurt Warner
Tony Sparano	Tavierre Thomas	Damon Washington
EJ Speed	Joshua Thomas	Tony Washington
Akeem Spence	Shaq Thompson	Todd Washington
Noah Spence	Chris Thompson	Benjamin Watson
Charles Spencer	Billy Thompson	Brandon Watson
Takeo Spikes	Chris Thompson	Josh Watson
Greg Spires	Lewis Tillman	Armani Watts
Erik Spoelstra	Spencer Tillman	Trae Waynes
John St. Clair	Jim Tolbert	Fred Weary
Dave Stalls	LaDainian Tomlinson	Anthony Weaver
Donté Stallworth	Cole Toner	Jed Weaver
Josh Stamer	Casey Toohill	William Webb Jr.
Johnny Stanton	Amani Toomer	Jason Webster
Giancarlo Stanton	Charles Torwudzo Jr.	Jemile Weeks
Kevin Stefanski	Touki Toussiant	Brandon Wellington
Jan Stenerud	Jeremy Towns	Dean Wells
Simon Stepaniak	Rodney Trafford	Carson Wentz
Dominique Stevenson	Lynden Trail	Jeff Weston
Grover Stewart	Drue Tranquill	Ja'Whaun Bentley
Jonathan Stewart	JC Tretter	Phillip Wheeler
Christian Stewart	Justin Tuck	James White
Jarrett Stidham	Baigeh Tucker	Roddy White
Otto Stowe	Casey Tucker	Adrian White
Chris Strausser	Cole Tucker	James White
Derek Strozier	Jacob Tuoti-Mariner	Aaron Whitecotton
Dwayne Stukes	Fenuki Tupou	Marcellus Wiley
Shafer Suggs	Kemoko Turay	David Wilkins II
Pat Surtain	Nate Turner	Jim Wilks
Harry Swayne	Derrek Tuszka	Joejuan Williams
Harry Sydney III	Courtney Upshaw	Chad Williams
Quinn Sypniewski	Stan Van Gundy	Chris Williams
Dave Szott	Phillip Vaughn Wise	Aeneas Williams
Roger T Duffly	Raymond "Bubba" Ventrone	Quincy Williams
Steve Tannen	Shane Vereen	Quinnen Williams

Shaun Williams	James Wilson	Willie Wright
Calvin Williams	Jamaine Winborne	Brandon Wright
Lawrence Williams	Robert Windsor	Tay Wright
Kevin Williams	Andrew Wingard	Ellis Wymys
Kobe Williams	Ronnie Wingo	Isaiah Wynn
Jordan Williams	Chase Winovich	Milton Wynn
Xavier Williams	Blaise Winter	Rock Ya-Sin
Daryl Williams Jr.	Mitchell Wishnowsky	James Yarbrough
Wally Williams Jr.	Will Witherspoon	Kenny Young
Mike Willie	Will Wolford	Usama Young
Nathaniel Willingham	Nathan Wonsley	Trevor Young
Khari Willis	Shawn Wooden	Eric Young Jr.
Jedrick Willis Jr.	Al Woods	Olamide Zaccheaus
George Wilson	Robert Woods	David Zawatson
CJ Wilson	Wesley Woodyard	Raymond Zeller
Charles Wilson	Blidi Wreh-Wilson	Justin Zimmer
Josh Wilson	Kenyatta Wright	Jeremy Zuttah
Damien Wilson	Rodney Wright	

In addition to the players and coaches, the following front office personnel and general managers have lent their support:

David A. Jenkins	Allison Bojarski	Louis Clark
Edward Aaron Perez	Chloe Booher	Katherine Conklin
Christopher Acosta	Kevin Boothe	Daksha Cordova
Armond Aghanian	Stephen Bowen	Felipe Corral
Robert Akinsanmi	Dustin Bowlin	Omar Coss Y Leon
David Akosim	Emma Bradford	Keith Cossrow
Kelly Allen	Courtland Bragg	Kara Costa
Kahlil Allen	Alyse Brehm	Anthony Coughlan
Leo Amos	Ron Brewer	Patrick Crawley
Renie Anderson	Ethan Brodsky	Matt Cummings
Monique Anderson	Morocco Brown	AJ Curry
Justin Anderson	Jade Burroughs	Issiah Davis
Brock Anderson	Joey Buskirk	Brian Decker
Paul Andraos	Zach Byrne	Alison DeGroot
Patrick Arthur	Colton Cadarette	Brittany Deise
Nana-Yaw Asamoah	Lindsay Caine	Mike Derice
Chad Austin Jessop	Geneva Camacho	Amber Darrow
Adrian Bailey	Lucas Cambra	Keith Dobkowski
Chanelle Balfour	Kaycee Canlas	Anne Doepner
Chris Ballard	Eddie Capobianco	Gabrielle Doheny
Lauren Bartomioli	Corey Casado	Jordan Dolbin
Megan Bell	Nick Caserio	William Dorrance
Nancy Bernstein	Dick Cass	Anne Duffy
Andrew Berry	Concetta Cavaleri	Deandra Duggans
Lindsey Bethel	Gerardo Chapa	Alex Duplessis
Heather Birdsall	Jonathan Charles	Philip Eident
Nicole Blake	Taylor Chavez	Regis Eller
Michael Blanchard	Hedy Chen	Joey Elliott
Dylan Bohanan	Mitch Chester	Rich Elmore
Steve Bohlson	Kimberly Chexnayder	Hayley Elwood
Max Boigon	Hsu-Wei Chow	Cameron Etheredge

Nicole Ewell	Jacob Janower	Laura Malfy
Amy Falkow	Mike Jasinski	Jon Marc Carrier
Hannah Farr	Maurice Jennings	Dylan Marchionda
Carly Fasciglione	Malik Jiffry	Dylan Marcionda
David Feldman	Janiece Jiminez	Josephine Martinez
Eric Finkelstein	Peter John-Baptiste	Josephine Martínez
Gerverus Flagg	Stephanie Johnson	Jesse May
Matthew Forzese	JW Johnson	Michelle McKenna
McKenzie Fox	Matthew Joye	Justen Medina
Lisa Friel	Tyler Judkins	Marissa Melnick
Zachary Galia	Megan Julian	Sana Merchant
Robert Gallo	Ina Jung	Emily Michka
Belynda Gardner	Alix Kane	Allison Miner
Alex Gaskin	Hank Kauffman	Charlotte Minetti
Logan Gerber	Catherine Keenan	Bryndon Minter
Amy Ghanbari	Liza Kellerman	Douglas Mishkin
Cyrus Ghavi	Courtney Kelley	Mark Mitchell
Colleen Gilmartin	Kevin Kelly	Damon Mitchell
Richard Gitahi	Danielle Kennedy	Anisha Mooradian
Isaac Gittens	Cassandra Kicak	Jamie Moore
Tyler Glassman	Christine Kim	Jordan Morse
Scott Goldman	Nicole King	Brandon Murphy
Reaganne Goode	Emily Kinman	Ryan Murphy
Colton Gordon	Kacey Knauf	Jessica Murphy
Jon Gottlieb	Rachel Kohn	Jaynie Murrell
Ally Greifinger	Scott Koppenhaver	Gabe Myers
Shannon Gross	Samantha Kordelski	Jacklyn N. Bove
Amanda Guerriero	Cara Kuei	Heather Nanberg
Lucretia Hallowell	Thomas Kurniady	Gregory Nelson
Christopher Halpin	Mike LaBianca	Margaret Nelson
Jamie Han	Jamaal LaFrance	Gina Newell
Goldwyn Harper	Shirley Lalicker	Nam Nguyen
Keenan Harrell	Shannon Lane	Rhett Nichols
Sydney Harris	Cady Langdon	Jarrett Nobles
Chase Hartman	Matt Lathrop	Drew Norton
Mo Henry	Jason Lavine	Georgia Nze
Joanne Hernandez	Patrick Lee	Denny O'Leary
Glen Herold	Damani Leech	Peter O'Reilly
Candace Hickson	Laura Lefton	Scott O'Malley
Henry Hodgson	Emily Leitner	James Onumonu
Natara Holloway	Craig Lepire	Stephen P. Richer
Christina Hovestadt	George Li	Dennis Padua
Andrew Hoyle	Ben Liebenberg	Tasso Panopoulos
Serena Huang	Alissa Lieppman	Nikki Patel
James Hubbard	Erin Littrell	Aubrey Peacock
Venessa Hutchinson	David Lomeli	Marcos Perez
Stephanie Hwu	Lisa Loomis	Andre Perez
Kathleen Ikpi	Joseph Lovallo	Liliana Perez
Elizabeth Iniguez	Joe Lovallo	Marcos Pérez
Anthony Isetta	Michael Lujan	Les Pico
David Issiah	Brooklyn M. McDaniels	Kelsey Pietrangelo
Arthur J. McAfee III	Fred Maas	Lindsay Pinckney
Boyd Jackson	Wayne Mackie	Tyler Pino
Taylor James	Wyndam Makowsky	Bob Quinn

Brian Raab
Joshua Rabenovets
Ashton Ramsburg
Sam Rapoport
Carmella Re-Sugiura
Matt Reamer
Amanda Remy
Ghazzal Rezvan
Yolanda Rivera
Tracie Rodburg
Jennifer Rojas
Isabelle Roy
Sam Rubinroit
Josh Rupprecht
Sean Ryan
Annely Salgado
Melissa Schiller
Sarah Schmidt
Josh Schuler
Grace Senko
Matthew Shapiro.
Nick Shook
Shakish Simon
Russell Simon
Dajah Siplin

Carly Slivinski
Alexandra Smoczkwicz
Jason Spanos
Donna Steele
Taylor Stern
Samantha Strejeck
Staci Strickland
James T. Collins Jr.
Sean Tabler
Mark Tamar
Allison Taylor
Jenner Tekancic
Kloi Terzian
Jordan Thomas
Dylan Thompson
Aja Thorpe
Nick Toney
Jamil Toure
Gina Tran
Kenlyn Tyree
Ted Tywang
Cory Undlin
Darren Urban
Victoria Valencia
Marcus van der Hoek

Kristen Vasquez
Christine Vicari
Allison Villafañe
Kelly Viseltear
David Wagner
Jarick Walker
Tanner Walters
Aubrey Walton
Cheyanne Warren-Diaz
Kirsten Watson
Ruth Wels
Devin White
Kiara Wilcox
Mollie Wilkie
Valeria Williams
Astasia Williams
Michael Woo
Rod Wood
Timothy Yoon
Darrel Young
Yasmin Youssef
Peyton Zeigler
Lucy Zhang
Marco Zucconi

STATEMENT FOR THE RECORD FROM
ALEJANDRA Y. CASTILLO
CEO, YWCA USA

THE COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

June 10, 2020



YWCA USA
1020 19th Street, NW
Suite 750
Washington, DC 20036
P 202.467.0801
F 202.467.0802
ywca.org

Dear Chairman Nadler, Ranking Member Jordan and Members of the Committee:

On behalf of YWCA USA and our over 200 local associations in 45 states and the District of Columbia, thank you for hosting today's hearing titled *Oversight Hearing on Policing Practices and Law Enforcement Accountability* and accepting this statement for the hearing record.

We submit this letter today to emphasize our support for the Justice in Policing Act of 2020 (H.R.7120/ S.3912) as well as our appreciation to Congress for taking an important first step toward police accountability. Like many of you, I am shocked, outraged, and heartbroken over the tragic and senseless murders of Breonna Taylor, George Floyd, Tony McDade, and so many other Black Americans who have been killed at the hands of police. The raw emotions that continue to play out across our TVs, through our social media feeds and in our communities have seeped into my mind and seared themselves into my memory as haunting cries for humanity.

And yet, these feelings are just a small fraction of the pain so many of my Black brothers and sisters are feeling across America. Since our nation's founding, our country has turned a blind eye to systemic patterns of police brutality, violence, and racism inflicted upon Black people. From the enslavement of Black people at the very origins of our nation to the murder of Reverend Dr. Martin Luther King, Jr. to present day, the public protests currently playing out across the country reflect generations of compounding injustice, fear, emotion—and inaction.

As a national organization with a longstanding mission to eliminate racism and empower women that is also the nation's largest network of domestic and sexual violence service providers, YWCA approaches these issues from a unique vantage point. We both see the moral imperative for change demanded in this moment *and* recognize the critical role that law enforcement so often plays in protecting women and children from domestic and sexual violence. We see the ways in which Black women and other women of color are criminalized, profiled, and harmed by systems, laws, and policies that are *supposed* to provide support and protection—and at the same time we rely on those very same systems, laws, and policies to aid so many of the

more than 2.3 million women, children, and families that we serve each year. We see clearly how racism shows up in all facets of life, and that the very same law enforcement, social service, education, healthcare, and court systems that in some situations protect our clients are also deeply entrenched with systemic and structural racism, and that they fuel racially disparate contact with child welfare, juvenile justice, and criminal justice systems.

It is from this vantage point that we unequivocally affirm our long-standing and valued partnership with law enforcement, but we cannot and must not allow another Black life to be taken from us by police violence.



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F 202.467.0802
ywca.org

YWCA CALLS FOR ACTION

YWCA stands with and supports the millions of Americans who are peacefully protesting in communities across the country to express their pain, frustration, and disillusionment with a justice system that perpetuates structural racism. We join those protesting on the frontlines to demand *real* solutions *now*. The days of blue-ribbon committees, commissions, and task forces to explore issues are over. We must not fall into the trap of band-aid answers and calling for further study that inevitably results in no action being taken.

As a nation, we have decades of studies, recommendations, and best practices to draw on. The time to act is now. And today, YWCA calls on Congress to implement concrete solutions to address deeply embedded structures and systems that give racism its malignant hold on our communities.

The Justice in Policing Act takes important, foundational steps to implement long overdue police accountability measures that get to the underlying systems, policies, and structures that reinforce and embed racism in our justice system. YWCA is committed to the success of the Justice in Policing Act and is particularly grateful for the following provisions, which are of particular importance to us:

- A ban on racial profiling by federal, state, and local law enforcement;
- Mechanisms to strengthen pattern and practice investigations by the Department of Justice (DOJ) and state attorneys general;
- The creation of a national police misconduct registry;
- Limitations on the transfer of military equipment to local law enforcement agencies; and
- Improved data collection on the use of force by law enforcement.

While the Justice in Policing Act is a significant first step toward instituting much needed reform, Congress must not stop here.

Increasing federal resources and investments in schools, child care, and early learning, trauma-informed care, mental and behavioral health, affordable housing, job training, and other programs and services that have long been underfunded in Black and Brown communities are essential steps in strengthening communities. And building communities that support people is key to creating justice and wellbeing. Such a shift in funding priorities would directly address deeply embedded inequities that perpetuate racial injustice, and reform the systems, structures, and policies that are the backdrop against which the crisis of police violence and brutality is playing out.



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We stand at a critical moment in time—and we cannot and will not let it be a passing moment. The time to take bold action and speak out against injustice is now and we will not be silent. As you consider the Justice in Policing Act, your actions will not only be judged by your words, but more importantly by the votes you cast as elected representatives of the people. These are the times that will define the soul of our nation and bear testament to the humanity and moral values of this generation.

We thank the Committee for investigating these critical issues and look forward to working with you to achieve equity and justice for all. As the Justice in Policing Act advances toward passage, YWCA remains committed to working with you to strengthen it and ensure real and meaningful change. Please do not hesitate to contact Pam Yuen, YWCA USA Government Relations Manager, at pyuen@ywca.org or 202-559-7022, if you have any questions.

Sincerely,

Alejandra Y. Castillo, CEO YWCA USA



345 Park Avenue
San Jose, CA 95110-2704
(408) 536-6000

June 10, 2020

Chairman Jerry Nadler
Ranking Member Jim Jordan
United States House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Nadler and Ranking Member Jordan,

I write on behalf of Adobe in support of the House Judiciary Committee's efforts to advance reforms and police accountability measures.

The senseless killings of George Floyd, Breonna Taylor, and Ahmaud Arbery underscore how much racial injustice persists in America and the need for Congressional action. When a violent act is perpetrated against any one person in a community, it profoundly impacts everyone in that community.

As a lawyer, it is deeply frustrating to see the criminal justice system fail black Americans time and again. Adobe stands against violence, hatred, and intolerance of any kind. The Committee's efforts, including important criminal justice remediation measures outlined in the Justice in Policing Act of 2020, are critical steps to reform policing in America and lead to much-needed structural change.

Thank you for your important work to address the crisis that our country is facing.

Sincerely,

A handwritten signature in black ink that reads 'Dana Rao'.

Dana Rao
Executive Vice President, General Counsel and Corporate Secretary
Adobe, Inc.

THIRD WAY
PRESS RELEASE Published June 9, 2020

Third Way's Statement in Support of the Justice in Policing Act of 2020



Lanae Erickson
Senior Vice President for the Social Policy &
Politics Program
[@LanaeErickson](https://twitter.com/LanaeErickson)

WASHINGTON—Third Way released the following statement from Lanae Erickson, Senior Vice President for Social Policy & Politics:

"Deeply ingrained systemic racism and bad public policy have led to countless police-involved killings of African Americans and other people of color in this country. After the murder of George Floyd, this persistent injustice has driven people onto the streets of almost every American city in pain and anger, demanding change. Big, real, impactful change. They must not be made to wait any longer.

"That's why it is so important that Members of Congress have introduced the *Justice in Policing Act of 2020*. We need a complete reimagining of policing in America to ensure every person in our country feels safe and protected by the law enforcement in their community.

"The *Justice in Policing Act* can begin that process at the federal level, while communities bravely push for the necessary changes at the state and local levels. The task ahead is large, and change will require that the public, and all of us, keep up the pressure on elected officials to be brave and principled. This moment demands progress, and this bill is an important step forward. Congress should act to pass it right away. We cannot ask people of color in this country to wait, and endure more killings, before they see reforms."

General

202-384-1700 (main)
202-775-0430 (fax)
contact@thirdway.org

Press Contact

Ladan Ahmadi
Deputy Director of Media Relations
202-384-1718
lahmadi@thirdway.org

“Women and families have a right to thrive in a safe and healthy environment, free from violence and discrimination. This means policymakers [must address](#) police brutality and the criminalization of Black people. The Justice in Policing Act of 2020 is a step toward ensuring that police officers and departments are demilitarized and accountable for their actions. We applaud Sens. Cory Booker, Kamala Harris and Chairs Karen Bass and Jerry Nadler for leading on these important issues, yet we understand the root problems of white supremacy, systemic racism and white complicity led to the murders of George Floyd, Ahmaud Arbery, Breonna Taylor and so many more. We can and should reform policing at the same time we work to dismantle a system that has devalued Black lives and has criminalized instead of investing in Black communities for centuries.”

~

Erika Moritsugu, Vice President for Economic Justice,
National Partnership for Women & Families

Blue Dog Leadership Statement on the Introduction of the Justice in Policing Act of 2020

Jun 9, 2020 | Press Release

WASHINGTON—Today, the Blue Dog Coalition's Co-Chair for Administration, Rep. Stephanie Murphy (FL-07), issued the following statement in response to this week's introduction of the *Justice in Policing Act of 2020*.

"Members of the Blue Dog Coalition stand united in condemning the murder of George Floyd and demanding that the police officers responsible for his death be held fully accountable under the law. Like the vast majority of Americans we represent, we feel a sense of anguish and anger upon witnessing yet another unjust killing of a Black American by police officers who dishonor their badge. Our nation must reckon with the fact that it has failed at all levels of government to fully and unequivocally recognize that Black lives matter. We join our colleagues in Congress in seeking swift and systemic change, and we will spend the next few weeks listening to the diverse views within our Democratic caucus, especially the Congressional Black Caucus, as we work toward solutions together. It is our hope Republicans will also join this effort, because now is not the time for partisanship. Congress and the White House cannot ignore the calls for change that are sweeping this nation. The status quo is not just unacceptable, it's also dangerous.

"We also stand in solidarity with the peaceful protestors who seek to bring about positive change and with the vast majority of men and women of law enforcement who strive to uphold their oaths every day and to ensure that their fellow Americans can safely exercise their constitutional right to protest peacefully. We call for those who attempt to co-opt peaceful protests through criminal acts, including looting and violence, to be held accountable.

"Our nation is in the midst of a movement. Across the country, in major cities and small communities, Americans are exercising their First Amendment rights to call for equal justice under the law. Led by peaceful protest, this movement is demonstrating that, together, Americans can drive much-needed change, make our society more just and equitable, and unite us as a nation."

####

Nation in Turmoil: The George Floyd Protests

Little Evidence of Antifa Links in US Prosecutions of Those Charged in Protest Violence

By Reuters

June 10, 2020 06:54 AM



WASHINGTON/NEW YORK - The U.S. Justice Department moved swiftly to bring federal charges against 53 individuals accused of violence during nationwide protests that swept across the United States calling for an end to police brutality.

Attorney General William Barr promised a crackdown on members of the anti-fascist movement known as antifa and other "extremists" he blamed for helping to drive the violence.

But a Reuters examination of federal court records related to the charges, social media posts by some of the suspects and interviews with defense lawyers and prosecutors found mostly disorganized acts of violence by people who have few obvious connections to antifa or other left-wing groups.

Reuters reviewed only federal cases, both because of the allegations by the Justice Department about the involvement of antifa and similar groups, and since federal charges generally carry harsher penalties. In some of the charging documents reviewed by Reuters, no violent acts are alleged at all.

The Department of Justice declined to comment on Reuters' findings and referred to an interview that Barr gave to Fox News on Monday. He said there that while his department had some investigations under way into antifa, it was still in the "initial phase of identifying people."



FILE - Members of the Georgia National Guard stand in front of shattered glass at the CNN Center in the aftermath of a demonstration against police violence on May 30, 2020, in Atlanta.

Looting and violence broke out at some of the hundreds of largely peaceful demonstrations over the past week sparked by the May 25 death of George Floyd, an African American, after a white Minneapolis police officer pinned him with a knee to the

neck for almost nine minutes.

The policeman, Derek Chauvin, has been charged with second-degree murder, and three other officers with aiding and abetting.

While Barr and President Donald Trump have repeatedly singled out antifa, an amorphous movement of primarily leftist anti-authoritarians (the name is derived from "anti-fascist"), as a major instigator of the unrest, the term does not appear in any of the federal charging documents reviewed by Reuters. It is possible that more evidence could emerge as the cases progress.



Attorney General William Barr, center, stands in Lafayette Park across from the White House as demonstrators gather to protest the death of George Floyd, June 1, 2020, in Washington.

Only one group was called out by name in a federal complaint: the so-called boogaloo movement, whose followers, according to prosecutors, believe in an impending civil war.

Hate group experts say boogaloo's followers are largely an assortment of right-wing extremists. Prosecutors alleged three men affiliated with "the movement" plotted to set off explosives in Las Vegas in the hopes of touching off rioting before a protest.

The three suspects are scheduled to appear in federal court on Monday and have not yet entered a plea. Their lawyers did not respond to requests for comment.

No claims of allegiance

In three other criminal complaints, individuals told police about their ideological leanings without claiming allegiance to any particular group.

In Massachusetts, 18-year-old Vincent Eovacious was charged with possession of a Molotov cocktail and — according to the complaint against him — told his arresting officer he was "with the anarchist group." The U.S. attorney's office in the state said there was no additional information on what that meant.

His lawyer did not immediately respond to a request for comment.

Another man, Brian Bartels, arrested in Pennsylvania for spray painting and destroying a police vehicle, described himself as "far left" and said he lashed out in a "fuck-it moment," according to the charging documents. His lawyer, Joseph Otte, declined to comment.

A man in Lubbock, Texas, 25-year-old Emmanuel Quinones, brandished an assault rifle at a protest and shouted: "This is a revolution" and "President Trump must die" as he was arrested, according to prosecutors. He admitted to posting messages on social media aimed at intimidating Trump supporters. Quinones' attorney declined to comment.

On social media, 17 individuals espoused violence — like threatening to start riots or harm police — or organized themselves using encrypted communications, the complaints alleged. Social media profiles reviewed by Reuters showed a range of views, including anarchism, anti-racism and anti-government messages.

Ca'Quintez Gibson, 26, was arrested for allegedly using Facebook live posts and emoji-filled messages to encourage people to loot in Peoria, Illinois. But John Milhiser, the U.S. attorney in Springfield, Illinois, whose office is prosecuting the case, told Reuters that Gibson had "no connection" with any political group or motive. Gibson's attorney could not immediately be reached for comment.

Barbara McQuade, who was U.S. attorney for the Eastern District of Michigan during President Barack Obama's administration, said prosecutors were generally cautious about making allegations based on someone's ideology, owing to constitutional guarantees of free speech.

Michael German, a former FBI agent and current fellow with the Brennan Center for Justice, said the government could produce more evidence at trial, but the "lack of clear indications of involvement of anti-fascists in these protests I think shows they are not leading in any way the protest violence."

Still, Trump's campaign for re-election in November is sending out pleas for campaign donations touting the president's "100%" stand against antifa.

Molotov cocktails

Most of the individuals charged — about 40 — were accused of violent acts around the protests, from throwing Molotov cocktails to setting fires or looting stores, according to photographs and affidavits included in the criminal complaints.

In the rest of the cases, no serious violence was alleged, Reuters found. Some of those arrested were charged only with possessing illegal drugs or firearms.

One man arrested in Florida, John Wesley Mobley Jr., was charged with impersonating a police officer when he was found carrying a BB gun that looked like a Glock pistol and a fake U.S. Marshal's badge, according to the federal charging documents.

Mobley had a history of felonies and had impersonated police in the past, the complaint said. His attorney, Karla Mariel Reyes, declined to comment.

A man arrested in Madison, Wisconsin, Kyle Olson, was carrying a loaded handgun, which he said he brought to the protests "for protection," court records stated. Joseph Bugni, the public defender who is representing Olson, said his client had "no political motivation."

Another man charged in Wisconsin, Anthony Krohn, was found by police lying intoxicated on the grass near the Wisconsin state capitol with a serious gunshot wound to his leg, which he said he had accidentally inflicted on himself. Krohn's attorney, Peter Moyers, said his client had "no history of political activism."

Attorneys for some of the individuals charged said they were surprised the FBI was getting involved in cases that would usually be handled by state prosecutors.

The FBI referred questions to the Justice Department.

The head of the New York Police Department's intelligence unit, John Miller, told reporters at a briefing there were definitely signs of organized violence by "anarchist groups" that came "prepared to commit property damage" in "high-end stores run by corporate entities" and developed a "complex network of bicycle scouts" to report on police movements.

But none of the eight people charged by the Justice Department in New York were alleged to have ties to specific anarchist groups, according to court papers.

The NYPD did not immediately respond to a request for comment on Reuters' findings.

RELATED STORIES

Nation in Turmoil: The George Floyd Protests

‘It means open season:’ Under Trump, the Justice Department has largely stopped investigating police departments for systemic abuses

By [Jess Bidgood](#) and [Jasmine Ulloa](#) Globe Staff, Updated June 9, 2020, 7:52 p.m.



In 2014, then-Attorney General Eric Holder traveled to Ferguson, Mo., after the killing of Michael Brown. PABLO MARTINEZ MONSIVAIS

WASHINGTON — In Chicago, the investigators in 2017 said police officers shot at moving vehicles with no justification, and endangered young people by bringing them to rival gang territory and leaving them there.

In Seattle, they wrote in 2011, two police officers tasered and beat a mentally ill man in the middle of a crisis, leaving him with a brain injury.

And in Baltimore, where the investigators in 2016 found a full 91 percent of people arrested for trespassing or failure to obey were Black, they said officers punched and pepper-sprayed a juvenile after they accused him and his sister of loitering; they were standing in front of their own home.



**STATEMENT OF KRISTEN CLARKE
PRESIDENT AND EXECUTIVE DIRECTOR
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

**U.S. HOUSE COMMITTEE ON THE JUDICIARY
HEARING ON
“POLICING PRACTICES AND LAW ENFORCEMENT
ACCOUNTABILITY”**

June 10, 2020

My name is Kristen Clarke, and I am the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to submit this testimony regarding policing practices and law enforcement accountability. The Lawyers' Committee has been a leader in the battle for equal rights since it was created in 1963 at the request of President Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. Simply put, our mission is to secure equal justice under the rule of law. For more than 50 years, the Lawyers' Committee has worked across the nation to protect and defend the civil rights of African Americans and other people of color in the areas of voting rights, economic justice, education, criminal justice, fair housing. Our Criminal Justice Project works to combat race discrimination and protect equal justice under the law by confronting the ways in which racism infects every stage of our criminal justice system, by challenging laws and policies that criminalize poverty, by promoting access to justice and representation, and by advancing accountability and structural reform of police departments.

Police accountability is the key to police reform. Without accountability, policing culture will not change. And it must change. For decades, police officers across the country have maintained and reinforced a system that discriminates against African Americans and other people of color, over-criminalizes low-level property and drug crimes, and fails to protect communities of color. Police encounters with African Americans disproportionately result in civil rights violations, and in some tragic circumstances, result in the deaths of Black men and women. As the Committee considers reform legislation, including the Justice in Policing Act, I want to shine a light on the barriers to police accountability that enable and support the type of unconscionable police abuse we have seen in Minneapolis and around the nation. I want to focus the Committee's attention on four key areas: (1) police unions and union contracts; (2) state laws that hinder accountability and block publication of police misconduct; (3) ineffective police disciplinary structures; and (4) legal doctrines that insulate officers from civil liability. These barriers to accountability result in real-world, catastrophic abuses of power, as they did in Minneapolis, and as they have in so many other violent police responses. Reform across these four areas will stand as a first step in changing the culture and accountability systems in police departments that have historically enabled police brutality, racial profiling, and the erosion of trust with communities of color.

I. THE PROBLEM: POLICE OFFICERS ARE LARGELY UNACCOUNTABLE FOR THEIR MISCONDUCT

Our country has flouted police accountability, prioritizing officers' job security above any other interest. At the state and local level, union contracts block police accountability, state and local laws protect officers from any real consequences, and oversight bodies lack the necessary independence and authority to hold officers accountable. And, judge-made law makes it nearly impossible to vindicate police violations of civil rights in federal courts. Wherever the barriers reside in a particular state or jurisdiction, these features of our system feed a brazen culture of police impunity.

A. POLICE UNIONS AND UNION CONTRACTS LOCK IN BARRIERS TO ACCOUNTABILITY

Police unions, focused primarily on protecting the job security of officers, have crippled the ability of police departments, local governments, and the public to investigate, discipline, and hold accountable officers who engage in misconduct.

Some police union contracts block an investigation before it can even begin. Many contracts disqualify complaints that were filed, or investigations that were initiated “too long” after the alleged misconduct occurred. The Omaha police union’s contract, for example, prohibits any disciplinary action (except for criminal activity) unless imposed within 100 days of the incident itself.¹ But “too long” in the eyes of a contract may be nowhere near enough time for a civilian to file a formal complaint, let alone the time needed to investigate a complaint. And if a complaint is disqualified, an investigation process cannot even start.

When an investigation *does* start, these contracts trigger delay mechanisms that give officers information and time to prepare an explanation. These contracts guarantee officers that they will not be questioned about potential misconduct until at least two (and sometimes more) days after the incident.² Unlike civilians accused of crimes, these contracts also often guarantee officers accused of misconduct a summary of the allegations against them (and sometimes disclosure of *all* of the evidence collected) before they put a statement on the record.

These delay mechanisms matter. If interviewed immediately, officers cannot sit down with one another and collude to get their stories straight. If interviewed immediately, officers cannot explain away evidence they might not know about, such as video evidence showing their misconduct, or devise some explanation for why their actions were supposedly justified. Together, these delay mechanisms give officers a time and information advantage that corrupts the investigatory process and undermines accountability and oversight processes.³

Even in the rare event that an officer is disciplined or terminated from the force, these contracts often guarantee review by an arbitrator (or another party) who can reverse disciplinary decisions and reinstate a fired employee.⁴ Over half of union contracts studied in one analysis give either officers or the union substantial power in selecting that arbitrator.⁵ Chicago, for example, has a list of acceptable arbitrators embedded in the union contract itself.⁶ It should not be a surprise, then, that about a quarter of officers fired ultimately get that decision overturned

¹ Agreement Between the City of Omaha, Nebraska and the Omaha Police Officers Association (in effect through December 26, 2020), Art. 6 Sec. 6, at 12, https://hr.cityofomaha.org/images/stories/public_documents/union_contracts/031517_Police_Labor_Agreement-final.pdf.

² Police Union Contract Project, CAMPAIGN ZERO, <https://www.checkthepolice.org/>.

³ *Id.*

⁴ Stephen Rushin, *Police Disciplinary Appeals*, 167 U. PA. L. REV. 545, 579 (2019).

⁵ *Id.* at 574.

⁶ *Id.* at 575.

and make their way back onto the force.⁷ The number is even higher in some cities, with Philadelphia being forced to rehire over 60 percent of terminated officers.⁸

When terminated officers make their way back to the force, the allegations of misconduct against them may end up getting expunged from their personnel files. Chicago's union contract, for example, provides that even if an officer is found to have engaged in misconduct, but is not disciplined for that misconduct, that finding must be removed from the officer's file within a year.⁹

In the rare case in which an officer is sued civilly for conduct on the job and the civilian is able to break through the shield of qualified immunity—see Section I.D. below—that officer is most likely not going to be the one footing the bill. Chicago's union contract, for example, indemnifies officers from most civil judgments against them, which means that the city pays the bill for the rare civil lawsuit that holds an officer liable for misconduct.¹⁰ Research confirms that offending officers almost never have to pay the judgments against them.¹¹ These contract provisions provide financial immunity, providing no incentive to police officers to conform their conduct to the law.

All of these limitations on holding police accountable are commonly found in union contracts. A survey of 81 of the country's 100 largest cities' police union contracts shows serious barriers to accountability across the United States, including many of those described above, ranging from disqualification of certain complaints to restrictions on the interrogation of officers who allegedly engaged in misconduct to erasure of misconduct records.¹² Nearly 90 percent of the contracts analyzed imposed at least one barrier to accountability.¹³ Over 75 percent of the contracts analyzed imposed three or more barriers to accountability.¹⁴

Police unions obstruct accountability in other ways, as well. The Philadelphia police union, for example, sued District Attorney Larry Krasner for collecting and implementing a “do not call” list of officers who have engaged in misconduct, meant to keep dishonest officers from

⁷ *Id.* at 579.

⁸ *Id.* at 580.

⁹ Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7, Eff. July 1, 2012, through June 30, 2017, Art. 8 Sec. 8.4, at 10, https://www.chicago.gov/content/dam/city/depts/dol/Collective%20Bargaining%20Agreement3/FOPCBA2012-2017_2.20.15.pdf. The police union lists this as the “current” contract. See Fraternal Order of Police Chicago Lodge 7, Contracts, <http://www.chicagofop.org/contract>.

¹⁰ *Id.* Sec. 22.1 *et seq.*

¹¹ See, e.g., Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 3 (2014).

¹² Police Union Contract Project, n.2, *supra*.

¹³ *Id.*

¹⁴ *Id.*

testifying in criminal cases.¹⁵ Police unions across California also sued after the passage of a state law that made some records of misconduct open to public inspection.¹⁶

These protections from consequences from police unions and union contracts have real-world consequences on communities of color. Chillingly, recent research has shown that police unionization is associated with increased violence by the police force, even when controlling for other variables.¹⁷ In particular, police unionization is associated with an increase in civilian deaths, which are disproportionately Black men and women.¹⁸

B. STATE LAWS PUSHED BY POLICE UNIONS FURTHER HINDER POLICE ACCOUNTABILITY AND HIDE POLICE MISCONDUCT RECORDS

Similar barriers to police accountability have been embedded in state statutes. At least 14 states have passed a so-called “Law Enforcement Officers’ Bill of Rights,”¹⁹ a set of laws pushed by police unions and designed to hinder investigations of law enforcement officers who may have engaged in misconduct, including police brutality. As a growing volume of legal scholarship and media analyses has concluded, these laws provide “unreasonably protective procedures” that tend to “thwart[] reasonable accountability and oversight.”²⁰ Or, as criminal justice professor Samuel Walker, an expert in police accountability, has put it, these laws are “a scandal.”²¹

Among other restrictions on fair investigations of officer misconduct, these laws prohibit the disciplinary investigation of a complaint of police brutality unless the complaint is first signed and sworn to under penalty of perjury by the victim, the victim’s family, or a witness.²² Mirroring similar provisions in union contracts, these laws intimidate civilians and delay the start of an investigation. Moreover, the signed, sworn-to complaint must be made within a limited period of time. In Maryland, for example, at the time of Freddie Gray’s death at the hands of

¹⁵ Robert Moran, *Court rejects FOP suit against Krasner on police “misconduct” list*, PHILA. INQUIRER (Aug. 23, 2019), <https://www.inquirer.com/news/krasner-fop-lawsuit-police-misconduct-20190824.html>.

¹⁶ See, e.g., Bob Egelko, *Court upholds broad release of police misconduct records in California*, S.F. CHRON. (Apr. 2, 2019), <https://www.sfchronicle.com/bayarea/article/Court-upholds-broad-release-of-police-misconduct-13733312.php>.

¹⁷ Dhammika Dharmapala, Richard H. McAdams, & John Rappaport, *Collective Bargaining Rights and Police Misconduct: Evidence from Florida*, UNIV. OF CHICAGO COASE-SANDOR INST. FOR LAW & ECON., Research Paper No. 831; UNIV. OF CHICAGO PUB. LAW & LEGAL THEORY, Working Paper No. 655 (Aug. 2019), <https://ssrn.com/abstract=3095217> (finding that conferring collective bargaining rights on sheriffs’ deputies was associated with about a 40 percent increase in violent incidents).

¹⁸ Cardiff Garcia & Stacey Vaneck Smith, *Police Unions and Civilian Deaths*, NPR (June 3, 2020), <https://www.npr.org/2020/06/03/869176943/police-unions-and-civilian-deaths>.

¹⁹ Eli Hagler, *Blue Shield*, THE MARSHALL PROJECT (Apr. 27, 2015), <https://www.themarshallproject.org/2015/04/27/blue-shield#.Etqk3UTYF>.

²⁰ Stephen Rushin, *Police Disciplinary Appeals*, 167 U. PA. L. REV. 545, 562 (2019). See also Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers’ Bills of Rights*, 14 B.U. PUB. INT. L.J. 185 (2005); Aziz Z. Huq & Richard H. McAdams, *Litigating the Blue Wall of Silence: How to Challenge the Police Privilege to Delay Investigation*, 2016 U. CHI. LEGAL F. 213.

²¹ Hagler, n.19, *supra*.

²² See, e.g., MD. CODE ANN., Public Safety § 3-104 (2016).

police in 2015, state law required such a complaint to be filed within 90 days following an incident of police brutality; otherwise, no disciplinary action could be commenced. (Maryland amended the law in 2016 to allow up to a year for a complaint to be filed.)²³

Another legal provision similar to elements in union contracts, state laws typically allow officers to delay their interviews with internal investigators for several days, presumably to obtain legal counsel, affording the officers involved ample time to conform their statements to the existing evidence and agree on a matching version of events.²⁴ In non-criminal, disciplinary hearings, before any internal interview of an officer for misconduct, the law enforcement officer under investigation must be informed in writing of the nature of the investigation.²⁵ These laws also commonly require that an officer may be questioned only for a “reasonable” length of time, at a “reasonable hour,” preferably while the officer is on-duty, and by only one or two investigators, who must themselves be fellow policemen.²⁶

These laws also foreclose any truly independent inquiry of police misconduct by requiring fellow officers to conduct the disciplinary investigation, rather than, for example, a civilian review board.

Police unions claim that these so-called “protections” put officers on equal footing with civilians accused of crimes. But this claim is misleading. When accused of *criminal* conduct, officers have the same rights as any other person in this country. But when subject to an internal investigation for potential employee discipline, police officers are protected in ways that are almost unimaginable in the context of any other profession. These laws neuter the ability of police departments, local government, and the public to meaningfully investigate and discipline serious misconduct by their officers.

The disciplinary process is so burdensome that departments often cannot afford to dedicate the time and resources necessary to see it through. Even for serious police misconduct, such as police brutality, often the internal employee disciplinary investigation is the *only* type of investigation that takes place. These obstacles to internal disciplinary actions allow repeat offenders—like the officer who killed George Floyd—to remain on the force, sending the message that officers are indeed above the law, no matter how serious their crimes, and further protecting officers through a police culture of impunity.

In addition to hindering the fair investigation of police misconduct, many state laws prohibit the public disclosure of misconduct complaints. In 23 states and the District of Columbia, a police officer’s disciplinary history is almost wholly unavailable through public

²³ See Pub. Safety and Policing Workgroup--Recommendations, H.B. 1016, Ch. 519, § 3-104 (Md. 2016).

²⁴ Maryland law originally allowed a ten-day delay. In 2016, it was amended to five days, and the chief may extend that period of time. See *id.* In Louisiana, state law allows officers up to 30 days to secure counsel before investigators can interview them about alleged misconduct. See L.A. STAT. ANN. § 40:2531(4)(a) (2017); Stephen Rushin, *Police Disciplinary Appeals*, 167 U. PA. L. REV. 545, 562 (2019).

²⁵ Hagler, *Blue Shield*, n.19, *supra*. See, e.g., MD. CODE ANN., Public Safety § 3-104 (2016).

²⁶ *Id.*

records requests.²⁷ In another 15, records are available only in limited ways. In the remaining 12, records are technically deemed “public,” though the official classification is misleading. In those few states that permit public disclosure of police disciplinary records, many still do not disclose complaints that did not result in discipline—complaints that would include 16 of the 17 complaints against the officer who killed George Floyd. And in some states, like Maryland, those records may never be disclosed, as an officer may have such complaints purged after three years.²⁸

The result of these laws, even in the states with the most liberal disclosure policies, an officer can evade public scrutiny (or scrutiny by another police department considering whether to hire that officer) as long as the reviewing body or some appellate body declines to sustain a finding of misconduct.

The **Justice in Policing Act** takes important first steps towards collecting and publicizing officers’ records of misconduct and state certification (or lack thereof), but we can and must do more to stop problem officers from staying on the force or from getting hired by a different police department. **Sections 201 and 202** of the Act, for example, together provide for a national registry that would track misconduct allegations across the country and require states to ensure that its officers meet certification requirements. These are critical steps forward, as they work against the secrecy of misconduct allegations and against the problem of officers moving from one department to another, with no consistent tracking of their misconduct. Section 201 is particularly powerful because it requires tracking of alleged misconduct that did not result in discipline, which addresses some of the problems arising from jurisdictions without an independent review process. The national database proposed, however, breaks down misconduct allegations for one category, use of force. While important, officer use of force is only one category of many types of misconduct. In addition to officers who assault and kill, there are officers who lie, engage in domestic violence at home, manipulate witnesses, and fail to follow up with victims, to name a few examples. To have real impact on officer behavior and the hiring and firing decisions of police departments, all types of misconduct must be tracked and publicized, not just use of force. And of course, that an officer meets state certification requirements may not tell us much at all if those requirements are not independently created and monitored by external people and organizations.

C. COMPLAINT PROCESSES ARE TAINTED AND DO NOT IMPOSE MEANINGFUL DISCIPLINE

Police unions and union-supported laws contribute to another barrier to accountability and, therefore, a culture of impunity: review processes that are either run by police departments themselves, by complaint boards that are staffed with officers, or by boards that have no real authority to impose discipline.

²⁷ WNYC, *Is Police Misconduct a Secret in Your State?*, <https://project.wnyc.org/disciplinary-records/>.

²⁸ See MD. CODE ANN., Public Safety § 3-110 (2010).

In some jurisdictions, police departments are themselves responsible for resolving complaints of misconduct—without any input from civilians at all.²⁹ Indeed, some state laws explicitly forbid independent inquiry into police misconduct.³⁰

In others, supposedly independent review boards exist outside the formal police department structure.³¹ But these purportedly independent review boards may include officers as panel members. Sometimes, these panel members, while not themselves police employees, are nonetheless selected by the chief of police.

In still others, truly independent civilian review boards weigh in on police misconduct, but they lack teeth.³² In most, the police chief is free to ignore the board's finding of misconduct and to impose no discipline—and this power is regularly exercised. In New York, for example, in 2012, the police department followed the civilian review board's recommendation in less than 10 percent of cases.³³

Regardless of their structure, across the nation's 50 biggest police departments, few complaint boards have any disciplinary authority at all, and instead just make recommendations back to the police departments, which are free to disregard those recommendations. Minnesota's law, for example, provides that "[a] civilian review board, commission, or other oversight body shall not have the authority to make a finding of fact or determination regarding a complaint against an officer or impose discipline on an officer."³⁴

The **Justice in Policing Act** would provide greater clarity on what an independent review board must look like to hold officers accountable, but should go further. The Act takes many of the first steps required to define what meaningful oversight looks like by a review board, including subpoena power, community diversity, and the power to convene hearings. These features give teeth to review boards, embed these boards in local communities, and work against barriers to police accountability. More is needed. For example, in defining the features of a civilian complaint board, the definition from **Sections 104 and 114** omits the requirements that the board (1) be staffed only by civilians, with no police presence, (2) prohibit the police department or chief from either choosing or recommending board members, or (3) be empowered to impose discipline. While **Section 104** authorizes funding to support independent *criminal* investigations of police misconduct (including civilian complaint boards), it does not address disciplinary investigations crucial to holding officers accountable—including improving policing and removing dangerous officers from a police force. More work remains to be done to improve police departments' internal disciplinary investigations, and federal reforms can only do

²⁹ Udi Ofer, *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, 46 SETON HALL L. REV. 1033, 1042 (2016).

³⁰ See, e.g., Minn. Stat. Ann. § 626.89, subd. 17.

³¹ Ofer, *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, n.29, *supra*, at 1053.

³² *Id.*

³³ *Id.* at 1047.

³⁴ MINN. STAT. ANN. § 626.89, subd. 17 (2012).

so much without meaningful reform of the role of police unions and their influence on barriers to police accountability.

Most jurisdictions provide yet another escape for officers seeking to evade disciplinary action: even if they are initially determined to have committed misconduct, the officers may have those decisions overturned through arbitration, appeals to a different review panel, or other administrative-law mechanisms.³⁵ Some jurisdictions are bound to offer this escape by virtue of union contracts; others offer this avenue through statutory or regulatory law.

The District of Columbia is an example of a jurisdiction with both statutory timeframes on the duration of investigations *and* administrative-law remedies for disciplined officers, which together have put problem officers back on the streets after unconscionable behavior. By statute, the District of Columbia requires that the department initiate disciplinary proceedings within 90 days of learning of the alleged misconduct.³⁶ Because of these protections, after firing approximately 20 officers for serious misconduct—including allegations of domestic violence, extorting a former romantic partner with sexually explicit photographs, and lying about interactions with a sex worker—the District of Columbia was forced to *rehire* those problem officers after they sued in administrative proceedings.³⁷ This reinforces the culture and practice of the department that enabled the misconduct to happen in the first place.

D. OUTSIDE THE DISCIPLINARY PROCESS, THE JUDGE-MADE DOCTRINE OF “QUALIFIED IMMUNITY” PREVENTS POLICE ACCOUNTABILITY THROUGH THE COURTS

While police union contracts and state laws insulate officers from internal employee-discipline accountability measures, still other barriers prevent accountability through the civil courts, denying justice for the victims of police brutality. When victims of police misconduct seek redress in federal courts, the judge-made doctrine of “qualified immunity” blocks them at almost every turn.

Under federal law, qualified immunity shields police officers from civil liability if their conduct does not violate “clearly established” rights of which a reasonable person would have known.³⁸ The doctrine was created by judges, not Congress, in an attempt to balance “the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.”³⁹ Over time, however, the Supreme Court has increasingly struck that balance in favor of shielding officers, so much so that now, the doctrine is not just a shield against “harassment, distraction,

³⁵ See, e.g., D.C. CODE § 1-606.03 (2004) (providing fired officers the right to appeal a decision to the Office of Employee Appeals).

³⁶ D.C. CODE § 5-1031 (2015).

³⁷ Alan Suderman, *Misfired*, WASH. CITY PAPER (Feb. 1, 2013), <https://www.washingtoncitypaper.com/news/article/13043652/misfired-the-dc-government-fired-then-re-hired-then-fired>.

³⁸ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

³⁹ *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal citation omitted).

and liability" for reasonable conduct, but a protection against almost any accountability whatsoever.

A victim of police abuse may succeed in holding an officer accountable in court only if another court has already "clearly established" that the same misconduct in the same context violated an individual's rights.⁴⁰ In excessive force cases, where the result always "depends very much on the facts of each case,"⁴¹ this requirement for exactness in matching an officer's misconduct with facts previously considered by a court in a different case will almost always be unattainable. In one recent case, for example, a court held that a police officer had qualified immunity after shooting a 10-year-old boy in the child's backyard while pursuing an unarmed suspect. The officer was shooting at the nonthreatening family dog and shot the child, who was obeying orders to lie on the ground.⁴² In another case, an officer was granted immunity after releasing a police dog on a man who sat with his hands raised over his head.⁴³ These are but two examples of how, as Justice Sotomayor has recognized, qualified immunity has now been transformed into an "absolute shield" against officer accountability.⁴⁴

The legal support for qualified immunity has never been strong,⁴⁵ and judges and scholars across the ideological spectrum—conservatives and liberals alike—now question the doctrine's legitimacy.⁴⁶ It is time Congress acted to remove this legally and morally unjustified barrier to police accountability.

Section 102 of the Justice in Policing Act does just that, eliminating qualified immunity for some types of law enforcement officers (i.e., state and local law enforcement and correctional officers). Similarly, in the criminal law context, **Section 101** would permit fewer officers to escape accountability by allowing the prosecution not only of officers who act "willfully" to violate an individual's civil rights, but officers who act recklessly, as well.

⁴⁰ *Kisela v. Hughes*, 138 S. Ct. 1148, 1153 (2018) ("Use of excessive force is an area of the law 'in which the result depends very much on the facts of each case,' and thus police officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue.").

⁴¹ *Id.*

⁴² Robert Barnes, *Supreme Court asked to reconsider immunity available to police accused of brutality*, WASH. POST (June 4, 2020), https://www.washingtonpost.com/politics/courts_law/supreme-court-asked-to-reconsider-immunity-available-to-police-accused-of-brutality/2020/06/04/99266d2c-a5b0-11ea-b473-04905b1af82b_story.html (collecting qualified immunity cases the Supreme Court currently is considering for argument next term).

⁴³ *Id.*

⁴⁴ *Kisela*, 138 S. Ct. at 1155 (Sotomayor, J., dissenting).

⁴⁵ See William Baude, *Is Qualified Immunity Unlawful?*, 106 CAL. L. REV. 45, 46 (2018).

⁴⁶ See *Zadeh v. Robinson*, 928 F.3d 457, 480 (5th Cir. 2019) (Willett, J., dissenting) ("Even in this hyperpartisan age, there is a growing, cross-ideological chorus of jurists and scholars urging recalibration of contemporary immunity jurisprudence."); Robert Barnes, *Supreme Court asked to reconsider immunity available to police accused of brutality*, WASH. POST (June 4, 2020), https://www.washingtonpost.com/politics/courts_law/supreme-court-asked-to-reconsider-immunity-available-to-police-accused-of-brutality/2020/06/04/99266d2c-a5b0-11ea-b473-04905b1af82b_story.html; George F. Will, *This doctrine has nullified accountability for police. The Supreme Court can rethink it.*, WASH. POST (May 13, 2020), https://www.washingtonpost.com/opinions/will-the-supreme-court-rectify-its-qualified-immunity-mistake/2020/05/12/05659d0e-9478-11ea-9f5e-56d8239bf9ad_story.html.

II. LACK OF ACCOUNTABILITY MEASURES IN ACTION: THE KILLING OF GEORGE FLOYD AND THE MINNEAPOLIS POLICE DEPARTMENT

Minneapolis provides just the latest example of how these barriers to police accountability predictably lead to unconscionable results. From a union contract that obstructs accountability, to a review board tainted by police membership, to an arbitration process that results in officers who have committed serious misconduct back on the force, Minneapolis is a case study in the absence of any meaningful accountability measures for police.

A. BACKGROUND: GEORGE FLOYD, HIS KILLERS, AND THE POLICE UNION

The union for the Minneapolis police department has circled the wagons around the four officers involved in George Floyd's death, with the union's president—a man with allegations of bias and misconduct himself—speaking forcefully against their termination.⁴⁷

Derek Chauvin, one of the officers charged with Floyd's murder, has a long history of misconduct allegations. Though Chauvin had 17 complaints filed against him in the last 15 years,⁴⁸ the police department issued discipline (a mere letter of reprimand) in just one of them.⁴⁹ The substance of the complaints for which Chauvin was *not* disciplined remains largely shielded from public view.⁵⁰

Bob Kroll, the union president, has a long history of misconduct allegations, with approximately 20 complaints as of 2015, for which he was disciplined in only three.⁵¹ As with Chauvin, the substance of the vast majority of Kroll's complaints remain shielded from public view. Long before George Floyd's death, Kroll also allegedly called the current Attorney General of Minnesota, Keith Ellison, a terrorist and made disparaging comments about a gay government employee.⁵² Kroll also allegedly wore a white-power patch on his uniform, was a member of a motorcycle group associated with white supremacists, and supported three off-duty

⁴⁷ Brandt Williams, *Minneapolis police union head signals fight for fired officers' jobs*, MINNESOTA PUBLIC RADIO NEWS (June 2, 2020), <https://www.mprnews.org/story/2020/06/02/minneapolis-police-union-head-signals-fight-for-fired-officers-jobs>.

⁴⁸ Shaila Dewan & Serge F. Kovaleski, *Thousands of Complaints Do Little to Change Police Ways*, N.Y. TIMES (May 30, 2020), <https://www.nytimes.com/2020/05/30/us/derek-chauvin-george-floyd.html>.

⁴⁹ MPD [Minneapolis Police Department] Internal Affairs Summary, Derek Chauvin, <http://www.ci.minneapolis.mn.us/www/groups/public/@mpd/documents/webcontent/wcmsp-224705.pdf>.

⁵⁰ Todd Richmond, *Minneapolis cop Derek Chauvin's work, personal background detailed; had nearly 20 complaints and two letters of reprimand*, THE MERCURY NEWS (May 30, 2020), <https://www.mercurynews.com/2020/05/30/minneapolis-officers-work-personal-background-detailed-2/> (explaining what while some of Chauvin's prior alleged misconduct got media attention, Minneapolis' official public records "don't include any details on the substance of the complaints").

⁵¹ Libor Jany, *Controversy follows Minneapolis police union president*, STAR TRIBUNE (Dec. 11, 2015), <https://www.startribune.com/controversy-follows-minneapolis-police-union-chief/361517061/?refresh=true>.

⁵² Samantha Michaels, *Minneapolis Police Union President Allegedly Wore a "White Power Patch" and Made Racist Remarks*, MOTHER JONES (May 20, 2020), <https://www.motherjones.com/crime-justice/2020/05/minneapolis-police-union-president-kroll-george-floyd-racism/>.

officers working security when they walked off the job at a WNBA game because players wore Black Lives Matters jerseys when warming up.⁵³ Kroll also sidestepped the Minneapolis Mayor's ban on "warrior"-style police training by contracting for this military-style training for union members for free—reinforcing a militaristic, "us vs. them" culture within the department.⁵⁴

B. HOW MINNEAPOLIS GOT HERE: THE UNION CONTRACT WITH THE CITY, OPEN-RECORDS LAWS, A COMPLAINT REVIEW PROCESS THAT INCLUDES OFFICER-REVIEWERS, AND ARBITRATION THAT REVERSES TERMINATION DECISIONS

One reason why both Chauvin and Kroll faced so many complaints and so little discipline is because of the contract negotiated by the union,⁵⁵ which imposes many of the barriers to accountability that exist in departments across the country. In Minneapolis, only about 1 percent of all complaints even get entered on officers' personnel files because of the protections negotiated by the union.⁵⁶ As is the case with many union contracts, the Minneapolis contract also enables officers to go to arbitration to try to reverse any disciplinary decisions.

Beyond the union contract, statutory barriers exist in Minnesota that keep allegations of misconduct hidden from public view and from other police agencies making hiring decisions. Minnesota's personnel records law requires disclosure of underlying data and documentation only for police complaints that were both sustained and resulted in disciplinary action.⁵⁷ For complaints that were either not sustained or that resulted in no discipline, the law requires disclosure only of the "existence" of a complaint (apparently not even requiring disclosure of the *nature* of the complaint, such as police brutality, as long as no discipline was imposed).⁵⁸ With a complaint process that is anything but neutral—and that tilts in favor of not disciplining officers—this provision means that potential misconduct is hidden almost completely from public view. As a result, determining whether an officer has a history of alleged misconduct, or learning the type of misconduct in which the officer allegedly engaged, is not an easy task.

⁵³ Randy Furst, *Minneapolis cops working Lynx game walk out over player comments, warm-up jerseys*, STAR TRIBUNE (July 12, 2016), <https://www.startribune.com/minneapolis-cops-working-lynx-game-walk-out-over-player-comments-warm-up-jerseys/386373171/>.

⁵⁴ Libor Jany, *Minneapolis police union offers free "warrior" training, in defiance of mayor's ban*, STAR TRIBUNE (Apr. 24, 2019), <https://www.startribune.com/minneapolis-police-union-offers-free-warrior-training-in-defiance-of-mayor-s-ban/509025622/>.

⁵⁵ The City of Minneapolis and the Police Officers' Federation of Minneapolis Labor Agreement, January 1, 2017, through December 31, 2019 (still in effect as of June 9, 2020), <http://www.minneapolismn.gov/www/groups/public/@hr/documents/webcontent/wcmssp-200131.pdf>.

⁵⁶ Melissa Segura, *There's One Big Reason Why Police Brutality Is So Common in the U.S. and That's the Police Unions*, BUZZFEED NEWS (June 2, 2020), <https://www.buzzfeednews.com/article/melissasegura/police-unions-history-minneapolis-reform-george-floyd>.

⁵⁷ MINN. STAT. ANN. § 13.43, subd. 2(a)-(b) (2015).

⁵⁸ MINN. STAT. ANN. § 13.43, subd. 2(a)(4) (2015).

Chauvin's public disciplinary record is a good example of the barriers created by the union contract and statutory protections: of the 16 complaints listed on the Minneapolis website summarizing Chauvin's internal-affairs investigations that did not lead to discipline, not a single one lists the nature of the alleged misconduct.⁵⁹ Had Minneapolis newspapers not covered three prior high-profile shootings in which Chauvin was involved,⁶⁰ we would be left with the city's publicly available summary of his record and the misimpression that Chauvin had never before assaulted or attacked a civilian. And had his full record been available to the public, Chauvin could have been flagged as an officer who needed additional oversight and training—or who perhaps did not belong on the force at all.

Minneapolis city law also injects barriers to accountability into the process of reporting and investigating misconduct. Per city ordinance,⁶¹ no complaint will even be processed more than 270 days after the alleged misconduct, unless extenuating circumstances exist. And despite its classification as a neutral agency, the Office of Police Conduct Review—the governmental body tasked with investigating allegations of misconduct—convenes panels in which two of the four reviewers currently serve on the Minneapolis police force and are selected by the chief of police. The remaining two are civilians. Either a civilian or a police employee is assigned to investigate the complaint. The panels then submit recommendations, not decisions, to the chief, who has ultimate authority on discipline.⁶²

Even the police chief's disciplinary power is limited by a union-negotiated arbitration clause. Per the union contract, the chief's determination to impose any discipline may be reversed in arbitration. In one instance, an arbitrator reversed the chief's decision to fire an officer based in part on the testimony of union president Bob Knoll himself—the same person with at least 20 allegations of misconduct on his record and allegations of ties to white supremacy.⁶³

These barriers have had a real impact on efforts to discipline officers in Minneapolis. Since 2012, only a dozen cases initiated by citizens have resulted in any discipline.⁶⁴

⁵⁹ MPD [Minneapolis Police Department] Internal Affairs Summary, Derek Chauvin, n.49, *supra*.

⁶⁰ Derek Hawkins, *Officer charged in George Floyd's death used fatal force before and had history of complaints*, WASH. POST (May 29, 2020), <https://www.washingtonpost.com/nation/2020/05/29/officer-charged-george-floyds-death-used-fatal-force-before-had-history-complaints/> (collecting Minneapolis area news stories about Chauvin).

⁶¹ MINNEAPOLIS, MINN., CODE OF ORDINANCES, Police Conduct Oversight, Tit. 9, Ch. 172.10 *et seq.* (2012), https://library.municode.com/mn/minneapolis/codes/code_of_ordinances?nodeId=COOR_TIT9FIPOPR_CH172POCOOV.

⁶² *Id.*

⁶³ 17-1 ARB ¶ 6807 *Police Officers Federation of Minneapolis and City of Minneapolis*, Lab. Arb. Awards 17-1 ARB P 6807 (C.C.H.), 2016 WL 7840758 (Oct. 6, 2016) (relying in part on testimony from Knoll himself and lack of sustained findings from officer's other complaints of misconduct to reverse chief's termination decision).

⁶⁴ Lazaro Gamio & Richard A. Oppel, Jr., *Minneapolis Police Use Force Against Black People at 7 Times the Rate of Whites*, N.Y. TIMES (June 3, 2020), https://www.nytimes.com/interactive/2020/06/03/us/minneapolis-police-use-of-force.html?fbclid=IwAR0N4iLXZj1G_IY_sM2fbArwgyzuguRwH3Ep7KTl4Sy7DbiOjNp2qUe4-JM.

Since just 2015, Minneapolis officers have rendered people unconscious with neck restraints nearly 50 times.⁶⁵ The department claims that these types of restraints are neither officially taught nor sanctioned,⁶⁶ which underlines the corrupting power of culture and practice in a police force that lacks any meaningful systems to execute official policy. Because of these barriers to accountability, the culture infecting the Minneapolis police department remains unchanged. Chauvin was permitted to remain on the force, leading to his deadly encounter with George Floyd. Bob Kroll was permitted to remain on the force, to actively fight against efforts to hold his colleagues accountable, and to maintain the culture in the Minneapolis department that led to Floyd's death.

Minneapolis is only now starting to meaningfully grapple with these obstructions to accountability and the department's culture of impunity, with the city council voting over the weekend to dismantle the department as it currently exists.⁶⁷

III. THE BARRIERS TO POLICE ACCOUNTABILITY ARE A THREAT TO OUR DEMOCRACY

This country has reached a critical moment for policing reform. We will never achieve racial equity and equal justice in this country until we break down the barriers to officer accountability. The misconduct and crimes of law enforcement officers—which these pernicious laws and police union contracts make harder to investigate and prosecute—are among those acts most destructive to our society, to the rule of law, and to the sustainability of our democracy. To understand the existential threat posed to the United States by crimes committed by police under color of law, one need look no further than the outpouring of moral outrage among American citizens in recent days. That moral outrage has been expressed by people of all races and ages, demonstrating widespread support for fundamental change. Do not let this moment pass.

When the American people take to the streets and cry, “No justice, no peace!” they are testifying to a fundamental human truth. It is carved into the stone walls of the building that houses our nation's Department of Justice that “Justice alone sustains society,” that “Justice is the great interest of mankind” and the “foundation for social security.”⁶⁸ As the Reverend Dr. Martin Luther King, Jr., said: “True peace is not merely the absence of tension: it is the presence of justice.”⁶⁹

⁶⁵ Andrew Blankstein, Andrew W. Lehen, & Emily R. Siegel, *Minneapolis police rendered 44 people unconscious with neck restraints in five years*, NBC NEWS (June 1, 2020), <https://www.nbcnews.com/news/us-news/minneapolis-police-rendered-44-people-unconscious-neck-restraints-five-years-n1220416>.

⁶⁶ *Id.*

⁶⁷ John Eligon & Dionne Searcey, *Minneapolis Will Dismantle Its Police Force, Council Members Pledge*, N.Y. TIMES (June 7, 2020), <https://www.nytimes.com/2020/06/07/us/minneapolis-police-abolish.html>.

⁶⁸ U.S. Dept. of Justice, *The Robert F. Kennedy Building, Celebrating Art and Architecture on the 75th Anniversary* 47, 79, <https://www.justice.gov/sites/default/files/jmd/legacy/2014/06/30/75RFBKBuilding.pdf>.

⁶⁹ Nat'l Park Service, *Martin Luther King, Jr. Memorial, Quotations*, <https://www.nps.gov/mlkm/learn/quotations.htm>.

When police cannot be held accountable; when they are effectively immunized from the very laws that they are entrusted to enforce; when they beat and kill the people they are supposed to protect, and can do so without accountability, there can be no justice.

Chair NADLER. I want to thank our Witnesses for participating in today's hearing, in particular, Mr. Floyd, with whom we have the greatest sympathy. Thanks.

That concludes today's hearing.

Without objection, all Members will have 5 legislative days to submit additional written questions for the Witnesses or additional materials for the record.

Chair NADLER. Without objection, the hearing is adjourned.

[Whereupon, at 4:49 p.m., the Committee was adjourned.]

APPENDIX

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

WASHINGTON OFFICE:
2160 Rayburn House Office Building
Washington, DC 20515
(202) 225-3616

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1919 SMITH STREET, SUITE 1180
THE GEORGE "MOKEY" LILAND FEDERAL BUILDING
HOUSTON, TX 77002
(713) 655-0050

ACRES HOME OFFICE:
6719 WEST MONTGOMERY, SUITE 204
HOUSTON, TX 77019
(713) 691-4882

HEIGHTS OFFICE:
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HOUSTON, TX 77008
(713) 961-4070

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4300 LYONS AVENUE, SUITE 200
HOUSTON, TX 77020
(713) 227-7740

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COMMITTEE ON THE JUDICIARY
FULL COMMITTEE

OVERSIGHT HEARING ON POLICING PRACTICES AND LAW
ENFORCEMENT ACCOUNTABILITY

WEDNESDAY, JUNE 10, 2020

9

- Thank you Chairman Nadler and Ranking Member Jordan for convening this oversight hearing on policing practices and law enforcement accountability, which occurs at defining moment in the history of our country.
- Let me welcome our witnesses:

Majority Witnesses

Vanita Gupta
President and CEO
Leadership Conference on Civil & Human Rights

Chief Art Acevedo
President
Major Cities Chiefs Association

Sherrilyn Ifill

President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.

Ron Davis

Chair, Legislative Committee
National Organization of Black Law Enforcement Executives

Marc Morial

President and Chief Executive Officer
National Urban League

Paul Butler

The Albert Brick Professor in Law
Georgetown Law School

Ben Crump

President and Founder
Ben Crump Trial Lawyer for Justice

Angela Underwood Jacobs
Oakland, CA

Philonise Floyd
Houston, TX

Minority Witnesses

Pastor Darrell Scott
Pastor
New Spirit Revival Center

Daniel Bongino
Host
The Dan Bongino Show

Phillip Goff
Co-Founder and President
Center for Policing Equity

- The horrifying killing of George Floyd by a Minneapolis police officer shocked and awakened the moral consciousness of the nation.
- Untold millions have seen the terrifying last moments of a black man taking his last breaths face down in the street with his neck under the knee of a police officer indifferent to his cries for help and pleading that he ‘can’t breathe.’
- In response, for the past week civil protests against police brutality have occurred nightly in cities large and small all across the nation.
- The times we are in demand that action and that is precisely what my colleagues in the Congressional Black Caucus, on this committee, and Congressional Democrats have done in introducing the *Justice in Policing Act of 2020*.
- I support this legislation as a senior member of the House Judiciary Committee who also served on the House Working Group on Police Strategies, but also a mother of a young African American male who knows the pain and anxiety that African Americans mothers feel until they can hug their sons and daughters who return home safely, and on behalf of all those relatives and friends who grieve over the loss a loved one whose life and future was wrongly and cruelly interrupted or ended by mistreatment at the hands of the police.
- The *Justice in Policing Act of 2020* is designed to destroy the pillars of systemic racism in policing practices that has victimized communities of color, and especially African Americans for decades, is overdue, too long overdue.
- But for one who has made reforming an unjust and unequal criminal justice system the work of my tenure in Congress, its introduction and subsequent enactment will be a defining moment in the history of our country.
- This legislation puts the Congress of the United States goes on record against racial profiling in policing and against the excessive, unjustified, and discriminatory use of lethal and force by law enforcement officers against persons of color.

- The legislation means no longer will employment of practices that encourage systemic mistreatment of persons because of their race be ignored or tolerated.
- With the introduction of the Justice in Policing Act of 2020, the government of the United States is declaring firmly, forcefully, and unequivocally that **Black Lives Matter**.
- **It is true all lives matter, they always have.**
- But that Black lives matter too, and in so many other areas of civic life, this nation has not always lived up to its promise but that the promise is worthy of fulfilling.
- Mr. Chairman, the protests we have witnessed are a direct reaction to the horrific killing of George Floyd but are most motivated by a deep-seated anger and frustration to the separate and unequal justice African Americans receive at the hands of too many law enforcement officers.
- The civil disobedience being witnessed nightly in the streets of America are also in memory of countless acts of the inequality and cruelty visited upon young African American men and women no longer with us in body but forever with us in memory.
- Every African American parent, and every African America child, knows all too well 'The Talk' and the importance of abiding by the rules for surviving interactions with the police.
- While many police officers take this responsibility seriously and strive to treat all persons equally and with respect, their efforts are too often undermined by some of their colleagues who abuse the enormous trust and confidence placed in them.
- And systemically racist systems and practices left in place can corrupt even the most virtuous police officers.
- So, the most important criminal justice reforms needed to improve the criminal justice system are those that will increase public confidence and

build trust and mutual respect between law enforcement and the communities they swear an oath and are willing to risk their lives to protect and serve.

- That is the overriding purpose and aim of the Justice in Policing Act of 2020, which contains numerous provisions to weed out and eliminate systemic racism in police practices.
- Specifically, this legislation holds police accountable in our courts by:
 1. Amending the *mens rea* requirement in federal law (18 U.S.C. Section 242) to prosecute police misconduct from “willfulness” to a “recklessness” standard;
 2. Reforming qualified immunity so that individuals are not barred from recovering damages when police violate their constitutional rights;
 3. Incentivizing state attorneys general to conduct pattern and practice investigations and improving the use of pattern and practice investigations at the federal level by granting the Department of Justice Civil Rights Division subpoena power;
 4. Incentivizing states to create independent investigative structures for police involved deaths; and
 5. Creating best practices recommendations based on the Obama 21st Century Policing Task force.
- I am particularly pleased that the Justice In Policing Act includes as Title I, Subtitle B, the bipartisan and bicameral George Floyd Law Enforcement Trust and Integrity Act, which I introduced as H.R. 7100.
- This legislation provides incentives for local police organizations to voluntarily adopt performance-based standards to ensure that incidents of deadly force or misconduct will be minimized through appropriate management and training protocols and properly investigated, should they occur.
- The legislation directs the Department of Justice to work cooperatively with independent accreditation, law enforcement and community-based organizations to further develop and refine the accreditation standards and grants conditional authority to the Department of Justice to make grants to law enforcement agencies for the purpose of obtaining

accreditation from certified law enforcement accreditation organizations.

- “As I have stated many times, direct action is vitally important but to be effective it must be accompanied by political, legislative, and governmental action, which is necessary because the strength and foundation of democratic government rests upon the consent and confidence of the governed.
- Effective enforcement of the law and administration of justice requires the confidence of the community that the law will be enforced impartially and that all persons are treated equally without regard to race or ethnicity or religion or national origin.
- As the great jurist Judge Learned Hand said: "If we are to keep our democracy, there must be one commandment: thou shalt not ration justice."
- Thank you, Mr. Chairman, I yield back my time.

[U.S. news](#)

Man charged in deputy ambush scrawled extremist 'Boogaloo' phrases in blood

Steven Carrillo, accused of killing a sheriff's deputy in Santa Cruz County, California, wrote the words on the hood of a car, prosecutors said

June 11, 2020, 9:04 PM EDT

By Brandy Zadrozny, Ben Collins and Andrew Blankstein

Steven Carrillo, a California man who was charged with murder after he ambushed two Santa Cruz County deputies, scrawled phrases tied to an online far-right extremist movement in blood on a car shortly before he was detained.

Carrillo killed Sgt. Damon Gutzwiller, critically injured another deputy and threw pipe bombs at police on June 6th, [Santa Cruz District Attorney Jeffrey S. Rosell alleged on Thursday](#).

Before he was apprehended, Carrillo scrawled the word "boog" and "I became unreasonable" in blood on the hood of a car. "Boog" is short for boogaloo, a far-right anti-government movement that began on the extremist site 4chan and aims to start a second American civil war.

Sgt. Damon Gutzwiller.Santa Cruz County Sheriff's Office

The phrase "I became unreasonable" has become a meme in public Boogaloo communities on Facebook, which discuss weapons and fantasize about a second civil war. One recent meme on Facebook shows a man holding a Boogaloo flag at a protest, along with the phrase "Become unreasonable."

"I became unreasonable" is a reference to a quote written by Marvin Heemeyer, an anti-government extremist who bulldozed 13 buildings in Granby, Colorado, in retribution for a zoning dispute. Heemeyer killed himself after the rampage, which occurred on June 4, 2004, almost 16 years to the day of Carrillo's attack.

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Heemeyer is known by the nickname Killozer in extremist groups online and is frequently quoted in Boogaloo Discord chats and Facebook groups.

"Heemeyer is revered in Boogaloo groups," said Megan Squire, a computer science professor at Elon University who tracks online extremism and is monitoring several private Boogaloo groups online.

Referencing a nickname for Heemeyer, Squire said, "Killozer represents the intersection between the libertarian ideal of small government and the militant fantasy of the Boogaloo. Heemeyer, as Killozer, meticulously planned a revenge fantasy on some local government entities that he blamed for excessive regulation of his business."

Carrillo also wrote the phrase "Stop the duopoly" in blood on the car hood. "Stop the duopoly" is an otherwise nonviolent political slogan frequently pushed by third party and libertarian candidates.

Carrillo's presence on Facebook mostly featured support for a libertarian presidential candidate, anti-police sentiment and pro-gun causes. His profile picture showed George Washington and other American presidents holding modern weapons and tactical gear.

In one of his last posts on Facebook, Carrillo posted a now infamous video of two Buffalo police officers shoving a 75-year-old man to the ground in a group called "A Gun Page for Poots Who Know They Are Poots."

Steven Carrillo.Santa Cruz County Sheriff's Office

Carrillo's Facebook page and posts have since been removed from the social network.

Online Boogaloo messaging has grown "increasingly extreme" amid pandemic lockdowns and nationwide protests over the killing of George Floyd, according to a [recent report](#) by the Network Contagion Research Institute, an independent nonprofit organization of scientists and engineers that tracks misinformation and hate speech across social media.

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"Elements of The Boogaloo have evolved from a gathering of militia enthusiasts and Second Amendment advocates into a full-fledged violent extremist group, which inspires lone wolf actors and cell-like actors alike," said Joel Finkelstein, director of the institute.

"Given recent events and the inability of law enforcement to grasp and intercept this new mode of distributed terror, we think an increase in these kinds of violent attacks against police are almost inevitable," Finkelstein said.

Boogaloo groups are public and readily accessible on Facebook, but a company spokesperson told NBC News last week that the social network is now "preventing these Pages and groups from being recommended on Facebook."

Facebook accounts tied to three men who were [arrested and charged with multiple state and federal violations of conspiracy](#) to cause destruction at protests in Las Vegas were pulled from the platform last week. At least one of the men, Stephen T. Parshall, repeatedly posted to Boogaloo groups on Facebook, including the phrase "Start. Fomenting. Insurrection."



Brandy Zadrozny

Brandy Zadrozny is an investigative reporter for NBC News.

Ben Collins

Ben Collins covers disinformation, extremism and the internet for NBC News.

Andrew Blankstein

Andrew Blankstein is an investigative reporter for NBC News. He covers the Western United States, specializing in crime, courts and homeland security.



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Miami-Dade officer who threw woman who called 911 to the ground charged with battery

[nbcnews.com/news/amp/ncna1001781](https://www.nbcnews.com/news/amp/ncna1001781)

May 3, 2019



A Miami-Dade police officer faces a battery charge after video showed him throwing a black woman to the ground during an arrest after she called 911 to report a man threatening her and a friend with a gun.

Officer Alejandro Giraldo was charged Friday with one count of felony official misconduct and one count of misdemeanor battery stemming from the violent March 5 confrontation.

In cellphone footage posted on social media, Giraldo is seen grabbing Dyma Loving, 26, by the arm and appearing to push her against a fence before throwing her on the ground.

Loving — who had called police to report the man brandishing a shotgun during an argument with her and her friend, Adrianna Green — was then placed in handcuffs.

"After taking the sworn statements of Ms. Dyma Loving, Ms. Adrianna Green, all the other available witnesses, and reviewing all the known video evidence, we believe that there is sufficient evidence to charge a violation of Florida's criminal statutes," the Miami-Dade State Attorney's Office said in a press release Friday.

Giraldo was arrested Friday morning and held on a \$5,500 bond. A spokesman for the Miami-Dade Police Department told NBC News that a decision would be made regarding Giraldo's employment status. Following the March incident, he had been placed on administrative duty.

"An arrest of one of our own is disappointing, and overshadows the hard work of the dedicated men and women of law enforcement, who strive daily to serve and protect our community," police director Juan J. Perez said in a statement. "This particular case underscores our commitment to cooperate and work together with the Miami-Dade State Attorney's Office in our continued effort to hold ourselves accountable."

Loving's attorney, Justin Moore, told NBC News on Friday that they "applaud the decision" to charge Giraldo, but believe his battery charge should also be a felony.

"It's a step in the right direction," Moore said.

Loving also filed a lawsuit in April against Giraldo and the police department, Moore said.

During the March arrest, Loving repeatedly told officers not to touch her and said she was "stressed" after the man later identified as Frank Tumm reportedly pulled a gun on her.

"I wanted to call my kid," Loving said in the video as officers tried to arrest her. "I just said I wanted to call my kid. My phone is dead. What do you not understand? I had a gun pointed in front of me and my kid is sick. I'm stressed out. I need to go call my children. I don't understand."

Police wrote in an incident report that Loving was "acting belligerent" and refused to obey officers' commands. Loving was charged with resisting arrest, but it was later dropped in March.

Giraldo is expected to be arraigned May 24.

Minyvonne Burke

Minyvonne Burke is a breaking news reporter for NBC News.



Dyma Loving called 911 to report that she and a friend had been threatened by a man with a gun. Courtesy of Dyma Loving



1



Alexandria Ocasio-Cortez ✓
@AOC



Huge update!

Our [#SquadFund](#) just blew past its \$50k goal & has
[raised \\$128k](#) for frontline racial justice groups
[@BlackVisionsMN](#) and [@reclaimtheblock](#).

Thank you ALL for showing up. This will change lives. And
I am thankful every damn day for sisterhood.



Ilhan Omar ✓ @IlhanMN · May 29

There's power in this movement: Thanks to my sisters in service and all of you,
[we've raised more than double our initial \\$50,000 goal](#) for racial justice in
Minneapolis!

Let's double it again. twitter.com/IlhanMN/status...

8:47 PM · May 29, 2020 · [Twitter for iPhone](#)



3  **Black Visions** @BlackVisionsMN · Jun 7

BREAKING: @CityMinneapolis commits to begin the process of ending the @MinneapolisPD and creating a new transformative model for cultivating safety in our city!! #DefundMPD #DefundPolice



2:08 32.8K views

47 502 1.3K

4




5

 Black Visions Retweeted**BLMChicago** @BLMChi · Jun 4

Let's ask for the complete abolition. We know what we need. We need crisis interventionists who are **therapists, doctors, street medics,** universal healthcare, increased funding to public education... **not cops.**

**Benji Hart** @radfagg · Jun 4

You know we've reached a watershed moment when abolitionists are ecstatic about the LAPD having its budget cut by \$100mil, and non-abolitionists are like, "That's only 8%, CUT IT MORE!" #DefundPolice #AbolishPolice #PoliceFreeSchools #BlackLivesMatter 
money.yahoo.com/los-angeles-ma..

 4 188 556

6



Black Visions
@BlackVisionsMN

Please, if you can, get the supplies and drop them off at donation sites. We need to protect our people more than ever (we already know the police aren't for us). We will be updating drop off sites in the thread throughout the day.

go buy extinguishers for fires, traffic cones for tear gas, & **lasers for surveillance cameras.** ppl also need **water balloons filled w milk** to obscure windows of white supremacists driving thru protesters drop directly at protests orgs at capacity

7



Black Visions @BlackVisionsMN · 4h



vaseline dion. @cursivebones · Jun 8

abolish the police is not a cute, catchy slogan like "cashmeoutside". abolish the police means police should not exist. as long as there have been blk people, there have been abolitionists. do not insult them by using abolish & reform interchangeably.

[Show this thread](#)

1

43

196



Black Visions @BlackVisionsMN · 4h

also



radical extremist @DaShaunLH · 22h

it's not enough to only abolish police or prisons, we need to abolish race & all other figurative prisons. it's not enough to abolish ICE or the military, we need to abolish the state and borders (by which the west legitimizes its terror on "undocu" folks and the world).

[Show this thread](#)

1

9

54



8

 **Pramila Jayapal** 
@PramilaJayapal

Organizations like [@BLMSeattleKC](#), Not This Time, and [@BlackVisionsMN](#) are doing critical work on the ground to organize against anti-Blackness and police injustice while also promoting racial justice.

You can support their work by making a donation here:



Support racial justice organizations' work to transform our communities!
Split a donation between these three organizations promoting racial justice.
[secure.actblue.com](#)

9:21 PM · Jun 2, 2020 · [Twitter Web App](#)

13 Retweets 32 Likes

9



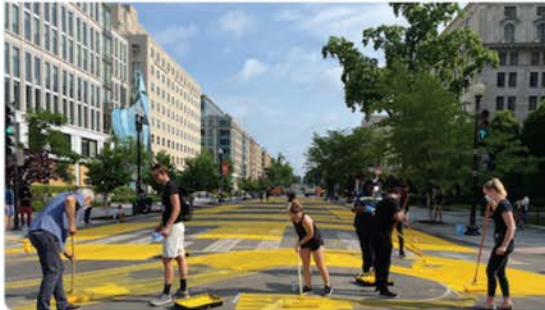
BlackLivesMatter DC
@DMVBlackLives

This is a performative distraction from real policy changes. Bowser has consistently been on the wrong side of BLMDC history. This is to appease white liberals while ignoring our demands. **Black Lives Matter means defund the police.** @emilymbadger say it with us

Emily Badger @emilymbadger · Jun 5

Holy cow. The city of DC is out here on 16th street behind the White House painting BLACK LIVES MATTER onto the streets — that it owns — stretching all the way to K Street.

[Show this thread](#)



9:53 AM · Jun 5, 2020 · [Twitter Web App](#)

9.5K Retweets 17K Likes



10

The image shows a website banner for Black Lives Matter. At the top left, the text "BLACK LIVES MATTER" is displayed in white, with three yellow horizontal lines below it. To the right, a navigation bar contains the links "NEWS", "ABOUT", and "PROGRAMS". Further right, the text "WHAT MATTERS" is shown in yellow. The main banner features a background image of a protest with a sign that says "BLACK LIVES MATTER". Overlaid on this image is the text "WE CALL FOR SUSTAINABLE TRANSFORMATION IN OUR COMMUNITIES" in white. Below this, there are two yellow horizontal lines, followed by the text "SEE THE DEMANDS" in white. Underneath that is a button that says "SIGN THE PETITION" in white. At the bottom left of the banner, the hashtag "#DefundThePolice" is displayed in white. At the bottom right, there are four small white dots, with the first one being yellow.

BLACK LIVES MATTER

NEWS ABOUT PROGRAMS

WHAT MATTERS

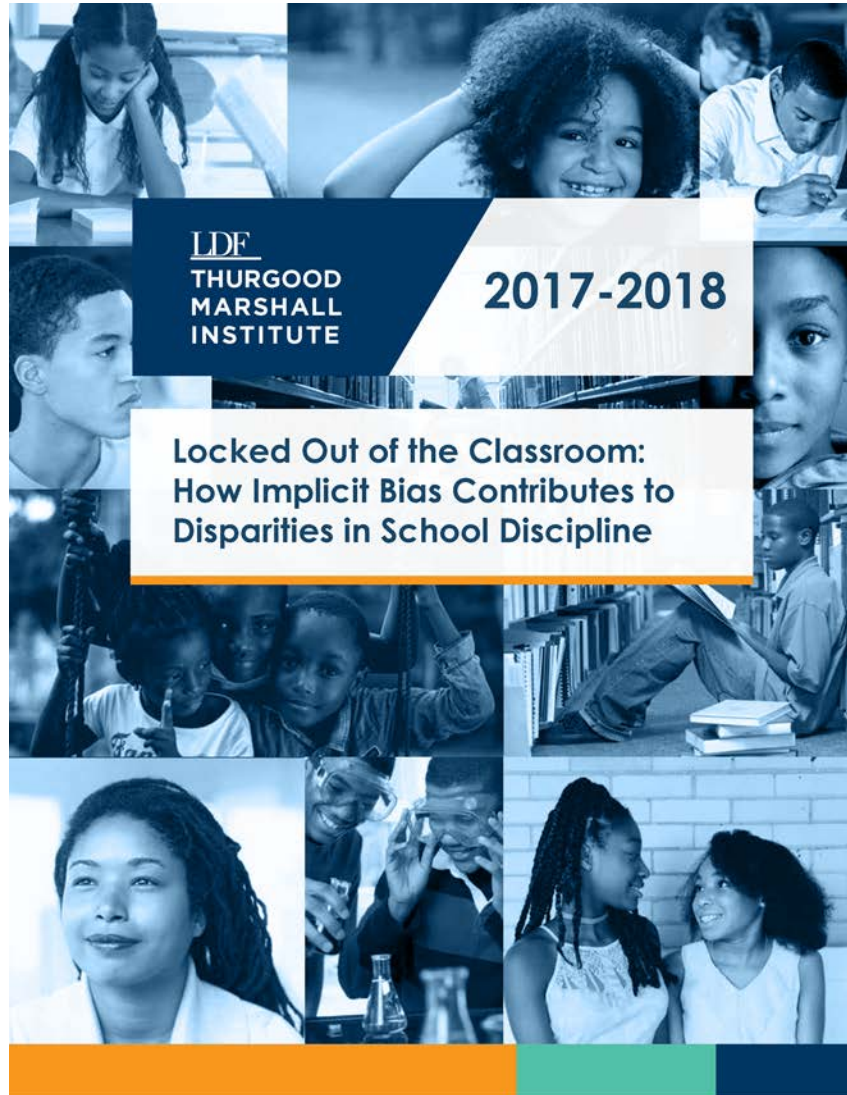
WE CALL FOR
**SUSTAINABLE
TRANSFORMATION**
IN OUR COMMUNITIES

SEE THE DEMANDS

SIGN THE PETITION

#DefundThePolice

See the demands. Sign the petition. #DefundThePolice





Sherilyn Ifill
President & Director-Counsel
NAACP Legal Defense & Educational Fund, Inc. (LDF)

James Cadogan
Director
LDF Thurgood Marshall Institute (TMI)

Authors:
Ajmel Quereshi
Senior Counsel
NAACP Legal Defense and Educational Fund, Inc.

Professor Jason Okonofua
Assistant Professor of Psychology
University of California-Berkeley

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To obtain a copy of the report, please contact:
LDF Communications Department
40 Rector Street, 5th Floor
New York, NY 10006

To download a copy, please visit: www.naacpldf.org

For more information about LDF or to make a
tax-deductible contribution to support LDF and the work
of the Thurgood Marshall Institute, please visit:
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LDF THURGOOD MARSHALL INSTITUTE

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is the first and foremost civil and human rights law firm in the United States. Founded in 1940 under the leadership of Thurgood Marshall, LDF's mission has always been transformative — to achieve racial justice, equality, and an inclusive society. Today, through litigation, advocacy, and public education, LDF continues to advance issues of education, voter protection, economic justice and criminal justice. LDF has been a separate organization from the NAACP since 1957.

The Thurgood Marshall Institute is a multidisciplinary center within the NAACP Legal Defense and Educational Fund, Inc. (LDF). Launched in 2015, the Institute complements LDF's traditional litigation strengths, arming LDF with dedicated support for three critical capabilities in the fight for racial justice: research, targeted advocacy campaigns, and organizing. The Institute also houses LDF's Archives — a collection of materials that document the legal arm of the Civil Rights Movement. The idea of creating the Institute was first introduced in 1993, following the passing of Thurgood Marshall.

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Executive Summary

While racial segregation in schools has been unconstitutional for over fifty years, Black students continue to face discrimination in the form of excessive school discipline. Like the legally sanctioned racism their grandparents endured, Black students today are subject to discriminatory behavior by the individuals they should trust most at school—teachers and principals. Compounding matters, in many cases, teachers and administrators may not know they are disproportionately targeting students of color for discipline. Rather, their behavior may be based on more subtle, subconscious beliefs, commonly referred to as implicit bias. Though subtle, these beliefs, and the racial stereotyping that results from them, can create a lifetime of serious, negative consequences for racially stigmatized students, ultimately causing them to distrust their teachers and to disengage in the classroom.

Civil rights advocates have long been aware of racial disparities in school discipline. As early as 1974, civil rights advocates highlighted that Black students were 2 to 3 times more likely to be suspended than White students.¹ Sadly, little progress has been made in reducing these disparities. In 2012, for example, Black students made up only 16% of students in the United States, but accounted for 42% of out-of-school suspensions.² Black students were over three times more likely than White students to be suspended or expelled from school.³ Once a Black student is suspended, he or she becomes entrapped in a repeated cycle of disproportionate discipline: a student who is suspended once is more likely to get suspended again.⁴ The consequences of school discipline on children are not limited to just their experiences in school. Once a Black student is suspended, the chances that he or she will drop out of school, become unemployed or underemployed, and enter the criminal justice system rise dramatically.⁵

Over the last twenty years, discriminatory school disciplinary systems have contributed considerably to the disproportionate rates of punishment of Black students. Zero-tolerance policies of the 1990's initially targeted violent, gun-related

crimes in schools,⁶ but quickly expanded to include non-violent offenses.⁷ School districts implemented local policies that called for students to be suspended or expelled from school for less serious, discretionary offenses like defiant behavior and tardiness.⁸ Because these offenses had no set definition, they afforded teachers and administrators broad discretion to take action against a student who was perceived to be committing them.

The inclusion of discretionary offenses for which students may be suspended has disproportionately harmed Black students even though Black students are not more likely to act out in school. Research has consistently established that Black students do not have higher rates of misconduct than other students.⁹ Rather, Black students are disproportionately disciplined for more subjective offenses, such as disrespecting a teacher or being perceived as a threat, than their White counterparts.¹⁰ These disparities result from and perpetuate stereotypes about Black students, specifically the stereotype that they are aggressive and dangerous.

Only recently have we fully understood that not only do such disparities perpetuate stereotypes regarding students of color, but are themselves the product of stereotypes subconsciously present in almost all of us. Every day, each of us is exposed to a variety of media that communicate negative stereotypes about persons of color. These stereotypes, unknowingly, affect behaviors of all people, including teachers. Teachers develop implicit biases that cause them to interpret otherwise innocent behavior as part of a pattern of negative behavior inherent in the student. Paired with disciplinary codes that define misconduct in vague terms, stereotypes significantly shape teacher decisions as to which students they punish. These discriminatory behaviors affect not only teachers, but the students who are their victims. Reacting to years of discriminatory treatment, students may adjust their behavior, reacting coldly to teachers with whom they are not familiar, fearing that the teacher, like others, will unfairly target them for discipline.



Fortunately, researchers have not only recognized the effects of these biases in schools, but have begun to develop techniques to address their effects. While the biases themselves may never be eliminated, their effects in schools can be limited through a variety of interventions that can help improve the relationship between teachers and students. Recent research has shown that interventions that prioritize: 1) "wise feedback" from teachers in place of punitive, dismissive discipline; 2) "social belonging" as students enter a

new school environment; and 3) "empathic discipline" that attempts to understand perceived misbehavior from the student's perspective, can begin to limit the effects of implicit bias and related concepts in the classroom. Combined with the rescission of policies that allow for the suspension of students for relatively minor, discretionary offenses, and the removal of school resource officers, we can reduce the disparities that have long plagued children of color.

What We Know: Black Students Are Disproportionately Disciplined, Particularly for Discretionary Offenses.

Black Students Are Disproportionately Disciplined

We have long known that administrators, teachers, and school resource officers disproportionately discipline African-American students. The latest statistics, which the U.S. Department of Education released just last year, confirm a troubling pattern of which civil rights advocates have long been painfully aware. "While 6% of all K-12 students received one or more out-of-school suspensions, the percentage is 18% for black boys; 10% for black girls; 5% for white boys; and 2% for white girls."¹¹

These disparities exist among even the youngest students. As the U.S. Department of Education has acknowledged, the over-disciplining of Black students begins as soon as they start school. "Black preschool children are 3.6 times as likely to receive one or more out-of-school suspensions as white preschool children."¹² Although, "Black children represent only 19% of preschool enrollment," they account for "47% of preschool children receiving one or more out-of-school suspensions[.]"¹³ By contrast, "white children represent 41% of preschool enrollment, but [only] 28% of preschool children receiving one or more out-of-school suspensions."

These disparities exist regardless of student gender.¹⁴ "Black boys represent 19% of male preschool enrollment, but 45% of male preschool children receiving one or more out-of-school suspensions. Black girls represent 20% of female preschool enrollment, but 54% of female preschool children receiving one or more out-of-school suspensions."¹⁵

Black students continue to be disproportionately disciplined as they progress through school. Overall, "Black K-12 students are 3.8 times as likely to receive one or more out-of-school suspensions as white students. Black girls are [only] 8% of enrolled students, but 13% of students receiving one or more out-of-school suspensions."¹⁶

These disparities persist as the punishments increase. Black students are almost twice as likely to be expelled from school without educational services as white students.¹⁷ "Black boys represent 8% of all students, but 19% of students expelled without educational services. Black girls are 8% of all students, but 9% of students expelled without educational services."¹⁸

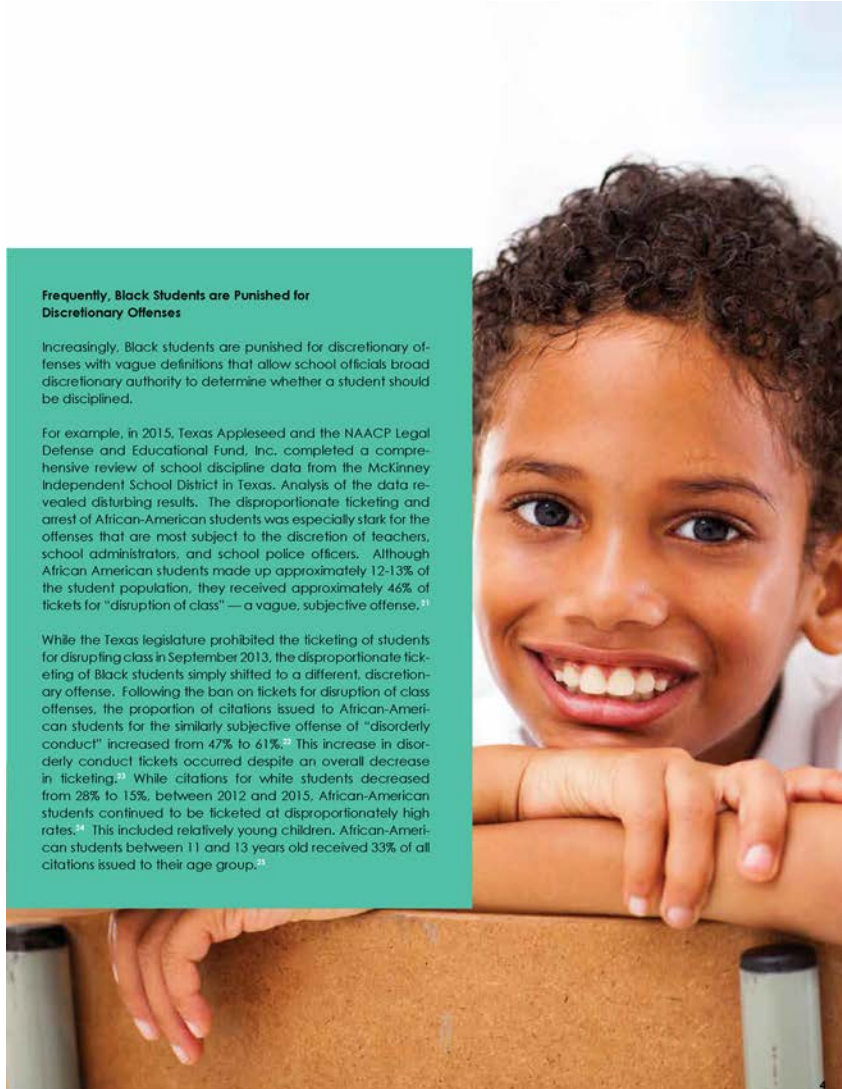
These disparities raise serious concerns under Title VI of the Civil Rights Act of 1964.¹⁹ Title VI prohibits discrimination on the basis of race, color, or national origin by any program that receives federal financial assistance.²⁰ The illegality of the racial disparities is further exacerbated by the fact that, in many jurisdictions, they are due to suspensions for vague and relatively minor, discretionary offenses.

Frequently, Black Students are Punished for Discretionary Offenses

Increasingly, Black students are punished for discretionary offenses with vague definitions that allow school officials broad discretionary authority to determine whether a student should be disciplined.

For example, in 2015, Texas Appleseed and the NAACP Legal Defense and Educational Fund, Inc., completed a comprehensive review of school discipline data from the McKinney Independent School District in Texas. Analysis of the data revealed disturbing results. The disproportionate ticketing and arrest of African-American students was especially stark for the offenses that are most subject to the discretion of teachers, school administrators, and school police officers. Although African American students made up approximately 12-13% of the student population, they received approximately 46% of tickets for "disruption of class" — a vague, subjective offense.¹¹

While the Texas legislature prohibited the ticketing of students for disrupting class in September 2013, the disproportionate ticketing of Black students simply shifted to a different, discretionary offense. Following the ban on tickets for disruption of class offenses, the proportion of citations issued to African-American students for the similarly subjective offense of "disorderly conduct" increased from 47% to 61%.¹² This increase in disorderly conduct tickets occurred despite an overall decrease in ticketing.¹³ While citations for white students decreased from 28% to 15%, between 2012 and 2015, African-American students continued to be ticketed at disproportionately high rates.¹⁴ This included relatively young children. African-American students between 11 and 13 years old received 33% of all citations issued to their age group.¹⁵





These Problems Have Been Exacerbated by the Increase in School Resource Officers.

These problems have worsened as schools have increasingly come to rely on school resource officers (SROs) who lack the necessary training to work with students, but rather are focused on the punishment and removal of students. Nationwide, police presence in schools has become ubiquitous. Nearly a quarter of elementary schools and 42% of high schools have SROs.²⁴ According to the U.S. Department of Justice, 19,000 police officers are stationed in schools across the United States.²⁵ Over three in four high schools and the vast majority of schools with 1,000 or more students have armed security staff.²⁶ Schools where at least half of the students are of color, as well as high-poverty schools (meaning those where at least 75% of students are eligible for free or reduced-price lunch), are home to the highest percentages in the country of K-12 school law enforcement.²⁷

The presence of police in schools disproportionately impacts students of color. Between 2012 and 2014, African American students made up approximately 12-13% of the student population, but accounted for about 36% of all tickets issued by SROs and 39% of arrests made by SROs.²⁸ Altogether, "[b]lack students are 2.3 times as likely to receive a referral to law enforcement or be subject to a school-related arrest as white students."²⁹

Over the past several years, parents and education advocates have repeatedly confronted and challenged SRO violence against students of color. In many cases, SROs have reacted violently to innocent behavior by Black students:

- In October 2015, a cell phone video captured a South Carolina SRO violently flipping a female student who was seated at a desk, despite the fact that she posed no threat to the officer or her fellow students.³⁰ After the assault, the student's arm was placed in a cast and she reported neck and back injuries.³¹ In April 2016, DOJ reached an agreement with Richland County requiring the Sheriff's Department to provide intensive annual training to officers working in schools.³²

- A video from November 2015 documented a SRO in Florida grabbing a 13-year old African-American youth, slamming him to the ground, and then twisting his arm for approximately 40 seconds, while the student writhed in pain.³⁵ As police documents revealed, the student "never showed any aggression toward [the officer]."³⁶

- In October 2015, a SRO in Oklahoma City, Oklahoma was charged with punching a student in the face after a dispute over a hall pass.³⁷ A video of the incident captured the officer approaching the student at a drinking fountain.³⁸ After the student walked away from the officer, the officer pursued the student and punched him multiple times.³⁹

- In April 2016, the parents of three children filed a lawsuit alleging that a SRO in Abilene, Texas violently assaulted them on three separate occasions without justification.⁴⁰ The SRO "used a 'pain compliance' maneuver called an arm-bar against a six-year-old kindergarten student, a chokehold against a twelve-year old student, and repeatedly slammed a fifteen-year old student against the wall and to the ground."⁴¹

- In March 2016, three Baltimore SROs were placed on administrative leave after a video captured one of the officers slapping a young man three times — one slap loud enough to hear a pop — and then kicking him while yelling profanities.⁴² Baltimore Mayor Stephanie Rawlings-Blake stated that "[t]he behavior . . . is certainly something you never want to see ... Certainly not a school officer acting in this way, particularly with a young person."⁴³

- A video from March 2015 captured a Louisville, KY SRO picking up a 13-year old by his neck and choking him until he went limp, after the youth playfully attempted to push the officer.⁴⁴ After the incident, the middle-schooler dropped to the ground, where he didn't move for more than 20 seconds.⁴⁵ Another officer later testified that the officer's actions were "consistent with strangulation."⁴⁶

- In April 2016, a SRO in San Antonio, TX was fired after a video captured him body-slaming a sixth grade girl.⁴⁷ After he slammed the girl down, a loud crack was heard and the surrounding crowd grew silent.⁴⁸ After the incident, the officer attempted to justify his actions, but the video of the incident directly contradicted his report.⁴⁹

- In 2010, the Southern Poverty Law Center filed a lawsuit on behalf of eight high school students in Birmingham, Ala., all of whom had been pepper-sprayed by SROs.⁵⁰ In October 2015, a federal judge ruled that the officers had used excessive and unconstitutional force when they sprayed students for minor misbehavior at school.⁵¹ The Court rejected the "eye-brow-raising position that school children are less deserving of protection from harm at the hands of overzealous law enforcement officers than adults."⁵²

- Since 2011, there have been at least 84 incidents in which SROs tasered students, some of whom were as young as 12.⁵³ Students were tasered for, among other things, "mouthing off to a police officer" and "trying to run from the principal's office."⁵⁴

Reliance on SROs compounds the problems discussed above by ignoring the root causes of alleged student misconduct. Rather than identifying and developing the supports necessary to assist students with behavioral problems, SROs exacerbate these problems and significantly alter the role of education in students' lives. SROs are more likely to interpret minor behavior such as interrupting class or being disrespectful to teachers as criminal behavior.⁵⁵ This results in unnecessary arrests that increase the likelihood that a child will end up in the juvenile-justice system, and later, prison.



Disproportionate Discipline Has Long Term Consequences for Black Students

The effects of disparities in discipline, particularly when they involve expulsion, arrest and/or incarceration, continue to be felt by black students throughout their lives. Once a student is identified as a potential “troublemaker” he or she is repeatedly subject to discipline, often of increasing severity. For example, a child who is expelled or suspended is more than twice as likely to be arrested within the same month as compared to a child who had not been previously suspended during the same month.²⁴ Once a student is involved in the criminal justice system, the problems grow exponentially. A recent study found that juvenile incarceration “reduces the probability of high school completion and increases the probability of incarceration later in life.”²⁵ Even when the study controlled for potential confounding factors, the relationships remained strong. Individuals incarcerated as juveniles were 39 percentage points less likely to graduate from high school and were 41 percentage points more likely to have been incarcerated by the age of 25 compared to other public school students from the same neighborhood.²⁶ Moreover, having a criminal record can create lifelong barriers to opportunity, including the ability to obtain employment, housing, or an education.²⁷

Despite common knowledge of these disparities and their consequences, relatively little progress has been made to reduce them. This failure is due to a variety of factors, including the proliferation of zero-tolerance school discipline policies concerning discretionary offenses and the increase in school resource officers. However, what has yet to be fully acknowledged, is that these disparities may, in part, be the result of teachers’ and administrators’ implicit biases affecting the way they interpret student behavior. Thankfully, researchers have begun to explore these topics, identifying key concepts that may not only be relevant to policing, but also discipline in schools.

What is Implicit Bias and What Do We Know About Its Effects?

Despite the fact that most teachers and school staff are committed to the fair and equal treatment of students, regardless of race, disparities in discipline have persisted for several years. According to research by various social scientists, this paradox may be the result of the role that "implicit bias" and other related concepts play in each of our lives.⁴⁰ Social scientists have identified a handful of key concepts that not only impact policing and consumer interactions, but are also relevant in the educational context.

Implicit Bias

Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.⁴¹ These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control.⁴² Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness. Because these biases are activated subconsciously, relying on them requires relatively little mental effort. When an individual finds him or herself in a new situation with a person with which he or she is unfamiliar, an individual may rely on such stereotypes, rather than consciously assessing the situation.

Implicit bias has been studied extensively in a variety of contexts. For example, studies show that bias can lead service providers, as well as police officers, to treat identical individuals differently depending upon the perceived race, religion, or ethnicity of the individual.⁴³ Implicit bias affects a person's behavior, impairing communication between staff and consumers, as well as impacting the treatment of consumers by staff.⁴⁴ Fortunately, recent studies have identified specific practices that have been shown to reduce and override implicit biases that can interfere with best practices in consumer and police interactions.⁴⁵

Racial Anxiety

In addition to implicit bias, psychologists have also identified "racial anxiety" as a cause of discriminatory interactions. "Racial anxiety" refers to the heightened levels of stress and emotion that individuals confront when interacting with persons of other races.⁴⁶ For example, minorities, having been victim of discrimination throughout their lives, fear that they will be the subject of discrimination and hostility even when interacting with individuals whom they have never met.⁴⁷ Non-minorities, meanwhile, worry that they will be assumed to have biased beliefs. Studies have shown that interracial interaction can cause physical symptoms of anxiety and that our non-verbal behaviors — making eye contact, using welcoming gestures or a pleasant tone of voice, for example — can be affected as well.⁴⁸ The net result is that incidents that could otherwise be easily resolved — e.g., an individual not understanding a police officer's request — unnecessarily escalate, while endangering the individual. Fortunately, as with implicit bias, studies have identified practices to reduce and manage racial anxiety for both racial minorities, as well as non-minorities.⁴⁹

Stereotype Threat

Finally, psychologists have identified "stereotype threat" as a potential source of conflict in interactions with police officials. Stereotype threat is the concern that an individual's behavior will confirm a negative stereotype about the identity group to which the individual belongs.⁵⁰ Stereotype threat often arises in a situation in which a person's identity is salient because their identity group is associated with a particular behavior in a particular context.⁵¹

Stereotype threat may arise in various contexts. Persons of color may be aware that they will be subject to additional scrutiny, particularly if they are perceived to be acting strangely or anxiously. Ironically and unfortunately, being conscious of such may lead them to behave anxiously, thus raising precisely the concerns that may trigger additional scrutiny. Fortunately, over the past decade, a broad array of institutional practices have emerged that can prevent stereotype threat from being triggered in the policing, as well as the consumer context.



Summary of Key Terms and Concepts

Discrimination Actions based on prejudicial beliefs regarding, among other things, a person's race, religion, gender or sexual orientation. For example, a young man denied a job because he is Black has been the victim of discrimination, regardless of whether he was denied due to explicit or implicit bias.

Explicit v. Implicit Bias Explicit bias is a conscious attitude, i.e., a belief of which one is conscious, while implicit bias is a subconscious attitude, i.e., a belief of which an individual is unaware. Attitudes about race can be processed both implicitly and explicitly.

Prejudice Attitudes about another individual based on that person's membership in a certain social group. For example, the false belief that because a young man is Black, he is dangerous.

Racial Anxiety "Racial anxiety" refers to the heightened levels of stress and emotion that individuals confront when interacting with persons of other races. For example, minorities, having experienced discrimination throughout their lives, fear that they will be the subject of discrimination and hostility even when interacting with individuals whom they have never met. Studies have shown that interracial interaction can cause physical symptoms of anxiety, which police officials, and other individuals in positions of authority, may misinterpret.

Stereotype A mental association about a person's attitudes or actions based on the person's membership in a group. These associations are largely created by the various media sources all of us have been exposed to since birth. A police officer may have a negative association with a Black person based on the person's race without realizing it.

Stereotype Threat Stereotype threat is the concern that an individual's behavior will confirm a negative stereotype about the identity group to which the individual belongs. Persons of color may be aware that they will be subject to additional scrutiny, particularly if they are perceived to be acting abnormally. Ironically and unfortunately, being conscious of such may lead them to behave anxiously, thus raising precisely the concerns that may trigger additional scrutiny.



How Does Implicit Bias Manifest Itself in Schools?

Recent research suggests that implicit bias and its effects are not limited to only the consumer or policing contexts. Rather, implicit bias, and the related concepts discussed above, are directly relevant to discipline in the classroom, particularly as police officials become more involved in the punishment of students for in-class behavior. Psychologists are beginning to understand that the cause of the extremely high levels of discipline meted out to Black students is due, in part, to a two-way social-psychological dynamic between teachers and students, stemming from stereotyping and bias.

As noted above, stereotyping is a tool the mind uses to save mental resources and make quick judgments about others in situations of uncertainty. Research shows that people are more likely to exhibit behavior based on stereotyping and bias when their knowledge of others is ambiguous.²² Less mental energy is needed to rely on a stereotype than is needed to think through a situation.²³ Accordingly, unless directed to act otherwise, a teacher when interacting with a new student of a race different than his or her own may automatically draw conclusions regarding the student and his or her behavior, without any legitimate basis to do so.

This process can play out as follows in the classroom:²⁴ Darnell, a Black boy in the 7th grade enjoys learning about science. His teacher, Mrs. Smith, a white woman, is excited about inspiring students. Like almost all Americans, both Darnell and Mrs. Smith have been continuously exposed to negative stereotypes about or racial bias against Black boys in school through various forms of media. One day, Mrs. Smith observes Darnell throwing paper airplanes across the classroom. Mrs. Smith unconsciously interprets the misbehavior as confirmation that Darnell is a “bad kid.” When Mrs. Smith sees the same or similar behavior from Darnell later that week, she wants to punish him more harshly, believing his action to not be a relatively innocent childlike behavior, but rather a reflection of his supposedly poor and disobedient character. In turn, this can confirm Darnell’s concerns regarding the teacher’s discriminatory motive and his fear that he is not accepted in the school or the classroom. As a result, Darnell cooperates even less with Ms. Smith and other teachers. The situation unnecessarily escalates, as Darnell is entrapped in the school-to-prison pipeline, in which he is continuously punished more severely.

The example above illustrates how stereotypes and the implicit biases that result can create barriers between teachers and students, shaping their actions and responses to one another. As the school year progresses, these stereotypes and their effects wear away at the teacher-student relationship. The negative perceptions and behaviors continue to reverberate, and minor disputes lead to major infractions. Though they do not realize it, stereotypes affect Mrs. Smith and Darnell, and they miss the opportunity to connect with each other.

Teacher-student relationships are a key determinant of discipline problems, and they appear to work cyclically.⁷⁵ Disciplinary problems can strain the relationship, and as the relationship deteriorates, disciplinary problems escalate. The effects of this chain can be serious, and for some students, life-altering. As noted above, in many jurisdictions, disrespect, expressed by insubordination or classroom disruption, is one of the most common reasons teachers refer students, especially Black students, for disciplinary action.⁷⁶

These concerns are not merely conjectural, but have been borne out by recent studies examining how teachers' assumptions about Black students lead to a deterioration of the student-teacher relationship. Researchers from Stanford University gave K-12 school teachers records describing two misbehaviors over the course of four days by a student and asked them how they would respond.⁷⁷ The teachers all received the same records, but were randomly assigned to read about different students in the incidents. Half of the teachers read about a student with a stereotypically Black name (Darnell or Deshawn) while the other half read about a student with a stereotypically White name (Greg or Jake).⁷⁸ Teachers reported more negative responses to the misbehavior if it was by a student they believed to be Black, as opposed to a student they believed to be White.⁷⁹ Teachers reported that the misbehavior was more severe, felt more hindered by it, and felt more irritated by the Black student.⁸⁰ Teachers also expressed a desire to discipline the Black student more severely for the misbehavior and were more likely to anticipate that the Black student would be suspended in the future.⁸¹ Further, researchers found that the racial disparity in the teachers' responses was due to the fact that they were more likely to believe the Black student was a troublemaker.⁸²

Discipline issues impact both teachers and students. Most teachers enter the profession wanting to inspire children to fulfill their potential and reach their educational goals,⁸³ but teachers can struggle to achieve that goal when they believe they are unable to maintain control over their classroom. This leads many teachers to become disheartened and increases the likelihood that they will leave the profession.⁸⁴

One teacher expressed the following regarding her frustrations with classroom discipline:

"For the most part, I truly enjoy being with the students. But the amount of time I spend trying to get them to stop having side conversations, stop hitting each other, stop cursing, stop walking around the classroom for no reason, etc., is frankly absurd...The day-to-day efforts of managing their classroom behaviors—getting everyone quiet, focused, back on task every time someone starts talking —takes up an inordinate amount of time that should go into instruction."
—A high school teacher (Education Week, 2013).⁸⁵



For students, discipline problems can lead to anxiety, disengagement from school and an increased likelihood that they will eventually drop out of school. Racially stigmatized children, who have experienced stereotypes and bias, often from a very young age, become increasingly aware of racism as they reach adolescence.²⁴ With this awareness, students may develop anxiety about fitting in at their school as a result of their race.²⁵ Black students' internalization of the racial bias in school only confirms what they have already experienced from an early age.

The school environment becomes a place where the student mistrusts his teacher and feels like an outsider, rather than a place that promotes his or her trust and sense of belonging in the world. The student-teacher relationship is a long-term one, and is often the child's first introduction to socialization in the world outside of his or her immediate family. It can be especially threatening to a Black student when a teacher confirms fears that the child may already have about bias and stereotyping in the world.²⁶ The student's worries about fitting into the school environment can ultimately contribute to underperformance in school and disengagement from classroom activities, which can be interpreted as misbehavior.²⁷

New research contends that both the student and teacher perspectives are important in addressing implicit bias and its effects in schools. A more holistic approach—one that considers the predicaments of both teachers and students—gives us a better understanding of how relationships can go awry and of how to shift relationships towards a healthier path. The goal of these social interventions is not to de-bias teachers. Rather, this new body of research attempts to solve disparities in school discipline by curbing the impact of implicit bias in the process of decision-making.



What Can Be Done to Limit the Effects of Implicit Bias in the Classroom?

For years, teachers and principals have believed that taking a child who is misbehaving out of the classroom would improve the student's behavior, while preventing his or her classmates from being distracted. Research, however, shows that removing students from school has consequences that reach far beyond the classroom. As detailed in the previous section, traditional forms of punitive punishment, like suspension, negatively affect students and teachers. According to a 2016 study, the cost of suspensions for 10th graders in Florida and California alone exceeded \$35 billion annually when taking in factors like criminal justice costs, higher healthcare costs, and lost tax revenue.¹⁸ Thus, everyone loses.

Not only are such responses deeply damaging to students and society, but as noted above, they fail to respond to the implicit biases that can play a significant role in perpetuating the perceived disruptive behavior. As a result, the situation is likely to repeat itself with other students of color. Thankfully, researchers, as well as advocates have begun to convince districts to employ more effective and efficient interventions that directly address the impact of implicit bias.

Many schools are starting to integrate restorative methods that refocus disciplinary strategies into opportunities to nurture relationships. These new strategies follow a body of research conducted over the last decade.¹⁹ Initial research attempted to combat implicit bias by eliminating individuals' personal biases. The tested strategies ranged from increasing awareness of implicit bias by talking about racial injustice to teaching the values of different minority groups through workshops and trainings.

However, current research shows that many of these efforts are by themselves ineffective.²⁰ Awareness of bias has not, by itself, been shown to have a lasting effect on a person's behavior. More recent research has taken a slightly different approach, by placing additional focus on combatting the effects of implicit bias, as well as the biases themselves.



Three recent approaches have shown great promise to combat the effects of implicit bias in schools. "Wise Feedback," "Social Belonging," and "Empathic Discipline" employ various techniques to shift student and teacher mindsets to ones more conducive to avoiding processes that implicate implicit biases and cause the deterioration of the student-teacher relationship.

Psychological interventions that address the deterioration of student-teacher relationships restore trust between students and teachers while also improving overall outcomes for students. For example, teachers with a more empathic mindset were less likely to threaten students, to assign detention, or to involve the principal.¹⁸ Teachers were more likely to ask for students' perspectives and to adjust their conduct in the classroom to avoid future misbehavior.¹⁹ The approaches discussed below show us how basic changes in the classroom setting can improve both the student-teacher relationship and educational outcomes for children.

The "Wise Feedback" Intervention

The way in which teachers provide students feedback can be critical to student success. While most teachers know that feedback is necessary for a student to improve academically, many students may misinterpret critical feedback as an indication that the teacher is biased against them, particularly if the student is unfamiliar with the teacher or if, even worse, the teacher and student have had previous negative interactions. The "wise feedback" intervention is designed to improve communication between students and teachers in a very practical way. Researchers have found that students trust teachers more when teachers are thoughtful about how they provide critical academic feedback or "wise feedback". "Wise feedback" is feedback that sets high standards for students, but assures students that they can meet those standards.²⁰

Even seemingly simple interventions have been found to be effective. For example, in one study that tested "wise feedback", researchers attached to students' assignments a handwritten note from their teacher.²¹ The first group received a note that read, "I'm giving you these comments so you'll have feedback on your paper."²² Meanwhile, the second group received a note reading, "I'm giving you these comments because I have very high expectations and I know you can reach them."²³ While only 17 percent of students receiving the first note revised their essays, 72 percent of students receiving the second note did.²⁴ The greatest increase in revised assignments occurred among Black students who previously had the lowest rates of trust in their teachers.²⁵

The "wise-feedback" intervention prevents students from believing that the teacher may harbor a negative bias against them by presenting students with an alternative explanation for the teacher's statements.²⁶ The teacher's note shows the student that the teacher believes in their ability to succeed in the classroom. Students frequently react to the feedback positively and work to improve their grade.²⁷ The intervention demonstrates how the inclusion of clear communication and respect can improve trust between teachers and Black students while avoiding unnecessary punitive discipline.

The "Social Belonging" Intervention

Middle school presents an important transitional time for a student's emotional, social and educational growth. The "social belonging" intervention acknowledges this reality and seeks to improve relationships between teachers and students during their first year of middle school.¹⁰³

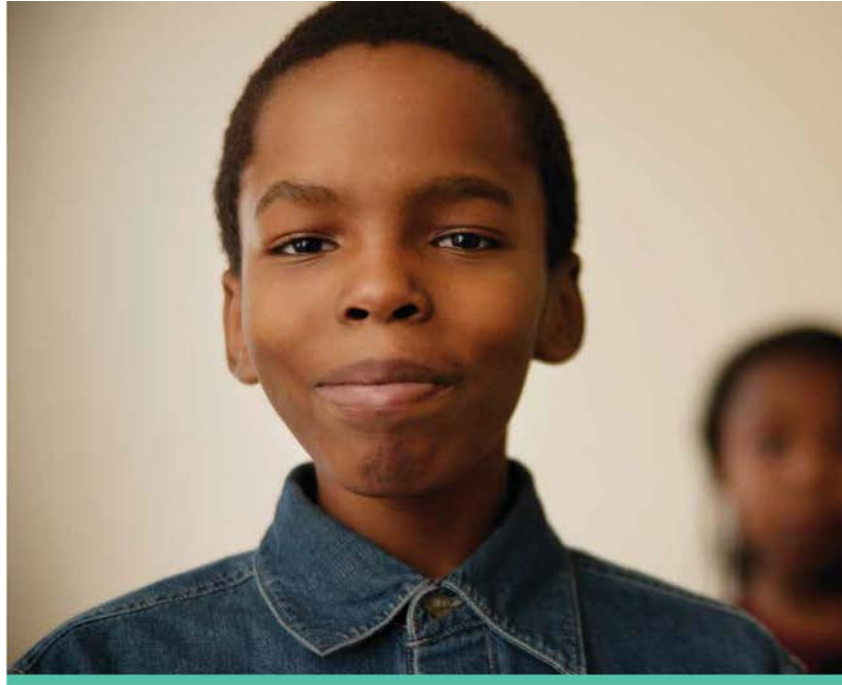
In one iteration of the "social belonging intervention", researchers encouraged 7th graders to write notes to 6th graders in an attempt to quell anxieties that 6th graders might have related to attending a new school.¹⁰⁴ The notes told 6th graders that teachers would "have their back", that "teachers are on your side," and that, with time, the new students would come to feel at home in the new school.¹⁰⁵ The intervention was particularly important to Black students, who reported lower rates of trust in the new school and feared teachers would give them negative feedback because of negative racial stereotypes.¹⁰⁶ Black students felt more comfortable in the classroom and more able to focus on their work.¹⁰⁷ Additionally, the overall student-teacher relationship improved. The recursive dynamics between the student and teacher proved to reduce incidents of discipline beginning in 6th grade, and through the end of high school.¹⁰⁸ All in all, disciplinary incidents among Black boys fell over a seven-year period by 64%.¹⁰⁹

Although the intervention is seemingly simple, such basic exercises can meaningfully improve the experience of Black students. The intervention focuses on individuals' positive desires and the sources of negative behavior, how to create better behavior, and how to elicit positive interactions on the part of the teacher and the student. By appealing to both parties' desires to be their best selves, teachers and students contribute to better overall outcomes.

The "Empathic Discipline" Intervention

Recently, a group of University of California-Berkeley and Stanford University researchers have begun developing strategies for building strong relationships between students and teachers based on the principles of "empathic discipline." They found that a one-time intervention based on these principles cut the number of school suspensions in half in five California middle schools.¹¹⁰

In the pilot, principles of empathic discipline were integrated through a series of interactive online exercises for middle school teachers.¹¹¹ Teachers were asked to read articles about discipline from students and teachers that highlighted student anxieties that contribute to student misbehavior.¹¹² Teachers first read quotations describing student fears.¹¹³ In one example, a student said, "Whenever I get a new teacher I think 'Is she gonna treat me fairly? Does she call on the White students more? Does she expect them to know the right answers and us to get them wrong?'"¹¹⁴ Teachers then read articles that focused on creating growth-oriented relationships with students who misbehave.¹¹⁵



In one example, a student said:

"One time, after I got in trouble in 7th grade, I still remember how my teacher took me aside later and listened to my side of the story. She repeated what I said back to me to be sure she understood what I was saying. Then she explained why she still had to give me a detention because I was disrupting class. Even though I still got a detention, I was glad that she didn't just dismiss what I had to say, like other teachers sometimes did. After that, I actually felt better in school because I knew I had someone to talk to."¹⁴

As part of the intervention, teachers also read stories from other teachers describing instances in which teachers used student misbehavior as an opportunity to build positive relationships with their students.¹⁵ After reading the materials, teachers wrote essays describing how they might also build positive relationships with students.¹⁶ Rather than being passive participants in the intervention, teachers took on an active role, as agents of change in their approach to teaching.

One teacher wrote,
 "[To build positive relationships], I greet every student at the door with a smile every day no matter what has occurred the day before."¹¹⁹

Another wrote,
 "I NEVER hold grudges. I try to remember that they are all the son or daughter of someone who loves them more than anything in the world. They are the light of someone's life!"¹²⁰

The ideas and aspirations expressed in their essays helped teachers adopt principles of empathic discipline and implement them in their classrooms.

The "empathic discipline" intervention has proven effective for several reasons. First, teachers gained insight into the experience of racially stigmatized students in school.¹²¹ This helped teachers understand how threats can have the potential to cause misbehavior.¹²² The exposure to student stories encouraged teachers to use discipline as an opportunity to build a relationship with the student and to cultivate a learning opportunity for that student.¹²³ Simply put, humanizing the student experience proved to help teachers see students as people who have the ability to grow and change.

In addition to dramatically reducing suspension rates, the intervention also helped students who had been previously suspended develop better relationships with their teachers and increase their sense of belonging in the school community.¹²⁴ Two months after the intervention, students who had been previously suspended described their teachers as more deserving of respect.¹²⁵

The empathic discipline model is now being implemented in several school districts throughout the U.S.

Implications and Limitations of These Approaches

Given the severe lifetime consequences racial disparities in school discipline cause, there is an urgent need to develop concrete solutions to this problem. While the interventions discussed above have proven to be effective in initial testing, they cannot by themselves eliminate disparities in discipline.

Student-teacher relationships exist in the context of schools, which are part of school districts, which, in turn, are managed by states. Each of these institutions, through their policies and practices, affect the relationship between teachers and students. When local and state policies prioritize the criminalization of students, teachers, despite their best intentions, may have only a limited ability to eliminate disparities. For example, while the techniques discussed above may help improve the relationship between teachers and students, they do not address the conduct of SROs. As noted above, law enforcement in school contribute significantly to negative outcomes for Black students. To fully address the racial disparities, schools and local educational agencies must severely curtail, if not eliminate, the presence or, at a minimum, role of school resource officers.



Conversely, when local and state governments eliminate policies that contribute to racial disparities, it can improve educational outcomes and the experience of both students and teachers. For example, California recently amended its Education Code to eliminate a teacher's authority to suspend (grades K-3) or expel a student (grades K-12) for "disruption" and for "willful defiance."¹²⁴ As in Texas, willful defiance has been one of the most common reasons for disciplining students in California and has significantly contributed to racial disparities in discipline between Black and White students.¹²⁵ The amendment may help reduce suspension rates for minor behavior, and if coupled with means for teachers and students to maintain stronger teacher-student relationships, it can mitigate racial inequality in suspension rates as well. Both teachers and students can feel less hindered by stereotypes and more capable of reaching their respective goals in the school context.



Conclusion

Every year, large numbers of Black students are ushered away from the classroom into the criminal justice system. The racial disparities in school discipline continue to feed the school-to-prison pipeline, with a disproportionate number of Black youth filling our jails and prisons. New interventions with more attention directed towards student-teacher relationships and the social and psychological factors contributing to these relationships have begun to lessen the extreme levels of discipline administered to Black children. As this body of work evolves, we have the potential to contribute significantly to keeping Black children in classrooms – where they belong.

Recommendations

Implicit Bias

1. Require Teachers, Administrators and any other school officials that have the power to suspend, expel or otherwise discipline students to undergo training regarding implicit bias, specifically what it is, how it is created, and how it affects interactions in the educational context, including student discipline.
2. Implement interventions that reduce the effects of implicit bias in the educational context by, among other things, encouraging teachers to provide feedback, that if critical, reassures students of their ability to achieve.
3. Implement interventions that reduce the effects of implicit bias in the educational context by, among other things, creating feelings of social belonging for all students, particularly Black students, who, due to a history of discrimination, may distrust their teachers.
4. Implement interventions that reduce the effects of implicit bias in the educational context by, among other things, encouraging teachers to respond to perceived student misbehavior with dialogue, understanding, and other empathic principles.

Discretionary Offenses

1. Collect and publicly report data on discipline related to discretionary offenses, sortable by charge, disaggregated by race and disability status and cross-tabulated by gender.
2. Conduct an annual comprehensive review and issue a report analyzing all data regarding discretionary offenses and, if necessary, implement interventions to address racial disparities.
3. Prohibit the expulsion or prolonged out of school suspension of students for discretionary offenses.
4. Solicit and employ the feedback of affected community members, including disciplined students and their families, in the process of revising policies and practices related to the disciplining of students for discretionary offenses.
5. Implement evidence-based practices, such as School-Wide Positive Behavior Supports, shown to properly address minor misbehavior while improving school safety and academic achievement: <http://www.pbis.org>.
6. Implement early intervention programs for students who are repeatedly punished for discretionary offenses and who are at risk of being retained in grade or dropping out of school.
7. Implement a restorative justice model for responding to discretionary offenses by students, allowing the student to be reintegrated into the educational community, as opposed to unnecessarily excluding him or her.
8. Provide screening of students repeatedly disciplined to ensure that the behavior is not the product of a disability. If it is, discontinue disciplining the student for such behavior and, in its place, provide an appropriate accommodation and/or appropriate mental health services.

School Resource Officers

1. Prohibit the use of SROs to address non-violent student code of conduct violations and other non-law enforcement related matters, and prohibit the use of SROs to assist with classroom management, including, but not limited to, responding to disruptive students.
2. Detail legal standards relating to stops, searches, arrests and the use of force by SROs.
3. Require that school officials use alternative measures to resolve a situation before involving an SRO.
4. Require local school districts use adequate hiring criteria for SROs, including prohibitions on the hiring or assignment of SROs that have a history of discriminatory conduct.
5. Require adequate training for all SROs on de-escalation and on how to effectively engage with students, including those with disabilities and of color.
6. Require local schools districts, their state partners, and law enforcement agencies to annually collect and publicly report use-of-force and other complaints regarding a SRO's treatment of a student.
7. Require local school districts and their state partners to collect and annually report for public release the number of SROs in each district, including actual enforcement officers and private security personnel, disaggregated by school level.
8. Require local schools districts, their state partners, and law enforcement agencies to annually collect and publicly report the number of arrests by SROs, the race and gender of students arrested, and whether they have a disability.
9. Require local school districts and their state partners to annually evaluate whether the presence of SROs is necessary to a legitimate educational goal, and if so, whether the goal can be satisfied by a reasonable alternative means.

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The U.S. high court's continual refinement of an obscure legal doctrine has made it harder to hold police accountable when accused of using excessive force.

By [ANDREW CHUNG](#), [LAWRENCE HURLEY](#), JACKIE BOTTS, [ANDREA JANUTA](#) and GUILLERMO GOMEZ

Filed May 8, 2020, noon GMT

Staff at the local hospital in tiny Madill, Oklahoma, called the police in the early evening of March 24, 2011, for help giving Johnny Leija an injection to calm him. Security cameras captured much of the ensuing encounter.

The officers, after shooting Leija with a stun gun, follow him down a corridor, shock him again, and wrestle him to the floor. One officer then straddles Leija's back, trying to handcuff him as the others struggle to pull back his arms. They get one handcuff on. Leija goes limp. The officers step back. Hospital staff drop to Leija's side and begin a futile effort to resuscitate him.

The Oklahoma Chief Medical Examiner's Office determined that Leija, his lungs already compromised by pneumonia, was starved for oxygen in his struggle with the police and died from "respiratory insufficiency."

The county sheriff and the Madill police chief defended the officers' actions as appropriate to the situation. The cops were not charged with any wrongdoing.

Erma Aldaba, however, blamed the officers for her son's death. "My son wasn't a criminal, my son was sick," she said in an interview.



HITTING A WALL: Erma Aldaba sought to hold police liable for her son's deadly encounter with police, but qualified immunity ended her lawsuit before it could even get to trial. REUTERS/Andrew Chung

So Aldaba took the only other route open to people in her situation: She sued. Her lawsuit in federal district court in Muskogee, Oklahoma, alleged that the three officers used excessive force, violating her son's civil rights under the Fourth Amendment to the U.S. Constitution, which protects against unreasonable search and seizure.

But almost immediately, her case hit a formidable obstacle: a little-known legal doctrine called qualified immunity. This 50-year-old creation of the U.S. Supreme Court is meant to protect government employees from frivolous litigation. In recent years, however, it has become a highly effective shield in thousands of lawsuits seeking to hold cops accountable when they are accused of using excessive force.

Excessive force, zero justice

Even when courts find police used too much force, they still often grant immunity. Here are just a few of those cases.

Video submitted as evidence to U.S. District Court for Utah

David Becker suffers brain damage after a cop smashes him to the ground in Heber City, Utah.

Video submitted as evidence to U.S. District Court for Eastern Michigan

Laszlo Latits is shot dead while in a car and trying to reverse away from police in Ferndale, Michigan.

Video submitted as evidence to U.S. District Court for Central California

Gerrit Vos, during mental health crisis, is shot dead exiting a store in Newport Beach, California.

At first, it looked like Aldaba would clear the hurdle. The judge hearing her case, and then a federal appeals court, rejected the officers' claim of qualified immunity.

The appeals panel based its decision on a two-question test courts use to weigh police requests for immunity. The first is whether the evidence shows or could convince a jury that the officers used excessive force in violation of the Fourth Amendment. The second question is whether the officers should have known they were breaking "clearly established" law – a Supreme Court coinage for a court precedent that had already found similar police actions to have been illegal.

To both questions, the court determined, the answer was yes.

Then, at the officers' request, the Supreme Court intervened. The justices ordered the appeals court to reconsider its ruling, indicating that they disagreed with the lower court.

Back at the appeals court, Aldaba's lawyer argued, as he had the first time around, that the cops' treatment of Leija was "clearly established" as illegal. To support his argument, he cited earlier cases in which police were held liable for using excessive force on unarmed, mentally compromised people. Not similar enough, the court now said, so the cops had no reason to think they were breaking the law. The police got immunity. Aldaba's case was dead.

"It makes me feel that there was a mistake, but we can't win," Aldaba, 60, said. "We can't win fighting the cops."

Qualified immunity: Grant or deny?

Effective barrier

Aldaba's lament has become an increasingly common one. Even as the proliferation of police body cameras and bystander cellphone video has turned a national spotlight on extreme police tactics, qualified immunity, under the careful stewardship of the Supreme Court, is making it easier for officers to kill or injure civilians with impunity.

The Supreme Court's role is evident in how the federal appeals courts, which take their cue from the high court, treat qualified immunity. In an unprecedented analysis of appellate court records, Reuters found that since 2005, the courts have shown an increasing tendency to grant immunity in excessive force cases – rulings that the district courts below them must follow. The trend has accelerated in recent years. It is even more pronounced in cases like *Leija's* – when civilians were unarmed in their encounters with police, and when courts concluded that the facts could convince a jury that police actually did use excessive force.

In excessive force cases against police, the courts ...

Reuters found among the cases it analyzed more than three dozen in which qualified immunity protected officers whose actions had been deemed unlawful. Outside of Dallas, Texas, five officers fired 17 shots at a bicyclist who was 100 yards away, killing him, in a case of mistaken identity. In Heber City, Utah, an officer threw to the ground an unarmed man he had pulled over for a cracked windshield, leaving the man with brain damage. In Prince George's County, Maryland, an officer shot a man in a mental health crisis who was stabbing himself and trying to slit his own throat.

The increasing frequency of such cases has prompted a growing chorus of criticism from lawyers, legal scholars, civil rights groups, politicians and even judges that qualified immunity, as applied, is unjust. Spanning the political spectrum, this broad coalition says the doctrine has become a nearly failsafe tool to let police brutality go unpunished and deny victims their constitutional rights.

The high court has indicated it is aware of the mounting criticism of its treatment of qualified immunity. After letting multiple appeals backed by the doctrine's critics pile up, the justices are scheduled to discuss privately as soon as May 15 which, if any, of 11 such cases they could hear later this year.

Justice Sonia Sotomayor, one of the court's most liberal members, and Clarence Thomas, its most conservative, have in recent opinions sharply criticized qualified immunity and the court's role in expanding it.

In a dissent to a 2018 ruling, Sotomayor, joined by fellow liberal Justice Ruth Bader Ginsburg, wrote that the majority's decision favoring the cops tells police that "they can shoot first and think later, and it tells the public that palpably unreasonable conduct will go unpunished."

In that case, *Kisela v. Hughes*, the justices threw out a lower court's ruling that denied immunity to a Tucson, Arizona, cop who shot a mentally ill woman four times as she walked down her driveway while holding a large kitchen knife.

A year earlier, Sotomayor in [another dissent](#) called out her fellow justices for a “disturbing trend” of favoring police. “We have not hesitated to summarily reverse courts for wrongly denying officers the protection of qualified immunity,” Sotomayor wrote, citing several recent rulings. “But we rarely intervene where courts wrongly afford officers the benefit of qualified immunity.”

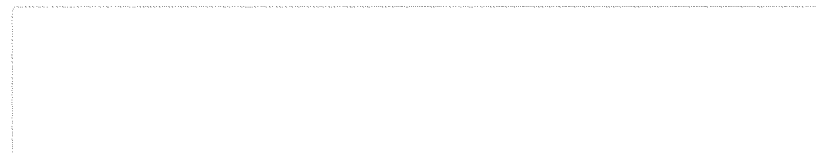
Sotomayor was responding to the majority's decision not to hear an appeal brought by Ricardo Salazar-Limon, who was unarmed when a Houston police officer shot him in the back, leaving him paralyzed. A lower court had granted the officer immunity.

The Reuters analysis supports Sotomayor's assertion that the Supreme Court has built qualified immunity into an often insurmountable police defense by intervening in cases mostly to favor the police. Over the past 15 years, the high court took up 12 appeals of qualified immunity decisions from police, but only three from plaintiffs, even though plaintiffs asked the court to review nearly as many cases as police did. The court's acceptance rate for police appeals seeking immunity was three times its average acceptance rate for all appeals. For plaintiffs' appeals, the acceptance rate was slightly below the court's average.

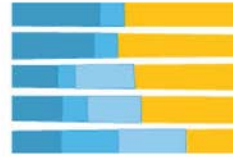
In the cases it accepts, the court nearly always decides in favor of police. The high court has also put its thumb on the scale by repeatedly tweaking the process. It has allowed police to request immunity before all evidence has been presented. And if police are denied immunity, they can appeal immediately – an option unavailable to most other litigants, who typically must wait until after a final judgment to appeal.

“You get the impression that the officers are always supposed to win and the plaintiffs are supposed to lose,” University of Chicago law professor William Baude said. In his research, Baude has found that qualified immunity, as a doctrine, enjoys what he calls “privileged status” on the Supreme Court, which extends to cases the court decides without even hearing arguments – a relatively rare occurrence. In such cases, the court disproportionately reversed lower courts' denials of immunity.

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All nine current justices declined to be interviewed for this article. They have offered few explanations of the court's stance on qualified immunity beyond writing in opinions that the doctrine balances individuals' rights with the need to free officials from the time-consuming and costly burden of unnecessary litigation.

Defining 'clearly established'

The main challenge for plaintiffs in excessive force cases is to show that police behavior violated a "clearly established" precedent. The Supreme Court has continually reinforced a narrow definition of "clearly established," requiring lower courts to accept as precedent only cases that have detailed circumstances very similar to the case they are weighing.

"We have repeatedly told courts not to define clearly established law at a high level of generality," the court wrote in a November 2015 [opinion](#), repeating its language from an earlier ruling. In that 2015 opinion, the justices reversed a lower court decision and

granted immunity to Texas State Trooper Chadrin Mullenix, who had stopped a high-speed chase by shooting at a vehicle from an overpass, killing the driver.

Critics of qualified immunity say the high court's guidance has created a ludicrously narrow standard. Even some judges feel constrained. In a 2018 decision, James Browning, a judge in federal district court in New Mexico, said he was ruling "with reluctance" in favor of an officer who had slammed an unarmed man to the floor in his own home while he was yelling at the police.

The force the cop used, Browning ruled, was excessive. But the officer had to be granted immunity, he said, because of subtle differences with the earlier case Browning had considered as a possible "clearly established" precedent. Those differences included the distance between the men and the officers and what the men were yelling. Even the locations of the respective incidents could be a factor, the judge noted, the earlier case having occurred in a Target parking lot.

In his ruling, Browning criticized the high court's approach because "a court can almost always manufacture a factual distinction" between the case it is reviewing and an earlier case.

In February, the federal appeals court in Cincinnati, Ohio, granted immunity to an officer who shot and wounded a 14-year-old boy in the shoulder after the boy dropped a BB gun and raised his hands. The court rejected as a precedent a 2011 case in which an officer shot and killed a man as he began lowering a shotgun. The difference between the incidents was too great, the court determined, because the boy had first drawn the BB gun from his waistband before dropping it.

In other recent cases, courts have sided with police because of the difference between subduing a woman for walking away from an officer, and subduing a woman for refusing to end a phone call; between shooting at a dog and instead hitting a child, and shooting at a truck and hitting a passenger; and between unleashing a police dog to bite a motionless suspect in a bushy ravine, and unleashing a police dog to bite a compliant suspect in a canal in the woods.

The Supreme Court in 2009 raised the bar even higher for plaintiffs to overcome qualified immunity. In Pearson v. Callahan, it gave judges the option to simply ignore the question of whether a cop used excessive force and instead focus solely on whether the conduct was clearly established as unlawful.

In the decade since then, the Reuters analysis found, appeals courts have increasingly ignored the question of excessive force. In such cases, when the court declines to establish whether police used excessive force in violation of the Fourth Amendment, it avoids setting

a clearly established precedent for future cases, even for the most egregious acts of police violence. In effect, the same conduct can repeatedly go unpunished.

Plaintiffs in excessive force cases against police have had a harder time getting past qualified immunity since a 2009 Supreme Court decision allowing lower courts to weigh only whether the force used is established in precedent as unlawful.

The case of Khari Illidge shows this perverse dynamic at work.

One cool spring evening in 2013, sheriff's deputies in Phenix City, Alabama, a suburb of Columbus, Georgia, responded to a trespassing call. They found Illidge wandering along a quiet, tree-lined road. The 25-year-old was naked, covered in scratches and behaving erratically.





NEVER BEFORE? Khari Illidge died after police hogtied him and a 385-pound officer kneeled on his back, but the court hearing Illidge's mother's lawsuit determined there was no precedent establishing the cops' behavior as unlawful. Gladis Callwood/Handout via REUTERS

In the encounter, the deputies shocked Illidge six times with a stun gun before he fell to the ground. As he lay face-down, one deputy shocked him 13 more times as two others struggled to handcuff his wrists, according to their testimony. They then shackled his ankles with leg irons and fastened them to his handcuffs – an extreme form of restraint, known as a hogtie, that many police departments across the country have banned.

A 385-pound officer then kneeled on Illidge's upper back until he went limp. Illidge was pronounced dead on arrival at the hospital. The autopsy report lists cardiac arrest as the cause of death.

"They treated him like an animal," Gladis Callwood, Illidge's mother, said. "Or maybe even worse."

Callwood sued the police, alleging excessive force. The cops claimed qualified immunity. They said they did what was necessary to subdue an aggressive man who resisted arrest and who, according to a friend who had seen him earlier, had probably taken LSD. A toxicology report found no traces of the drug in his blood.

"You have to make split-second decisions," Ray Smith, one of the deputies who had shocked and hogtied Illidge, told Reuters. Hesitation can be deadly, he said.

Judge W. Harold Albritton in federal district court in Montgomery, Alabama, sided with the cops. In his ruling, the judge said there was no precedent establishing that the officers'

treatment of Illidge was unlawful.

The Atlanta-based 11th U.S. Circuit Court of Appeals agreed – even though it had heard a case involving hogtying in Florida in 2009. In that earlier case, Donald George Lewis died after West Palm Beach cops hogtied him on the side of the road where they had found him disoriented and stumbling through traffic. But the appeals court in that earlier case granted immunity without addressing whether the force police used was excessive. As a result, the court didn't establish a precedent that could apply in subsequent cases – including Callwood's.

By allowing judges to consider only the question of clearly established law in excessive force cases, the Supreme Court created a closed loop in which “the case law gets frozen,” said lawyer Matt Farmer, who represented Lewis's family.

In October 2018, the Supreme Court declined to review Callwood's case. Her lawsuit, like Aldaba's, was dead.

High-profile outliers

Police have difficult, high-risk jobs. Few would dispute that. Qualified immunity is essential, proponents say, because police need latitude to make split-second decisions in situations that could put lives, including their own, at risk.

“It is very easy to second-guess the decision making of a police officer when you are sitting at a desk,” said Chris Balch, an Atlanta-based lawyer who represents police departments in civil rights cases.

Larry James, general counsel of the National Fraternal Order of Police, said the trend in appeals courts to favor immunity reflects the high volume of meritless lawsuits civil rights lawyers file. “Plaintiffs' lawyers sue everyone under the sun, irrespective of the facts,” he said.

Even so, as the Reuters analysis found, appellate courts have ruled in favor of plaintiffs, denying cops immunity, in 43 percent of cases in recent years. As opponents of qualified immunity point out, denial of immunity doesn't automatically mean cops will be held liable for alleged excessive force. When such cases go to trial, juries may side with police after weighing the facts of a case. Also, local governments or their insurers, not the cops themselves, typically bear the financial burden of litigation, settlements or jury awards.

The U.S. government does not maintain comprehensive data on civilians killed or seriously injured by police. According to media organizations and police-accountability groups that compile numbers from police reports, news accounts and other sources, the number of deaths alone is about 1,000 a year.

A handful of those incidents draw national attention to police tactics – for example, the 2014 death of Eric Garner after New York City police put him in a lethal chokehold. In such high-profile cases, qualified immunity rarely comes into play. Instead, police departments, often under heavy political pressure and facing public protests, typically offer big dollar settlements to victims or their survivors. The cops may also face disciplinary action or criminal charges.

In the far more numerous incidents of alleged excessive force that don't make national headlines, police departments are under less pressure to settle, and officers are even less likely to be prosecuted or otherwise disciplined. In those cases, federal civil rights lawsuits provide the obvious avenue for holding cops accountable.

The United States first allowed citizens to sue government officials for civil rights violations in a law passed in 1871. These so-called Section 1983 lawsuits were intended to give citizens a path to justice when state and local authorities in the post-Civil War era turned a blind eye to – or even participated in – acts of racist violence by groups like the Ku Klux Klan.

Nearly a century later, the Supreme Court introduced qualified immunity, articulating the doctrine in a 1967 ruling to limit Section 1983 lawsuits. The court reasoned that police should not face liability for enforcing the law in good faith. The court refined the doctrine in 1982 to include the “clearly established” test.

Today, after decades of Supreme Court tweaks to how excessive force cases are judged, plaintiffs' lawyers say the deck is unfairly stacked against their clients. “Why are there so many police shootings?” said Dale Galipo, a prominent California civil rights attorney. “I would say one of the reasons is there's no accountability, there's no deterrent.”

Several lawyers told Reuters they decline to take cases they think may have merit in large part due to the high barrier of qualified immunity. “I have turned down dozens of police misconduct cases and have routinely referred the potential plaintiffs to qualified immunity as a major problem,” said Victor Glasberg, a civil rights lawyer in Virginia.

The American Association for Justice, the plaintiff bar's main lobbying group and a backer of efforts to curb qualified immunity, knows that its “members would like to pursue cases where people are treated unjustly,” said Jeffrey White, the group's senior associate general counsel. But, he added, lawyers must think carefully when “the chances of obtaining justice are tilted heavily towards defendants.”

Gentle and loyal

Johnny Leija spent his life in small towns in the dry, flat farming and oil country on both sides of the Oklahoma-Texas border, quitting school after junior high to take a series of temporary construction jobs.

He was gentle and fiercely loyal to his family, friends and relatives told Reuters. They recounted the time Leija ended up with a broken leg after sticking up for his sister in a fight with her abusive boyfriend. In his early 20s, he spent a year in Marshall County jail for marijuana possession. After that, his family said, he never indulged in anything harder than the occasional Bud Light.

Leija moved to Madill in early 2011 with his girlfriend, Olivia Flores, and the four children they were raising – one of their own and three by Flores from an earlier relationship. He soon got a job welding and painting horse trailers, but money was tight. Leija, Flores and the children were sleeping on the floor of their still-unfurnished house. In late March, when Leija started complaining about pain in his chest and torso, Flores had to pawn a radio to buy medicine.

On the morning of March 24, 2011, after Leija spent most of the night vomiting, he and Flores headed to the emergency room at Integris Marshall County Medical Center, now called AllianceHealth Madill. Details of what happened over the next 12 hours come from a review of hundreds of pages of medical, police and court records and interviews with people involved.

When first examined, Leija was agreeable and alert, but his blood oxygen levels were dangerously low. He was put on oxygen and given antibiotics through an intravenous line. He soon seemed on the mend and was admitted to a room down the hall.

Flores left midafternoon to pick up the children from school. Soon after, Leija's breathing became labored. His blood-oxygen level plunged again. He became distressed and aggressive. The doctor on call, John Conley, prescribed over the phone an anti-anxiety pill. Leija refused it, claiming that the hospital staff was trying to poison him. "I am Superman," he yelled. "I am God!"



ILL-FATED VISIT: Johnny Leija, here at the baptism of his infant daughter, had only recently moved to Madill, Oklahoma, when illness forced him to seek medical attention at the hospital where he would die in an encounter with police. Olivia Flores/Handout via REUTERS

He somehow cut the IV line and told a nurse that he needed to leave. Conley, again by phone, told nurses to give Leija an injection to calm him. The hospital had no security staff, so a nurse called the police to help restrain Leija for the shot. Conley arrived minutes later, finding Leija in the bathroom still insisting he had to leave the hospital.

Madill Police Officer Brandon Pickens and Marshall County Deputy Sheriffs Steve Atnip and Steve Beebe were eating dinner at La Grande, a Tex-Mex joint on a highway north of Madill, when they got the call about an unruly patient at the hospital.

They had little information when they arrived. Beebe thought Leija, dressed in a white T-shirt and pajama bottoms, was a visitor, not a patient.

According to the officers' accounts, Leija pulled the gauze from his IV site and yelled, "This is my blood!" as it dripped on the floor.

The officers ordered Leija to his knees. He did not comply. Beebe aimed his Stinger stun gun at Leija and fired, hitting Leija in the chest.

It had little effect. Leija "hollered out, shook a bit," a nurse later testified. Beebe, Pickens and Atnip then grabbed Leija, 5 foot 8 and 230 pounds, and pushed him against a wall, where Beebe pressed the Stinger against Leija's back and shocked him again. The four toppled onto the lobby floor with a thud.

Pickens and Atnip were holding Leija face down and Beebe was trying to handcuff him when he grunted and stopped moving. Clear fluid poured from his mouth and pooled on the floor around his head.

Conley and staff spent 40 minutes trying to revive Leija. At 7:29 p.m., he was pronounced dead, a Stinger dart still stuck in his chest.

Marc Harrison, a forensic pathologist with the Oklahoma Chief Medical Examiner's Office, testified in a sworn deposition that Leija's manner of death was "natural," but that "it would be reasonable to assume" that two shocks with a stun gun and Leija's physical struggle with police would have "required an elevated need for oxygen." Through the medical examiner's office, Harrison said he stands by his opinion.

Stern denials

When Aldaba's lawsuit against the officers landed in federal court in Muskogee, Oklahoma, the officers' lawyers quickly asked that the case be thrown out on the grounds of qualified immunity.

It was “abundantly clear” that the force used on Leija was not excessive, the police lawyers argued. Further, they said, no established precedent put the officers on notice that they would violate Leija’s rights “by attempting to subdue an individual so that medical staff could properly treat him.”

Judge Frank Seay disagreed. He noted that officers’ accounts differed from each other about the extent of the threat Leija posed and what the officers knew about his medical condition. For instance, the two sheriff deputies said Leija was “slinging blood” and had challenged them to fight, but officer Pickens did not make those claims. And while all three officers said Leija was bleeding heavily, two nurses present testified that he wasn’t.

“Leija was a hospital patient. He was not armed in any fashion. While it is alleged that he was using his blood as a weapon, there is no evidence that any blood spattered on any of the officers,” Seay said in his April 5, 2013, ruling. The case against the three officers could now move forward.

Beebe, the deputy who twice shocked Leija, said in an interview that his biggest regret about the fatal encounter was not having more details on Leija and his medical condition. “Maybe we could have done things different if we had that information,” Beebe said. “The last thing you want to do is end up with somebody dying.” He added: “I’m sad for the family. We all live in the same community.”



IN THE MOMENT: Marshall County Deputy Sheriff Steve Beebe, one of the three officers trying to subdue Johnny Leija when he died, said cops "shouldn't have to worry about being sued every time" they have to use force. REUTERS/Andrew Chung

Beebe also serves as pastor at a Southern Baptist church in a nearby town – a role that he said has helped him understand the need to de-escalate stressful situations.

In the encounter with Leija, however, he and the other officers "did the right thing" to protect themselves and the people in the hospital, he said. "I think we need to be held accountable," Beebe said. "But when we go out, sometimes we have to use force... We shouldn't have to worry about being sued every time."

Pickens, now a firefighter in Madill, directed questions to his police superiors. City Manager James Fullingim, who was police chief at the time of Leija's death, said immunity is important for officers to perform their jobs. "The officers absolutely did not do anything wrong," he said.

Atnip died in a motorcycle accident in 2015. Conley, the doctor who treated Leija, declined to comment.

The police took their case to the 10th U.S. Circuit Court of Appeals in Denver, Colorado. That court was no less stern in denying the officers' appeal, faulting their decision to "Tase and wrestle to the ground a hospital patient whose mental disturbance was the result of his serious and deteriorating medical condition." Leija did not commit any crime, the court said, and he posed a threat only to himself, passively resisting the officers. "The situation the police officers faced in this case called for conflict resolution and de-escalation, not confrontation and Tasers," the court said.

The officers then petitioned the Supreme Court to review the case. Their appeal arrived just as the justices were weighing the case of Texas State Trooper Mullenix, the cop who shot and killed a fleeing driver from an overpass.

The lower courts had denied Mullenix immunity, saying it was unclear how much of a risk the driver had posed. But on Nov. 9, 2015, the Supreme Court reversed the lower courts. Ignoring whether the force used was illegal, the justices focused on whether Mullenix's actions had been clearly established as illegal. It concluded that none of the three car-chase cases it had previously decided were similar enough.

The same day, the justices ordered the 10th Circuit to use the Mullenix ruling as a guide in reconsidering whether qualified immunity should apply in Aldaba's case.

Aldaba's lawyer, Jeremy Beaver, pointed out to the appellate panel a handful of "strikingly similar" rulings from the 10th Circuit going back nearly 20 years that provided "ample warning" to the police that their actions were unlawful.

Case law since 2001, Beaver noted, required police to consider a person's diminished mental health or capacity when determining what force to use. A 2007 case denounced the beating and Tasing of an unarmed, nonviolent person who was not fleeing. So did a similar case from 2010.

"Mr. Leija had a clearly established right to be free from Taser and tackling while he was a hospital patient who had committed no crimes, was unarmed, was not a threat to the officers or the public, and was mentally and physically compromised," Beaver argued in court papers.

That wasn't enough. The revised appeals court decision, written by Judge Gregory Phillips, dismissed Beaver's arguments because the "offered cases differ too much from this one."

Phillips said the cases Beaver cited involved force to detain people for "non-medical" reasons and did not involve hospital personnel "standing by observing" the incident. "We have found no case presenting a similar situation," the judge wrote. Phillips did not respond to a request for comment.

The outcome, Beaver said, highlights the painful paradox of qualified immunity. Aldaba “had to live with the fact that at every stage, every judge that reviewed the case determined that there were constitutional violations that had occurred,” he said. “Despite that, she still couldn’t have a trial.”



UNMARKED: Johnny Leija's mother, Erma Aldaba (right), and one of his sisters at Johnny's grave, where they had hoped to place a gravestone paid for from the jury award they expected from Aldaba's lawsuit against the cops. REUTERS/Andrew Chung

Shielded

By Andrew Chung in Madill, Oklahoma; Lawrence Hurley in Washington, D.C.; Jackie Botts in Los Angeles; and Andrea Januta and Guillermo Gomez in New York

Data: Jackie Botts, Andrea Januta and Guillermo Gomez
Westlaw research: Kate MacEachern and Matthew Gilson

Video: Adam Weisen
Visual editors: Feilding Cage and Sarah Slobin
Edited by John Blanton and Janet Roberts

Civil Rights Principles for Safe, Healthy, and Inclusive School Climates



Civil Rights Principles for Safe, Healthy, and Inclusive School Climates

The federal government's role in ensuring schools are free from discrimination has been articulated and affirmed by the U.S. Supreme Court, Congress, and the U.S. Department of Education (ED).¹ Ensuring that all children are safe and welcome in schools is incredibly important to our organizations, our partners, and the communities we represent.

At such a tenuous time, the nation, federal and state governments, and schools are focused on the importance of building safe, healthy, and inclusive school environments. The tragedies that have occurred in schools across the country demand serious investments in evidence-based policies and practices that keep children and staff safe and do not exacerbate the school-to-prison pipeline, further criminalize marginalized children, or increase the over-policing of students in schools and communities. These investments and policy changes are needed to prevent further disenfranchisement of historically marginalized students, including students of color, Native students, students with disabilities, LGBTQ youth, religious minorities, sexual assault survivors, and immigrant students, among others. These practices include comprehensive, multi-tiered systems of support; counseling; positive behavior supports; restorative justice programs; and trauma-informed care.

In order to ensure that students are learning in safe, healthy, and inclusive environments, we seek PK-12 school climate legislation that meets the following principles. We ask members of Congress to fulfill their role in helping educators and communities create and maintain safe schools that afford all students equal educational opportunities by incorporating these principles into all relevant legislation.

Overarching Goals

Several goals are included throughout school climate work and run through each of the principles outlined below. We believe each priority should be fully funded, provided with adequate resources to be effective, and targeted at the schools and students that need them the most. Additionally, all school staff need to receive evidence-based, culturally responsive training and other professional development to be able to implement any programs or policies put in place to improve school climate and ensure equitable educational opportunities for all students. All legislation should include sufficient oversight and enforcement to ensure compliance.

¹ See: Brown v. Board of Education (1954); Lau v. Nichols (1974); Plyler v. Doe (1982); Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Individuals with Disabilities Education Act (IDEA); Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act (ADA) of 1990; Age Discrimination Act of 1975.

PRINCIPLE #1: ENSURE RIGHTS OF STUDENTS Federal law and policy must protect and enforce students' legal rights. Legislation should protect the right to a hearing for students who face suspension from school and the right to effective and timely parental notification of disciplinary actions; ensure all children, regardless of immigration status, have equal access to an education; ensure that transgender students (including boys, girls, and children of all other genders) are safe and supported at school, including by ensuring their access to programs and facilities that match their gender identity; ensure that schools address sexual harassment in an equitable manner consistent with guidance documents issued by ED in 2001,² 2011,³ and 2014⁴; ensure and affirm all rights of students, including First Amendment rights, which have historically protected organizing and dissent at schools; enforce the protections assured by the Constitution with regard to search, seizure, and interrogation at school for all students; and ensure that students are not subject to discriminatory discipline based on race, color, national origin, disability, religion, or sex (including sexual orientation, gender identity, and pregnancy status), including by restoring a private right of action for disparate impact claims. All legislation must include an oversight mechanism to publicly identify when schools and local education agencies are not protecting students' rights and a private right of action when students' rights are violated.

PRINCIPLE #2: ENCOURAGE SCHOOLS TO IMPLEMENT COMPREHENSIVE AND SUPPORTIVE DISCIPLINE PRACTICES The most effective methods for improving school climate engage children and teachers in pro-social activities that build positive relationships, promote cultural competency, confront bias, celebrate diversity, are trauma-informed, and instill a sense of community throughout the school. Any legislation intended to improve school climate should require that federal funds be used to implement only evidence-based, preventative measures that build positive school cultures and alternatives to exclusionary discipline and criminalization. This includes offering comprehensive professional development opportunities; hiring enough guidance counselors, social workers, and health professionals who are knowledgeable about child-centered civil rights laws; and employing culturally responsive practices (including accessible to people with disabilities and English language learners), restorative justice, and school-wide positive behavioral interventions and supports. All legislation should include oversight provisions and penalties for local education agencies that fail to comply.

² U.S. Department of Education Office for Civil Rights. "[Revised Sexual Harassment Guidance: Harassment of students by school employees, other students or third parties](#)." January 19, 2001.

³ U.S. Department of Education Office for Civil Rights. "[Dear Colleague Letter](#)," April 4, 2011.

⁴ U.S. Department of Education Office for Civil Rights. "[Questions and Answers on Title IX and Sexual Violence](#)," April 29, 2014.



PRINCIPLE #3: ADDRESS CHILDHOOD TRAUMA Schools should foster a positive climate for learning by supporting all children, including by acknowledging the trauma that some children and their families – and also administrators and teachers – experience every day. Any legislation to address school climate must include funding for effective professional development for school personnel to implement practices that recognize, acknowledge, and respond appropriately to childhood trauma; more mental health services and counselors; and funding and technical assistance to programs that support children, including restorative justice programs, school-wide positive behavioral interventions and supports, positive youth development, and social and emotional learning. Such legislation must also include reporting and oversight requirements to ensure grant funding is being used as intended by the law.

PRINCIPLE #4: ENHANCE PROTECTIONS AGAINST HARASSMENT AND DISCRIMINATION IN SCHOOL Congress must resoundingly affirm children's right to be free from discrimination, including harassment and bullying (including cyberbullying) based on protected traits, including sexual orientation or gender identity. Schools that receive federal funds should be required to adopt codes of conduct that specifically prohibit bullying and harassment on the basis of actual or perceived race, color, national origin, disability, sex (including sexual orientation, gender identity, pregnancy and related conditions), and religion, as well as retaliation for being a party or witness in a complaint of discrimination or bullying. Additionally, Congress should affirm and clarify that sexual orientation and gender identity are protected traits that are subject to anti-discrimination protection in educational programs. Schools should also be required to provide reliable and accurate data disaggregated and cross-tabulated by race, sex, and disability on harassment and bullying (including cyberbullying) to the Department of Education. Further, any legislation should include a private right of action to ensure individuals can take legal recourse when state actors violate the law.



PRINCIPLE #5: ENSURE ACCOUNTABILITY THROUGH ACCURATE AND COMPREHENSIVE DATA COLLECTION

Schools and districts should be required to collect and report comprehensive school climate data that is disaggregated, cross-tabulated, accurate, timely, and broadly and publicly available without personally identifiable information. Students, parents, and community members deserve data transparency so they can gauge school climate within their districts. While the Civil Rights Data Collection includes important information about students' experiences, additional data are needed (including, for example, on the use of force by police in schools and all involuntary removals and transfers from school over five school days in length) and oversight is needed to ensure reported data are accurate. Data should be collected so as to inform updates on infrastructure, programming, resources, and school personnel training.

PRINCIPLE #6: INVEST IN SCHOOL INFRASTRUCTURES THAT SUPPORT POSITIVE SCHOOL CLIMATES

Children deserve to attend schools that are safe, clean, and conducive to learning. Legislation to improve school climate should provide adequate and equitable funding for proper facilities and services, including heat, air conditioning, drinkable water, food assistance programs like school lunches, full ADA compliance, modern buildings, and current, modern technology designed to improve student learning. Investment in educational materials should also be culturally responsive and affirming to the histories of children and families who make up our public education system. Any legislation should include oversight and penalties for local education agencies to ensure that funding is used to update buildings to facilitate learning and prohibit the use of school infrastructure funding to militarize or "harden" schools or increase surveillance of children.

PRINCIPLE #7: ELIMINATE SCHOOL-BASED LAW ENFORCEMENT Police, including school resource officers (SROs), do not belong in schools. Education legislation intended to improve school climate should expressly prohibit using federal funds on school police or surveillance and work towards the elimination of law enforcement and surveillance in schools. To the degree that law enforcement, including SROs and school security guards, remain in schools, any legislation proposed must require local education agencies to have written Memorandum of Understanding (or legal agreements) that define the role and responsibility of all law enforcement and school safety personnel and that also prohibit school police officers and similar school personnel, including volunteers, contractors, and affiliates, from enforcing student codes of conduct, engaging in a school discipline role, or managing student behavior that belongs in the hands of administrators; prohibit both police and school personnel from carrying weapons; and require school police to receive comprehensive and ongoing training on youth behavior, implicit bias, and student rights. All legislation should include oversight and penalties for local education agencies that fail to comply with its provisions.

PRINCIPLE #8: ELIMINATE THREATS TO STUDENTS' HEALTH AND SAFETY Creating a safe and inclusive school climate requires stopping counterproductive and overly harsh punishments, including corporal punishment and restraints and seclusion, which impact our most marginalized youth and lead to long-term behavioral and mental health impacts. Federal legislation to address school climate must prohibit the use of restraints (except in situations of imminent danger of serious physical harm to self or others), prohibit the use of seclusion, and require the end of corporal punishment. These practices have no place in our schools. Legislation should limit or ban these harmful practices while also requiring improved disaggregated school-level data collection, an immediate meeting between parents of the student and the school when one of these practices occurs, and also include a private right of action to ensure individuals can take legal recourse when state actors violate the law.

**Signers of the Civil Rights Principles for Safe, Healthy, and Inclusive School Climates,
October 2019:**

The Leadership Conference on Civil and Human Rights	.....	American Association for Access, Equity and Diversity
The Leadership Conference Education Fund	.....	American Association of University Women
NAACP Legal Defense & Educational Fund, Inc.	.....	American Civil Liberties Union
Campaign for Youth Justice	.....	American Humanist Association
ACCESS	.....	American Islamic Congress
Advancement Project National Office	.....	American-Arab Anti-Discrimination Committee

Anti-Defamation League	National Alliance for Partnerships in Equity (NAPE)
Arab American Institute	National Association of Councils on Developmental Disabilities
Association of University Centers on Disabilities	National Association of Human Rights Workers
Augustus F. Hawkins Foundation	National Center for Law and Economic Justice
Autistic Self Advocacy Network	National Center for Lesbian Rights
Bazelon Center for Mental Health Law	National Center for Special Education in Charter Schools
Center for Law and Social Policy (CLASP)	National Center for Transgender Equality
Center for Popular Democracy	National Center for Youth Law
Clearinghouse on Women's Issues	National Council on Independent Living
Council of Parent Attorneys and Advocates	National Disability Rights Network
Delta Sigma Theta Sorority, Inc.	National LGBTQ Task Force Action Fund
Disability Rights Education & Defense Fund (DREDF)	National Partnership for Women & Families
Education Law Center - PA	National Organization for Women
Feminist Majority Foundation	National Urban League
GLSEN	National Women's Law Center
Hindu American Foundation	NBJC
Hispanic Federation	OCA - Asian Pacific American Advocates
Human Rights Campaign	PFLAG National
Impact Fund	Shriver Center on Poverty Law
Interfaith Alliance	Southeast Asia Resource Action Center (SEARAC)
Iota Phi Lambda Sorority, Inc.	Southern Poverty Law Center
Lambda Legal	TASH
Lawyers' Committee for Civil Rights Under Law	Voto Latino
MALDEF	YWCA USA
Movement Advancement Project	
NAACP	

The following organizations joined the original signers in endorsing these Civil Rights Principles for Safe, Healthy, and Inclusive School Climates as of June 15, 2020:

National

Alliance for Educational Justice	Committee for Children
Alliance for Strong Families and Communities	Dignity in Schools Campaign
American Association of Colleges for Teacher Education (AACTE)	Domestic Violence Legal Empowerment and Appeals Project
American Association of People with Disabilities	Easterseals
American Atheists	Education Law Center
American Council of the Blind	Education Reform Now
American Dance Therapy Association	Educators for Excellence
Association of Latino Administrators and Superintendents	EduColor
Association on Higher Education And Disability (AHEAD)	Empowering Pacific Islander Communities (EPIC)
Autistic Reality	End Rape On Campus
Autistic Women & Nonbinary Network	Family Equality
Brain Injury Association of America	Family Focused Treatment Association
Campaign for Trauma-Informed Policy and Practice	First Star Institute
Center for African Immigrants and Refugees Organization (CAIRO)	FORGE, Inc.
Center for American Progress	Futures Without Violence
Center for Community Resilience	Garifuna International Indigenous Film Festival
Center for Disability Rights	Girls Inc.
Center for Law and Education	Global Women's Institute
Center for Public Representation	Hip Hop Caucus
CenterLink: The Community of LGBT Centers	IDRA (Intercultural Development Research Association)
Children's Advocacy Institute	Intersystems
Children's Defense Fund	Japanese American Citizens League
Civil Rights Project/Proyecto Derechos Civiles	KIPP
Civitas ChildLaw Center, Loyola University Chicago School of Law	Kros Learning Group
Collaborative for Academic, Social, and Emotional Learning (CASEL)	Learning Disabilities Association of America
Collaborative for Student Success	MANA, A National Latina Organization
	Minority Veterans of America
	Modern Military Association of America
	National Action Network Nassau County Chapter
	National Alliance to End Sexual Violence
	National Association of the Deaf

National Black Child Development
Institute, Inc.
National Center for Learning Disabilities
National Center for Parent Leadership,
Advocacy, and Community
Empowerment (National PLACE)
National Center for Victims of Crime
National Coalition for LGBT Health
National Council of Asian Pacific
Americans
National Council on Educating Black
Children
National Crittenton
National Down Syndrome Congress
National Health Law Program
National Immigration Law Center
National Juvenile Justice Network
National Network to End Domestic
Violence
National WIC Association
National Youth Advocate Program, Inc.
NEA Foundation
New Leaders

State/Local

Advocates for Children of New York
Agency for Humanity
All Voting is Local Georgia
Allendale Association
Alliance for Community
Transformations
Amani Community Services
APEX Behavioral Consulting LLC
Arizona Coalition to End Sexual and
Domestic Violence
Avanzar
AWACE LIFE CARE CENTER
BBNC Education Foundation
Black Girls Rock of MS, Inc.
California Partnership to End Domestic
Violence

Ounce of Prevention Fund
Poverty & Race Research Action Council
Public Advocacy for Kids (PAK)
RespectAbility
Restoring Community of Illinois
ReTribe Transformations, L3C
Southern Education Foundation
SPAN Parent Advocacy Network
Speak Up Special Education Advocacy
Starr Commonwealth
The Education Trust
The National Association for Bilingual
Education
The Sentencing Project
The Trevor Project
TNTP
Trust for America's Health
Ujima Inc: The National Center on Violence
Against Women in the Black
Community
UnidosUS
Union for Reform Judaism

California State Council on
Developmental Disabilities
California Work & Family Coalition
Center for Children
Center for Pan Asian Community
Services, Inc.
Chicago Lawyers' Committee for
Civil Rights
Child Justice, Inc.
Children's Defense Fund - New York
Children's Defense Fund - Ohio
Children's Defense Fund - Texas
Children's Rights Clinic, Southwestern
Law School
Citizens Review Board for Children

Colorado Children's Campaign	GRASP (Great Aspirations Scholarship Program, Inc.)
Crisis Center Dodge City	Hawaii State Coalition Against Domestic Violence
DCADV	Illinois Coalition Against Domestic Violence
Deaf Iowans Against Abuse, Inc.	Indiana Coalition Against Domestic Violence
Decoding Dyslexia MA	Indiana Disability Rights
Disability Law Center	Iowa Coalition Against Domestic Violence
Disability Law Colorado	Journey of Hope Inc.
Disability Rights Arkansas	Justice Center of Southeast MA
Disability Rights California	Kansas Coalition Against Sexual and Domestic Violence
Disability Rights Center of the Virgin Islands	Kentucky Coalition Against Domestic Violence
Disability Rights Florida	Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Disability Rights Maine	Legal Aid Justice Center
Disability Rights Maryland	Los Angeles LGBT Center
Disability Rights Nebraska	Loud Voices Together Educational Advocacy Group, Inc.
Disability Rights North Carolina	Maine Developmental Disabilities Council
Disability Rights Oregon	Maryland Center for Developmental Disabilities
Disability Rights Pennsylvania	Maryland Essentials for Childhood
Disability Rights Tennessee	Maryland State Council on Child Abuse and Neglect
Disability Rights Texas	Massachusetts Advocates for Children
Disability Rights Wisconsin	Massachusetts Attorneys for Special Education Rights
District Alliance for Safe Housing, Inc	McFarland and Associates, Inc.
Earl Carl Institute for Legal & Social Policy, Inc	Mental Health America of North Dakota
EdLaw Project of the Committee for Public Counsel Services	Mental Health Legal Advisors Committee
EI Sol Science and Arts Academy	Michigan Alliance for Special Education
Equality California	Michigan Protection & Advocacy Service, Inc.
Equality North Carolina	Mid-Atlantic P.A.N.D.A. (Prevent Abuse and Neglect through Dental Awareness)
Family Crisis Center, Inc.	Muncie Human Rights Commission
Friends of Goody Bassett	ND Federation of Families for Children's Mental Health
Garifuna International Indigenous Film Festival	
Georgia Coalition for the People's Agenda	
Girls Inc. of Carpinteria	
Girls Inc. of Long Island	
Girls Inc. of Memphis	
Girls Inc. of Orange County	
Girls Inc. of Santa Fe	
Girls Inc. of the Valley	
GIRLSwSTEAM	

Nebraska Coalition to End Sexual and Domestic Violence	Special Education Advocacy and Consulting
Nevada Coalition to End Domestic and Sexual Violence	Special Needs Advocacy Network, Inc (SPaN) - Massachusetts
New Jersey Coalition to End Domestic Violence	Strong Youth Foundation
New Orleans Youth Alliance	Systems Change Consulting
New York State Coalition Against Domestic Violence	Taller Salud
North Carolina Coalition Against Domestic Violence	Taste of Korea Chicago
North Dakota Protection & Advocacy Project	The Family Tree/Prevent Child Abuse Maryland
NYCLU	The Network: Advocating Against Domestic Violence
Ohio Domestic Violence Network	Thompson Child & Family Focus
Ohio Hispanic Coalition	Transforming School Discipline Collaborative
OutNebraska	Uplift Education
Pegasus Legal Services for Children	Urban League of Hampton Roads, Inc.
Prevent School Violence Illinois	Urban League of Springfield, MA
Progressive Life Center, Inc.	Ventura County Women's Political Council
Project Butterfly New Orleans	Vera House, Inc.
Project Sanctuary of Mendocino County	Violence Free Colorado
Project: PeaceMakers, Inc	Virginia Sexual & Domestic Violence Action Alliance
Racial Justice NOW	West Virginia Coalition Against Domestic Violence
Rape/Domestic Abuse Program	Western CT Association for Human Rights - WeCAHR
Restore Advocacy	YWCA Berkeley/Oakland
Rhode Island Coalition Against Domestic Violence	YWCA Darien-Norwalk
Rise-NY	YWCA Kalamazoo
Safehouse Crisis Center	YWCA National Capital Area
Saint James Missionary Baptist Church	YWCA of Glendale
Silver State Equality-Nevada	YWCA of the Sauk Valley
Sisters Acquiring Financial Empowerment	YWCA Southeastern Massachusetts
	YWCA Yakima





🏠 1620 L Street NW, Suite 1100
Washington, DC 20036

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As a judge, I have to follow the Supreme Court. It should fix this mistake.

 [washingtonpost.com/opinions/2020/06/12/judge-i-have-follow-supreme-court-it-should-fix-this-mistake/](https://www.washingtonpost.com/opinions/2020/06/12/judge-i-have-follow-supreme-court-it-should-fix-this-mistake/)

Opinion by James A. Wynn Jr.

James A. Wynn Jr. is a judge on the U.S. Court of Appeals for the 4th Circuit.

This post has been updated.

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George Floyd's unconscionable killing has properly brought renewed attention to the Supreme Court's doctrine of "qualified immunity," which shields law enforcement officers from civil lawsuits alleging excessive force. The judge-made law of qualified immunity subverts the Civil Rights Act of 1871, which Congress intended to provide remedies for constitutional violations perpetrated by state officers. Eliminating the defense of qualified immunity would improve our administration of justice and promote the public's confidence and trust in the integrity of the judicial system.

I am not alone in my concerns about qualified immunity. Commentators — and justices — from across the ideological spectrum rightly contend that this doctrine has wandered far afield from the text of the Civil Rights Act. That landmark statute, enacted during Reconstruction, allows individuals to bring civil actions against state actors — including state and local law enforcement officers — for violating their constitutional rights. But two lines of Supreme Court precedent have rendered qualified immunity an increasingly insurmountable obstacle to individuals seeking legal redress for violations of their constitutional rights.

First, the Supreme Court has ratcheted up the standard a plaintiff must meet to bring a claim by requiring the plaintiff to show that the violation of his or her constitutional rights was "clearly established." This means a plaintiff must demonstrate that the law enforcement officer's challenged conduct was virtually identical to the facts of a previous Supreme Court or Court of Appeals decision finding a constitutional violation. The slightest factual variations can render a constitutional right not "clearly established" — meaning that the officer faces *no* civil liability for the violation.

Second, the Supreme Court has allowed, and even encouraged, lower courts to dismiss cases once they determine that a law enforcement officer's challenged conduct did not violate a "clearly established" constitutional right — without ever deciding whether the conduct did in fact violate the Constitution. As a consequence, there are few judicial decisions against which to measure whether a law enforcement officer's conduct amounted to a "clearly established" violation of constitutional rights.

In effect, those who allege that police officers have used excessive force are trapped in a never-ending self-fulfilling prophecy: They cannot sue officers who harm them because the harmful conduct has never been “clearly established” as a constitutional violation in a factually similar case. But because so many cases are dismissed without addressing whether the challenged conduct was in fact a constitutional violation, it is rarely “clearly established” that there *was* a violation.

This cycle prevents plaintiffs from pursuing their claims, gives officers little guidance on the contours of individuals’ rights and excuses ever more egregious conduct from liability. There are, of course, other avenues for punishing police misconduct, including criminal prosecutions of officers, but criminal cases can be difficult to bring and win, and in any event civil lawsuits can add an important layer of consequence and deterrence.

Congress enacted the Civil Rights Act to deter the unlawful use of excessive force by law enforcement officers. It provides that police officers and other officials “shall be liable” for “the deprivation of any rights” secured by the Constitution. The Supreme Court’s creation and expansion of qualified immunity — and its ongoing refusal, thus far, to reconsider it — not only diminishes the law’s intended effect; it also harms individuals who are booted out of court before they can ever bring claims of excessive force before a jury.

And it strains the separation of powers. By creating a defense unmoored from the text, the Supreme Court has undermined Congress’s intent to provide remedies to those whose rights have been violated.

When the judiciary effectively nullifies congressional legislation specifically designed to provide a remedy to those who have been subjected to constitutional violations, it necessarily moves our society closer to a Hobbesian state ungoverned by predictable rules. Violence and looting are neither constitutionally protected nor morally acceptable. But when the judiciary strips individuals’ constitutional rights of legal protection — when, for example, law enforcement officers can take lives unjustifiably, without legal consequence — it can be expected that the public will take matters into its own hands.

In my work as a judge, I follow the decisions of the Supreme Court because judges apply the law as it is, not as they believe it should be. The Framers embodied that concept by carefully and thoughtfully drafting each of the Constitution’s 7,600 words with the intention and expectation that the judiciary — the branch constitutionally entrusted and *obligated* to interpret the Constitution — would give effect to each and every one. We, as judges, must uphold that obligation. When we fail to do so, our communities bear the consequences.

The Honorable Ro Khanna & The Honorable William Lacy Clay
Testimony before the House Judiciary Committee on Oversight Hearing on Policing Practices
& Law Enforcement Accountability
June 10, 2020

Chairman Nadler, Ranking Member Jordan, and distinguished members of the House Judiciary Committee, we submit this written testimony in support of the Policing Exercising Absolute Care with Everyone (PEACE) Act of 2019 (HR 4359).

First, we want to thank Chairman Nadler, Chairwoman Bass, Senator Harris and Senator Booker for inclusion of the PEACE Act as section 364 in the George Floyd Justice in Policing Act of 2020, to raise the national standard for the use of deadly force by federal law enforcement.

We announced the introduction of the PEACE Act last year as our nation marked the fifth anniversary of the tragic death of Michael Brown and the beginning of the historic Ferguson uprising.

The murder of George Floyd is yet another tragic reminder that it is long past time to address one of the root causes of the longstanding crisis of excessive force by police: the lack of any legal duty for police officers to use force as a last resort. The PEACE Act would raise the federal standard for the use of force and incentivize states to adopt that standard through federal funding mechanisms, as recommended by more than 450 civil and human rights organizations in a letter to congressional leadership.

The current legal standard gives nearly unfettered discretion to police over use of force, as long as they claim a perceived threat. In practice, it means that if officers believe someone has a gun and that they are in imminent danger, police may shoot - as a police officer did when killing 12-year-old Tamir Rice in 2014 on a playground.

This police officer killed Tamir just two seconds after pulling up within 10 feet of Tamir, making it difficult to take cover or use verbal persuasion or other tactics suggested by the police department's use-of-force policy, had Tamir resisted compliance. Under the PEACE use of force standard, the police officers responding to this 9-1-1 call would have been incentivized to keep a greater distance when arriving at the playground and would have had more time to see for themselves that Tamir was a juvenile and only had a toy gun. The police officer who killed Tamir has since been cleared of all criminal charges.

The data shows that this standard yields positive results for citizens and police officers alike. After the Seattle Police Department was required by Pres. Obama's Justice Department to change their use of force standard to one of necessity in 2012, [the rate of injuries](#) to officers remained flat or went down, and a [comprehensive report](#) found that "decreased use of force has not placed officers at any higher risk or made officers less able or willing to use force to defend themselves from threats or harm." Meanwhile, there was a net decrease of 743 incidents -- a 60% drop -- in the use of moderate and high-level use of force.

Chairman Nadler, Ranking Member Jordan and distinguished members of the House Judiciary Committee, we thank you for including the PEACE Act in your seminal Oversight Hearing on Policing Practices and Law Enforcement Accountability, and we look forward to working with you to advance meaningful reforms on policing policy.

Solidarity House

8000 EAST JEFFERSON AVE.
DETROIT, MICHIGAN 48214
PHONE (313) 926-5000



INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW

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VICE-PRESIDENTS: TERRY DITTES • CINDY ESTRADA • GERALD KARIEM

June 10, 2020

**Oversight Hearing on Policing Practices and Law Enforcement Accountability
House Judiciary Committee
Submitted by Rory Gamble
UAW President
8000 E. Jefferson Avenue, Detroit, MI 48214**

Chairman Nadler, Ranking Member Jordan and members of the Committee, on behalf of the million active and retired members of the International Union, UAW, I thank you for the opportunity to offer testimony for this critical and timely hearing on policing practices and law enforcement accountability.

The recent senseless and cruel killings of George Floyd, Breona Taylor, and Ahmaud Arbery are sad reminders that our country continues to grapple with deep seated, racial inequalities and prejudice. I am deeply saddened by these senseless tragedies. Former UAW President Walter Reuther's speech at the 1963 March on Washington for Freedom and Jobs words still ring true today, "I share the view that the struggle for civil rights and struggle for equal opportunity, is not the struggle of Negro Americans but the struggle for every American to join in." Clearly, we have significant unfinished business. We all have a role in fixing systematic inequities, ongoing discrimination and prejudice which help shape our workplaces, institutions of learning, and personal interactions.

Labor rights and civil rights are inextricably intertwined. Since our inception 85 years ago, the UAW has proudly fought for advancing both civil and human rights for all people. Undeniably, our union would not be what it is today without the leadership and contributions of people of color and immigrants. In the 1930s, 55 percent of the workers in Detroit auto factories were African American and foreign born.

It is important to address persistent racial inequality. It is a deep-rooted problem in our country and there is no simple solution. As an African American man and union leader, we cannot look at these issues in isolation. These continued injustices are clear when we look at African American health and economic disparities. According to the Economic Policy Institute (EPI), white families hold on average more than five times as much liquid assets as black families (\$49,529 vs. \$8,762.) In 2018, median household income for white households was 70 percent higher than for black households (\$70,642 vs. \$41,692).

The pandemic has also had a disproportionate effect on black people's health. Nationwide, about 30 percent of COVID-19 patients are black, even though they make up only 13 percent of the overall population. The susceptibility of African Americans to the virus is the result of a long history of discrimination and marginalization in our health care system and labor market.

The explosion of the prison population and the increasing use of mandatory minimums have had a disproportionate impact on communities of color. African American men are incarcerated at six times the rate of White men, and African American women are incarcerated at more than double the rate of White women. America spends \$80 billion on incarceration every year. Imagine how much better off we would be as a country if we could instead invest even a fraction of that money in education and creating the jobs of the future.

I commend the committee for holding this hearing on police reforms and law enforcement accountability and am pleased that you plan on voting on legislation to improve our criminal justice system this month. In the last few weeks, hundreds of thousands of demonstrators have protested across the country calling for justice, fairness, and an end to police violence. Attacks by authorities on peaceful demonstrators is an affront to all working people and the principals on which this nation was founded. If peaceful demonstrators are attacked with impunity, what is to stop the attack of workers on the picket line? Peaceful demonstrations make us stronger as country, not weaker.

It is long past time we take a closer look at policies and practices that erode civil rights. I say this with great sorrow and not to vilify our brave men and women in blue. We represent many police officers and they are truly untold heroes who go to work every day to keep all of us safe. They have bravely been on the front lines of the COVID-19 pandemic, as they are always on the front lines when our nation is in need. But in the case of George Floyd and other horrific abuses that this nation has had to witness, things went terribly wrong. We must look at this issue as a nation. No matter how painful, we cannot turn away.

There are a series of police reforms we support such as banning police chokeholds, limiting so-called "qualified immunity" for police officers that prevents them from being sued, and creating a national misconduct registry. We must face the fact that it is time for Congress to finally make lynching a hate crime. The fact that this simple action has yet to happen in the year 2020 illustrates how far we still must go.

Comprehensive solutions are needed to address police brutality and systematic racism. We urge the Committee to consider a wide range of structural reforms in addition to targeted police reforms. Equal opportunity in education, protecting workers right to form unions, investments in job training programs and incentivizing companies to create and maintain jobs in the United States should all be on the table.

It is important to stress that collective bargaining agreements (CBAs) are not the root of the problem. The rhetoric being used to denigrate unions will further divide us and undermine the collective contributions of labor, from civil rights laws to policies that rebuild the middle class.

This is not our route forward.

The United States is a great country. Our greatness is not predicated on being the wealthiest country on earth nor does it come from our superior military power. Our strength comes from our founding principles. We are “a government for the people” in which we are “all treated equally.” We cannot betray our fundamental principles and continue to lead to the world.

Let me conclude by urging us all not to focus on our differences, but to look at who we are and what we value as Americans. If this terrible pandemic has taught us anything, it is that we must stand together and protect one another. Our differences should be our strength, not our weakness.

Governors, Mayors, and communities all have a role in combatting racial injustice and inequity. Now more than ever, we need our elected leaders to take meaningful action to help heal our country and ensure that everyone is afforded fairness, justice and opportunity.

Thank you.



Statement of Bruce Stern, President
 Oversight Hearing on “Police Practices and Law Enforcement Accountability”
 House Committee on the Judiciary
 June 10, 2020

The American Association for Justice (AAJ) thanks the Chairman for holding this hearing and submits this statement for inclusion in the record. The horrific actions against Black people over the last few weeks have brought to light a tragic American failure long in need of reform: police accountability and systemic racism. The continued tragic, unjust, and senseless deaths require us to do more to fight police brutality, systematic racism, and violations of the U.S. Constitution. This is a time for action, and AAJ and its members are committed to helping families seek justice in the courts. AAJ is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured or killed, or whose rights have been violated. With members in the United States, Canada, and abroad, AAJ is the world’s largest plaintiff trial bar. Ben Crump, who is testifying today, and AAJ members across the country, represent the families of those killed or injured by police violence and people whose civil rights have been violated by the government.

AAJ applauds Rep. Bass (D-CA), Chairman Nadler (D-NY) and the Congressional Black Caucus for taking swift action in response to the appalling death of George Floyd by the knee of a police officer. AAJ supports quick and bold action on many of the issues addressed in the Justice in Policing Act as a comprehensive approach for addressing police brutality and systemic racism within law enforcement. We thank the sponsors for addressing qualified immunity, a judicially developed doctrine that prevents families of victims killed or injured by police violence from holding officers accountable. AAJ also strongly supports the inclusion of provisions relating to data collection and retention, as well as transparency in policing and restoring public trust.

End Qualified Immunity: The judicially created doctrine of qualified immunity strips individuals, including victims of police violence and misconduct, of their ability to enforce their constitutional rights. The Civil Rights Act of 1871, codified as 42 U.S.C. §1983, provides if any person, acting under the color of state law, unlawfully deprives another of his or her federally guaranteed rights, that person “shall be liable to the party injured.” Judicial interpretation has grossly distorted the purpose of §1983 and rendered ineffectual an important mechanism of its enforcement power; the doctrine recognizes that a person’s constitutional rights can be violated by public officials but fails to provide any opportunity for accountability under the law. It does so by promulgating a nonsensical, judge-made rule not found in the statute, which creates a standard many victims and survivors can never meet. Section 1983 must be amended so that the doctrine of

qualified immunity no longer provides a defense or immunity to state actors—including law enforcement officers—who violate constitutional rights.

As part of the qualified immunity analysis, a court determines whether the police officer violated a “clearly established” statutory or constitutional right. The Supreme Court has held that to meet that standard there generally must be a prior court case with nearly identical facts from either the Supreme Court or a Court of Appeal from which the case arises. Effectively, unless the police happen to commit the precise same constitutional violation twice, qualified immunity is a complete bar to holding an officer accountable for deprivation of constitutional rights. And even if the victim can show violations of a clearly established right, the government official is entitled to qualified immunity if he or she made a reasonable mistake as to what the law requires.

Qualified immunity protects a government official from having to go through a trial at all. Accordingly, courts resolve qualified immunity issues as early in a case as possible, often before discovery when critical information becomes more available. This can further foreclose disclosure by the police of key information regarding the events that led up to a senseless, tragic death or other significant injury.

Section 1983 fundamentally protects constitutional rights. Because qualified immunity is a judicially created doctrine, Congress must be careful in the language it uses to address it so as not to legitimize a doctrine not found in the existing statute. To this end, AAJ also recommends amending §1983 so that the usual legal rules embodied in the doctrine of respondeat superior apply and that employers of law enforcement officers can be held accountable for the actions of their employees. The combination of qualified immunity and the fact that municipalities cannot be held accountability for an officer’s actions leads to recurring, uncontrolled police violence, misconduct, and abuse.

Additional consideration should also be given to whether a federal statute of limitation could preserve individual access to justice. Also worthy of consideration is whether the victim and his or her family can ever be given a meaningful chance at achieving a measure of justice if the jury deciding their case is not from the surrounding community, as is the circumstance for most federal court trials which occur outside of the community in which the incident occurs.

Public Access to Information: Nothing has done more in recent years to bring broader public awareness to the crisis of police violence and misconduct than personal cell phone video. Official police video, if collected and retained on a consistent basis, could augment and enhance information gathered by the public, and the Justice for Policing Act contains key provisions regarding the use and retention of body camera and dashboard camera videos, which often play key evidentiary roles in both criminal and civil proceedings.

Collection: The establishment of a rebuttable evidentiary presumption for failing to capture or destroying body camera video is an essential provision of the bill.

Retention: All electronic communications—including body camera and dashboard camera video—must be preserved with appropriate privacy considerations in place for members of the public, especially minor children. Third-party vendors retained by law enforcement

for maintaining body camera and other video footage must have both the capacity and security to do so.

In addition, federal data collection on law enforcement practices is another central and critical component to transparency and creating some level of public trust. Data collection and retention on traffic stops, body searches, and deadly force are required under the bill and must be available to the public and for attorneys to document patterns and practices of misconduct.

Finally, a provision could be added to the bill requiring law enforcement to self-identify. As the public is aware from recent protests, it is often difficult to tell what specific law enforcement agency has provided which officers. The public should not be left guessing which law enforcement agency or particular officer is involved in policing particular events or venues. Officers should be prohibited from covering up identifying information, such as their names, on their badges.

Police Misconduct Registry: In the case of Derek Chauvin, the former Minneapolis police officer charged with second-degree murder for the death of George Floyd, 18 prior complaints had been filed against him. Shouldn't this information be available and before 18 complaints or reports of misconduct are filed? And if Mr. Chauvin had been terminated earlier by the Minneapolis Police Department, shouldn't the St. Paul Police Department located just across the Mississippi River know about Mr. Chauvin's record when making a hiring decision? A national registry allows for informed decision-making. Transparency will enable law enforcement agencies to terminate individuals with a history of racist or abusive behavior more expeditiously and ensure that they do not become a problem for another law enforcement agency.

AAJ is grateful to Chairman Nadler and members of the Judiciary Committee for quickly providing a national forum in which to discuss these critical issues which are long overdue for congressional reform. Congress must heed the calls of the American public for police accountability and enact tangible measures to end systemic racism in all facets of American life. The lives lost due to police violence and misconduct during our nation's history and the leadership of individuals and organizations who have long fought for civil rights, justice and equality must result in action. The time has come for Congress to enact reforms to finally move this country closer to fulfilling America's promise for everyone.



June 9, 2020

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
2142 Rayburn House Office Building
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
2142 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Nadler, Ranking Member Jordan, and Members of the Committee:

My name is Jay Schweikert, and I am an attorney and a policy analyst with the Cato Institute's Project on Criminal Justice. I would like to thank the Committee on the Judiciary for convening this Oversight Hearing on Policing Practices and Law Enforcement Accountability, on June 10, 2020, and for providing the opportunity to express my views regarding this topic. In particular, I am writing to discuss the harmful effect that the judicial doctrine of qualified immunity has on accountability for members of law enforcement, police-citizen relations, and the criminal justice system in general.

In the landmark Supreme Court case of *Marbury v. Madison*, Chief Justice John Marshall stated that: "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."¹ Stated differently, the substance of constitutional rights means little if state actors can violate those rights with impunity. Accountability must therefore be a top priority for anyone interested in policing practices and criminal justice reform more generally.

Congress created a robust means for ensuring the accountability of state and local officials back in 1871, when it passed what would become our primary civil rights statute. That statute is presently codified at 42 U.S.C. § 1983, and thus is usually called "Section 1983" after its place in the U.S. Code. It was first passed by the Reconstruction Congress as part of the 1871 Ku Klux Klan Act, which itself was part of a series of "Enforcement Acts" designed to help secure the promise of liberty and equality enshrined in the then-recently enacted Fourteenth Amendment.²

¹ 5 U.S. (1 Cranch) 137, 163 (1803).

² See An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes, ch. 22, § 1, 17 Stat. 13 (1871).



As currently codified, the statute states as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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, suit in equity, or other proper proceeding for redress³

In other words, the statute states simply and clearly that any state actor who violates someone's constitutional rights "shall be liable to the party injured." The purpose behind creating such a cause of action is quite simple: individuals whose rights are violated deserve a remedy, and at a structural level, the potential for such a remedy ensures accountability among public officials.

But the Supreme Court has effectively gutted the effect of Section 1983 through the invention of a doctrine called "qualified immunity." This judicial doctrine shields state and local officials from liability, even when they act unlawfully, so long as their actions did not violate "clearly established law."⁴ In practice, this is a huge hurdle for civil rights plaintiffs, because the Court has repeatedly insisted that "clearly established law must be 'particularized' to the facts of the case."⁵ In other words, to overcome qualified immunity, civil rights plaintiffs generally must show not just a clear legal *rule*, but a prior case in the relevant jurisdiction with functionally identical *facts*.

Although the Supreme Court has always purported to say that an exact case on point is not strictly necessary,⁶ it has also stated that "existing precedent must have placed the statutory or constitutional question beyond debate."⁷ And in practice, lower courts routinely hold that even seemingly minor factual distinctions between a case and prior precedent will suffice to hold that the law is not "clearly established." To give just a couple concrete examples:

³ 42 U.S.C. § 1983.

⁴ See *White v. Pauly*, 137 S. Ct. 548, 551-52 (2017).

⁵ *Id.* at 552 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

⁶ *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018).

⁷ *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).



- In *Baxter v. Bracey*,⁸ the Sixth Circuit granted qualified immunity to two police officers who deployed a police dog against a suspect who had already surrendered and was sitting on the ground with his hands up. A prior case had already held that it was unlawful to use a police dog without warning against an unarmed suspect laying on the ground with his hands at his sides.⁹ But despite the apparent factual similarity, the *Baxter* court found this prior case insufficient to overcome qualified immunity because “Baxter does not point us to any case law suggesting that *raising his hands, on its own*, is enough to put [the defendant] on notice that a canine apprehension was unlawful in these circumstances.”¹⁰ In other words, prior case law holding unlawful the use of police dogs against non-threatening suspects who surrendered by *laying on the ground* did not “clearly establish” that it was unlawful to deploy police dogs against non-threatening suspects who surrendered by *sitting on the ground with their hands up*.
- In *Latits v. Phillips*,¹¹ the Sixth Circuit granted immunity to a police officer who rammed his vehicle into the car of a fleeing suspect, drove the suspect off the road, then jumped out of his vehicle, ran up to the suspect’s window, and shot him three times in the chest, killing him. The court acknowledged that several prior cases had clearly established that “‘shooting a driver while positioned to the side of his fleeing car violates the Fourth Amendment, absent some indication suggesting that the driver poses more than a fleeting threat.’”¹² Even though that statement would seem to govern this case exactly, the majority held that these prior cases were “distinguishable” because they “involved officers confronting a car in a parking lot and shooting the non-violent driver as he attempted to *initiate flight*,” whereas here “Phillips shot Latits *after* Latits led three police officers on a car chase for several minutes.”¹³ The lone dissenting judge in this case noted that “the degree of factual similarity that the majority’s approach requires is probably impossible for any plaintiff to meet.”¹⁴

⁸ 751 F. App’x 869 (6th Cir. 2018), *petition for cert. filed*, 2019 U.S. S. Ct. Briefs LEXIS 1365 (U.S. Apr. 8, 2019) (No. 18-1287).

⁹ See *Campbell v. City of Springsboro*, 700 F.3d 779, 789 (6th Cir. 2012).

¹⁰ *Baxter*, 751 F. App’x at 872 (emphasis added).

¹¹ 878 F.3d 541 (6th Cir. 2017).

¹² *Id.* at 552-53 (quoting *Hermiz v. City of Southfield*, 484 F. App’x 13, 17 (6th Cir. 2012)).

¹³ *Id.* at 553.

¹⁴ *Id.* at 558 (Clay, J., concurring in part and dissenting in part).



Thus, given how the “clearly established law” test works in practice, whether victims of official misconduct will get redress for their injuries turns not on whether state actors broke the law, nor even on how serious their misconduct was, but simply on the happenstance of whether the relevant case law happens to include prior cases with fact patterns that match their own.

Perhaps most disturbingly, the doctrine can actually have the perverse effect of making it *harder* to overcome qualified immunity when misconduct is *more* egregious—precisely because extreme, egregious misconduct is less likely to have arisen in prior cases. In the words of Judge Don Willett, one of President Trump’s appointees to the Fifth Circuit, “[t]o some observers, qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior—no matter how palpably unreasonable—as long as they were the *first* to behave badly.”¹⁵

There is no shortage of cases illustrating this point, but the following two are representative:

- ***Corbitt v. Vickers***:¹⁶ Police officers pursued a criminal suspect into an unrelated family’s backyard, at which time one adult and six minor children were outside. The officers demanded they all get on the ground, everyone immediately complied, and the police took the suspect into custody. But then the family’s pet dog walked into the scene, and without any provocation or threat, one of the deputy sheriffs started firing off shots at the dog. He repeatedly missed, but did strike a ten-year-old who was still lying on the ground nearby. The child suffered severe pain and mental trauma and has to receive ongoing care from an orthopedic surgeon. The Eleventh Circuit granted qualified immunity on the grounds that no prior case law involved the “unique facts of this case.”¹⁷ One judge did dissent, reasonably explaining that “no competent officer would fire his weapon in the direction of a nonthreatening pet while that pet was surrounded by children.”¹⁸
- ***Kelsay v. Ernst***:¹⁹ Melanie Kelsay was playing at a public pool with her friend, when some onlookers thought her friend might be assaulting her and called the

¹⁵ *Zadeh v. Robinson*, 928 F.3d 457, 480 (5th Cir. 2019) (Willett, J., concurring in part and dissenting in part).

¹⁶ 929 F.3d 1304 (11th Cir. 2019).

¹⁷ *Id.* at 1316.

¹⁸ *Id.* at 1323 (Wilson, J., dissenting).

¹⁹ 933 F.3d 975 (8th Cir. 2019) (en banc).



police. The police arrested her friend, even though she repeatedly told them he had not assaulted her. While talking with a deputy, Matt Ernst, Kelsay saw that her daughter had gotten into an argument with a bystander and tried to go check on her. Ernst grabbed her arm and told her to “get back here,” but Kelsay again said she needed to go check on her daughter, and began walking toward her. Ernst then ran up behind her, grabbed her, and slammed her to the ground in a “blind body slam” maneuver, knocking her unconscious and breaking her collarbone. The Eighth Circuit granted Ernst qualified immunity on the grounds that no prior cases specifically held that “a deputy was forbidden to use a takedown maneuver to arrest a suspect who ignored the deputy’s instruction to ‘get back here’ and continued to walk away from the officer.”²⁰

But qualified immunity does not merely harm the *victims* of police misconduct—it also hurts the law enforcement community itself, by depriving officers of the public trust and confidence that is necessary for them to do their jobs safely and effectively. Policing is dangerous, difficult work, and it cannot be done safely and effectively without the trust and cooperation of communities. Unsurprisingly then, public perception of accountability is absolutely essential to police effectiveness.²¹

Yet in the wake of so many high-profile police shootings, public confidence in law enforcement has been plummeting. Indeed, by 2015, Gallup reported that public trust in police officers had reached a twenty-two-year low.²² Although only a small proportion of officers are involved in fatal encounters in any given year,²³ that fraction still generates a huge number of fatalities in absolute terms. For example, between 2015 and 2017, police officers fatally shot nearly a thousand Americans each year,²⁴ with tens of thousands more wounded.²⁵ And the widespread prevalence of cell phones, combined with the

²⁰ *Id.* at 980.

²¹ See generally Inst. on Race and Justice, Northeastern Univ., *Promoting Cooperative Strategies to Reduce Racial Profiling* (2008).

²² Jeffery M. Jones, *In U.S., Confidence in Police Lowest in 22 Years*, GALLUP (June 19, 2015).

²³ Gene Demby, *Some Key Facts We’ve Learned About Police Shootings Over the Past Year*, NPR (Apr. 13, 2015).

²⁴ Julie Tate et al., *Fatal Force*, Washington Post Database (last updated June 9, 2020).

²⁵ Nathan DiCamillo, *About 51,000 People Injured Annually By Police, Study Shows*, NEWSWEEK (Apr. 19, 2017).



ability to share videos on YouTube and social media, means that footage of police shootings are being documented and shared like never before.²⁶

Qualified immunity therefore exacerbates what is already a crisis of confidence in law enforcement. Even if it is only a small proportion of the law enforcement community that routinely violates the law, ordinary citizens cannot help but accurately observe that even those officers will rarely be held accountable. Even police officers share this assessment—in a 2017 survey of over 8,000 officers, 72% disagreed with the statement that “officers who consistently do a poor job are held accountable.”²⁷

In the wake of George Floyd’s death at the hands of Minnesota police—and the ongoing national turmoil his death has provoked—this issue has grown especially urgent. The shocking violence committed by Derek Chauvin and the stunning indifference of the other officers on the scene are the product of a culture of near-zero accountability, in which police simply do not expect to be held to account for their misconduct. Journalists and commentators of all stripes—including the *New York Times*,²⁸ Fox News,²⁹ Slate,³⁰ and Reason³¹—have all noted the direct connection between George Floyd’s death and the doctrine of qualified immunity.

The antidote to this crisis is exactly the sort of robust accountability that Section 1983 is supposed to provide, but which qualified immunity severely undercuts. When judges routinely excuse egregious misconduct on technicalities, then *all* members of law enforcement suffer a reputational loss. Qualified immunity thus prevents responsible law enforcement officers from overcoming negative perceptions about policing, and instead

²⁶ See generally Wesley Lowery, *On Policing, the National Mood Turns Toward Reform*, WASH. POST (Dec. 13, 2015).

²⁷ Rich Morin et al., Pew Research Ctr., *Behind the Badge* 40 (2017).

²⁸ Editorial, *How the Supreme Court Lets Cops Get Away With Murder*, N.Y. TIMES, May 29, 2020.

²⁹ Tyler Olson, *George Floyd case revives 'qualified immunity' debate, as Supreme Court could soon take up issue*, Fox News, May 29, 2020, available at <https://www.foxnews.com/politics/george-floyd-case-revives-debate-on-qualified-immunity-for-government-officials>.

³⁰ Mark Joseph Stern, *The Supreme Court Broke Police Accountability. Now It Has the Chance to Fix It.*, Slate, May 27, 2020, available at <https://slate.com/news-and-politics/2020/05/george-floyd-supreme-court-police-qualified-immunity.html>.

³¹ C.J. Ciaramella, *The Supreme Court Has a Chance To End Qualified Immunity and Prevent Cases Like George Floyd's*, Reason, May 29, 2020, available at <https://reason.com/2020/05/29/the-supreme-court-has-a-chance-to-end-qualified-immunity-and-prevent-cases-like-george-floyds/>.



protects only the minority of police who routinely break the law, thereby eroding relationships between police and their communities.

For these reasons, amongst many others, opposition to qualified immunity enjoys more cross-ideological and cross-professional support than nearly any other public policy issue today. A recent *amicus* brief challenging the doctrine included, in the words of Judge Willett, “perhaps the most diverse amici ever assembled”³²—including (but not limited to) the ACLU, the Alliance Defending Freedom, Americans for Prosperity, the Law Enforcement Action Partnership, the NAACP, and the Second Amendment Foundation.³³

The Supreme Court may have created the doctrine of qualified immunity, but Congress has the power to fix it. By clarifying that Section 1983 means what it says—that state actors who violate constitutional rights “shall be liable to the party injured”—Congress can reinvigorate the best means we have of ensuring accountability for members of law enforcement, and also help restore the public trust and confidence that police officers need to do their jobs safely and effectively.

Sincerely,

Jay R. Schweikert
Policy Analyst
Project on Criminal Justice
Cato Institute

³² *Zadeh v. Robinson*, 928 F.3d 457, 480 (5th Cir. 2019) (Willett, J., concurring in part and dissenting in part).

³³ See Brief of Cross-Ideological Groups Dedicated to Ensuring Official Accountability, Restoring the Public’s Trust in Law Enforcement, and Promoting the Rule of Law, *I.B. & Doe v. Woodard*, No. 18-1173 (U.S. Apr. 10, 2019).



For Immediate Release
June 8, 2020

Contact
Julia Cusick
jcusick@americanprogress.org

STATEMENT: The Justice in Policing Act Is an Important Step Toward Long-Term Structural Change, Says CAP's Neera Tanden

Washington, D.C. — Today, Reps. Karen Bass (D-CA) and Jerry Nadler (D-NY) and Sens. Kamala Harris (D-CA) and Cory Booker (D-NJ) introduced the Justice in Policing Act. Following the introduction of the bill, [Neera Tanden](#), president and CEO of the Center for American Progress, issued the following statement:

Over the past two weeks, tens of thousands of people from all walks of life, in every corner of this country, have come together to stand up for Black lives and demand an end to police brutality. It is now incumbent on lawmakers at all levels of government to use this moment to enact long-term structural change in policing.

The Justice in Policing Act is a critical step forward toward reform at the federal and local levels. The bill includes many important provisions, including grants to states to bring "pattern or practice" cases, conditioning federal dollars on changes to policing techniques such as ending the use of chokeholds, and prohibiting law enforcement from recklessly depriving Americans of their constitutional rights.

CAP applauds this effort and will be working with both the House and the Senate to advance the bill while continuing to work with state and local officials across the country, where most law enforcement actions occur, to ensure accountability and increase public safety. We call on all members of Congress to heed the will of the people and join House Speaker Nancy Pelosi (D-CA) and leaders of the Congressional Black Caucus to support these reforms, transform law enforcement, and shrink the footprint of the police in our communities.

Related resources:

- "[What We Should Expect of the Police: Experts Weigh In On Recent Police Violence](#)" by Ed Chung and Betsy Pearl
- "[Expanding the Authority of State Attorneys General to Combat Police Misconduct](#)" by Connor Maxwell and Danyelle Solomon
- "[Policing During the Coronavirus Pandemic](#)" by Ed Chung, Betsy Pearl, and Lea Hunter
- "[The Intersection of Policing and Race](#)" by Danyelle Solomon

For more information or to speak to an expert, please contact Julia Cusick at jcusick@americanprogress.org.

###

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Center for American Progress, 1333 H St NW FL 10, Washington, DC 20005 United States

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
CHIEF POLICY OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5310

June 8, 2020

TO THE MEMBERS OF THE UNITED STATES CONGRESS:

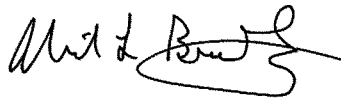
The U.S. Chamber of Commerce welcomes the introduction of bills to reform policing policies. Well-functioning police departments holding the trust of the communities they serve are essential to a free society. Without taking away from the many officers and departments across this nation who by their actions have earned such trust, there is no doubt that change is necessary in police policy.

We are not experts in policing policy. We won't pretend to suggest that we know exactly how policy ought to be changed to make an impact. What we do know is that while no single law can solve our problems, changes in policy can make a difference.

We call on all elected officials, Republicans and Democrats, to come together and, informed by experts, enact bipartisan policing reforms before Labor Day. We encourage Members to suggest ideas and recommendations in the days ahead and will award credit on the Chamber's scorecard for Members of Congress who introduce or cosponsor proposals that advance impactful policing reform.

We look forward to participating in the dialogue and helping to address this important issue. But more importantly, we look forward to action that builds trust and moves our nation forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil L. Bradley", with a stylized flourish at the end.

Neil L. Bradley



Written Statement of
 Alphonso David
 President
 Human Rights Campaign
 To the
 Committee on the Judiciary
 United States House of Representatives
 Oversight Hearing on Policing Practices and Law Enforcement Accountability

June 10, 2020

Chairman Nadler, Ranking Member Jordan, and Members of the Committee:

My name is Alphonso David, and I am the President of the Human Rights Campaign, the nation's largest civil rights organization working to achieve equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) people. HRC strives to end discrimination against LGBTQ people and realize a nation that achieves fundamental fairness and equality for all. On behalf of our more than 3 million members and supporters, I am honored to submit testimony for this important hearing on policing practices and law enforcement accountability. I want to thank Chairman Nadler, Congresswoman Bass, and other members of this committee for their leadership on these issues.

The movement for LGBTQ equality locates its origins in resisting the discriminatory profiling and police violence used to enforce laws that prevented LGBTQ people from living fully liberated lives. Police departments across the country, particularly those in larger cities with significant populations of out transgender and lesbian, gay and bisexual people, routinely profiled, surveilled, and terrorized the spaces that our community created to exist freely and safely. The seminal events at Coopers Donuts, Compton's Cafeteria, and the Stonewall Inn are reflected in the demands for justice for Tony McDade, Breonna Taylor, and George Floyd. They are also reflected in the cries for justice for the long list of Black trans women whose murders remain unsolved and lives disregarded.

The history of criminalization of Black identity and communities, and the discriminatory policing practices used to maintain that criminalization, runs even deeper. Unchecked abuses of police power and state-sanctioned violence against Black people span our nation's history. In the early 18th century, "slave patrols", first established in South Carolina and Virginia, were granted the authority to stop, seize, and administer physical discipline to those suspected of escape or rebellion.¹ And in 2015, the United States Department of Justice, after an extensive investigation following the death of Michael Brown, determined that systemic racially discriminatory practices

¹ See Philip L. Reichel, *Southern Slave Patrols as a Transitional Police Type*, 7 AM. J. POLICE 51, 55 (1988).

by the Ferguson Police Department had undermined community trust and left Black residents less safe.²

Despite recent efforts to provide for increased federal oversight of local police departments who engage in discriminatory and abusive practices, the institution of policing remains deeply infected with racial bias. Today's historic demand for justice requires an historic response from our federal government. We must pass legislation that drives the systemic change necessary to address recent and repeated instances of police brutality and discriminatory profiling while also courageously embracing the deep fundamental change necessary to reimagine a new community-centered safety model that allows all Black people, including Black LGBTQ people, to live fully and freely.

The memory and legacy of Tony McDade, Breonna Taylor, George Floyd, and the countless others whose names we do not know requires nothing less.

Recommendations

Deeply entrenched racism can not be undone by a single act. Governments and individuals will have to profoundly shift their actions, beliefs, and reactions before true change is achievable. Yes, Congress can take decisive steps today to begin the hard work of dismantling policing systems that actively devalues the lives of Black people. The Justice in Policing Act of 2020 reflects many of the core priorities identified by HRC and more than 400 organizations. The legislation passed by Congress must adopt a multifaceted approach to the problem.

Demilitarize the police

Since the 1990s, the Pentagon's Defense Logistics Agency has transferred surplus military equipment to more than 8,000 federal and state law enforcement agencies through the 1033 program.³ Equipment provided to police departments includes armored vehicles, grenade launchers, bayonets, explosives, and battering rams. Militarization of police has fundamentally changed policing both for the officers themselves and the individuals they are supposed to serve. Public confidence in law enforcement declines with the presence of militarized units.⁴ Even more troublingly, the transfer of military weapons to police departments increases officer induced fatalities among civilians.⁵

² U.S. DEP'T OF JUST. C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

³ 1033 Program FAQs, DEF. LOGISTICS AGENCY <https://www.dla.mil/DispositionServices/Offers/Reutilization/LawEnforcement/ProgramFAQs.aspx> (last visited June 8, 2020).

⁴ Nsikan Akpan, *Police militarization fails to protect officers and targets black communities, study finds*, PBS News (Aug. 21, 2018), <https://www.pbs.org/newshour/science/police-militarization-fails-to-protect-officers-and-targets-black-communities-study-finds>.

⁵ Casey Delehanty et al., *Militarization and police violence: The case of the 1033 program*, RES. & POL. (June 14, 2017), <https://journals.sagepub.com/doi/full/10.1177/2053168017712885>.

Militarization changes the day to day approach of police departments. SWAT team deployments are not isolated to significant incidents such as hostage situations, rather they are routinely used by police departments. An investigation by the ACLU found that 79% of SWAT team deployments were for executing search warrants.⁶ A lack of data and recordkeeping makes it difficult to statistically ascertain which communities are most affected by militarization. However, a review of police militarization in Maryland, which bucks the trend by maintaining reliable records, shows that SWAT teams are more likely to be deployed to Black neighborhoods regardless of crime levels consistent with anecdotal evidence across the country.⁷ Congress must end federal programs, including the 1033 program, that provide police with military equipment.

Redirect funds

The United States spends twice as much on policing, prisons, and courts as it does on direct welfare programs such as Temporary Assistance to Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), and supplemental social security.⁸ Numerous studies show that access to frequent, sufficient direct supplemental funds reduce major crimes including burglary, theft, and robbery.⁹ Yet, our current social safety net is woefully underfunded. Looking at housing alone, only one quarter of eligible people are able to obtain federal Housing Choice vouchers.¹⁰ The average national wait time exceeds two years and approximately half of all housing authorities are not accepting new applicants.¹¹

Spending on preventative programs results also in savings in other areas. For example, every dollar spent on substance abuse treatment, the government saves 12 dollars in reduced crime and health care costs.¹² Congress, states, and local governments can reduce incidents of crime by redirecting funds to critical assistance programs as well as housing programs, mental health services, substance abuse treatment, and early intervention programs.

Create federal standards for acceptable use of force

⁶ *War Comes Home: The Excessive Militarization of American Policing*, AM. C.L. UNION 3 (2014), <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>.

⁷ Akpan, *supra* note 4.

⁸ Christopher Ingraham, *U.S. spends twice as much on law and order as it does on cash welfare, data show*, WASH. POST (June 4, 2020), <https://www.washingtonpost.com/business/2020/06/04/us-spends-twice-much-law-order-it-does-social-welfare-data-show/>.

⁹ C. Fritz Foley, *Welfare Payments and Crime*, 93 REV. ECON. & STAT. 97 (2011), available at https://dash.harvard.edu/bitstream/handle/1/32969786/rest_a_00068.pdf?sequence=1&isAllowed=y.

¹⁰ Aaron Schrank, *It's a long wait for Section 8 housing in U.S. cities*, MARKETPLACE (Jan. 3, 2018), <https://www.marketplace.org/2018/01/03/its-long-wait-section-8-housing-us-cities/>.

¹¹ *Id.*

¹² *Principles of Drug Addiction Treatment: A Research-Based Guide (Third Edition)*, NAT'L INST. ON DRUG ABUSE (last updated Jan. 2018), <https://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/frequently-asked-questions/drug-addiction-treatment-worth-its-cost>.

Currently, there is no federal standard that clearly defines acceptable use of force during police-civilian interactions. Instead, state and local law enforcement agencies are tasked with implementing their own guidelines with vague constitutional direction.

In its 1989 decision in *Graham v. Connor*, the Supreme Court held that excessive force cases should be determined based on whether the officer's actions were reasonable at the time.¹³ However, the "objective reasonableness" standard articulated by the Court more than three decades ago was and remains mired in ambiguity. Having not concretely answered the question of what "reasonable" means, the Court's ruling provided police departments with considerable discretion in making that determination for themselves. Subsequent lower court rulings have followed suit. As a result, police use of force is insufficiently governed by a patchwork of state laws and administrative procedures that make it nearly impossible to convict an officer under excessive force claims.

The bar must be set higher, starting with a federal use of force standard that is both clear and comprehensive. At a minimum, it should permit use of force only when necessary and as a last resort when all reasonable options have been exhausted. It should also expressly prohibit maneuvers and restraints that restrict the flow of blood or oxygen to the brain, including neck holds and chokeholds. This type of force should expressly be deemed a civil rights violation. To further safeguard individual's civil rights, Congress should update the federal criminal civil rights statute - Deprivation of Rights Under Color of Law, 18 U.S.C. §242 - by adjusting the mens rea requirement from willfulness to recklessness, permitting prosecutors to successfully hold law enforcement accountable for the deprivation of civil rights and civil liberties. Additionally, a federal standard should ban use of force as a punitive or retaliatory measure and require law enforcement to use de-escalation tactics instead.

Police officers must also act when they observe fellow officer misconduct. When witnessing a colleague using excessive force or engaging in wrongdoing, police officers should have a duty to intervene and accurately report the incident to supervisors, making it clear to the community and to other officers that law enforcement's primary responsibility is to protect and serve the public.

Transparency and accountability

Law enforcement agencies have an obligation to address the systemic and structural injustices in the criminal justice system, which include discriminatory policing practices and tactics that eroded community trust. Police departments must aim to become more transparent by making trainings and departmental procedures more available to the public. Additionally, there must be a generous data collection effort that includes information on types of police stops, instances of use of force, and the treatment of vulnerable populations, like those belonging to immigrant, LGBTQ, and Black and Brown communities. It is important that this collection of data provides separate and specific information that concerns all demographic characteristics and that is available in multiple languages.

¹³ *Graham v. Connor*, 490 U.S. 386 (1989), available at <https://supreme.justia.com/cases/federal/us/490/386/>.

Eliminate qualified immunity for police officers

Qualified immunity is a legal doctrine constructed by the federal courts to shield government officials from being personally held liable for violations of Constitutional rights. Recent evolution of the doctrine has effectively made it impossible for an average person to hold police accountable for brutality and discriminatory practices. Currently, a person must show that law enforcement violated “clearly established” law by pointing to a case arising in the same context that involves the same conduct.¹⁴ This standard deters courts from thoroughly assessing a claim which provides future claimants from having a comparable basis for their violations. Justice Sonia Sotomayor painted a bleak picture by noting that the current standard for qualified immunity “sends an alarming signal to law enforcement officers and the public. It tells officers that they can shoot first and think later, and it tells the public that palpably unreasonable conduct will go unpunished.”¹⁵

The purpose of Section 1983 of the Civil Rights Act of 1871 is to create accountability for Constitutional rights violations. The courts extrapolated qualified immunity from common law rather than statute or an implied Constitutional right.¹⁶ This allows Congress to address the issue via legislation. In addition to addressing the actions of specific police officers, ending qualified immunity will incentivize cities to restructure police departments and change policies that permit an abuse of power. Ending qualified immunity does not guarantee that an individual will be successful in their claim against a police officer, but rather removes the barrier which currently prevents juries from hearing and deciding the case on the merits. Congress must end qualified immunity for police officers that engage in brutality or otherwise violate civil rights.

Creation of national public database for disciplined police officers

Tens of thousands of police disciplinary records are shielded from public view. Whether guided by state law or internal policies, police departments regularly refuse to disclose the contents of the files, arguing that doing so would constitute an invasion of officer privacy. But the professional history of a police officer whose personnel records are riddled with instances of misconduct and bad behavior should not be protected from public scrutiny.

Officer misconduct can vary widely, with offenses ranging from perjury to police brutality. Issues also arise when officers who are disciplined or fired are rehired in other jurisdictions by police executives who are unaware of their problematic professional histories. The creation of a searchable national public database for disciplined officers is necessary to ensure accountability and transparency exists in hiring decisions and safeguards members of the community who must engage with the police. Information contained therein would include, at a minimum, the names of officers who have been found to have engaged in misconduct and who have had their licenses revoked as a result.

¹⁴ *Qualified Immunity*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/qualified_immunity.

¹⁵ *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting), <https://supreme.justia.com/cases/federal/us/584/17-467/#tab-opinion-3881475>.

¹⁶ David Rudovsky, *The Qualified Immunity Doctrine in the Supreme Court: Judicial Activism and the Restriction of Constitutional Rights*, 138 U. PA. L. REV. 23, 36 (1989), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2508&context=faculty_scholarship.

Require use of body cameras

When used correctly, body-worn cameras have the potential to increase transparency and provide an additional perspective to police-community encounters. Coupled with a consistent standard of use, body cameras can be used to promote both civilian and officer safety. An appropriate standard should emphasize public availability and regular reviewing of footage, except in instances where it is clear that doing so would harm a witness or compromise an active investigation.

Additional requirements should include clean reporting, with police officers providing personal accounts of police-civilian incidents before reviewing video. This helps ensure that officer narratives are not influenced by what they've observed on recorded footage. Standards should also consider the privacy rights of individuals being filmed during interactions with police. Body-worn cameras should never be used in conjunction with facial recognition software or to help officers engage in unnecessary surveilling of members from vulnerable communities, like people of color, immigrants, and the LGBTQ community.

End racial profiling

Profiling and discrimination in policing must be strictly prohibited. In particular, these dangerous practices disproportionately affect people of color and those from the LGBTQ community, who are at an increased risk of arrest and incarceration as a result of over-policing.¹⁷

The effects of discriminatory profiling also have a chilling effect on the reporting of crimes. Studies have shown that vulnerable communities are hesitant to call the police as a result of prior police mistreatment. A majority of respondents in the 2015 U.S. Transgender Survey revealed they would feel “uncomfortable asking the police for help”, even if they required it.¹⁸

To combat the rampant use of discriminatory profiling in policing, Congress should immediately pass the End Racial and Religious Profiling Act.

The End Racial and Religious Profiling Act prohibits law enforcement from targeting a person based on actual or perceived race, ethnicity, national origin, religion, gender, gender identity, or sexual orientation without trustworthy information that is relevant to linking a person to a crime.¹⁹ The Act also requires law enforcement to maintain adequate policies and procedures designed to eliminate profiling, including increased data collection in order to accurately assess the extent of the problem. Additionally, the Act compels law enforcement officials to receive training on issues of profiling and mandates the creation of procedures for receiving, investigating, and responding to complaints of alleged profiling.

¹⁷ CTR. FOR AM. PROGRESS, UNJUST: HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBT PEOPLE OF COLOR 22 (Aug. 2016), <https://www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf>.

¹⁸ SANDY E. JAMES ET AL., NAT'L CTR. TRANSGENDER EQUAL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹⁹ S. 2355, 106th Cong. (2019), <https://www.congress.gov/bills/116/congress/senate-bill/2355/text>.

It is important, now more than ever, that Congress pass this important legislation and demonstrate a commitment to ending discriminatory profiling in policing.

Prohibit no-knock warrants

No-knock warrants authorize police to enter a premises without announcing their presence or their purpose. Intended to prevent the destruction of evidence or ensure police safety, no-knock warrants have instead led to the killing and injury of innocent people. An analysis of no-knock warrant raids conducted by the New York Police Department found that 10 percent were wrong-door raids.²⁰ Even in circumstances in which police correctly identify a premises, information that led to the identification of a suspect has come through false claims or unreliable confidential informants.²¹

Barriers to obtaining no-knock warrants are few. In an investigation into no-knock warrants in Little Rock, Arkansas, police successfully obtained no-knock warrants by using boiler-plate language alone regarding the supposed danger of the situation in 95 of 103 granted no-knock warrants.²² Congress, states, and local governments must prohibit the use of no-knock warrants to ensure the safety of the people.

Increase use of special prosecutors to investigate police misconduct and excessive use of force.

The mutualistic relationship between police officers and prosecutors threatens the equitable application of justice. Prosecutor's frequently work alongside local police departments to institute legal proceedings against potential and existing defendants. This close-knit relationship creates a serious conflict of interest when the alleged perpetrator of a crime is a police officer.

Consequently, police officers are rarely charged or convicted for police misconduct, even in the presence of overwhelming evidence that it has occurred. In the event that an officer is indicted, broad prosecutorial discretion ensures that only a small percentage are ever convicted. In the past year, over 1,000 people were fatally shot by police, while countless others were victims of uses of force that did not involve a gun.²³ Of the 10,000 people killed by police between 2005 to

²⁰ Dara Lind, *Cops do 20,000 no-knock raids a year. Civilians often pay the price when they go wrong.*, Vox (May 15, 2015), <https://www.vox.com/2014/10/29/7083371/swat-no-knock-raids-police-killed-civilians-dangerous-work-drugs>.

²¹ See e.g. Radley Balko, *Little Rock's dangerous and illegal drug war*, WASH. POST (Oct. 14, 2018), <https://www.washingtonpost.com/news/opinions/wp/2018/10/14/little-rocks-dangerous-and-illegal-drug-war/>.

²² *Id.*

²³ *Fatal Force: 1041 people have been shot and killed by police in the past year*, WASH. POST (updated June 8, 2020), https://www.washingtonpost.com/graphics/investigations/police-shootings-database/?hpid=hp_hp-investigations-police-shootings-database%3Ahomepage%2Ft-9.

2014, only 153 officers were charged in their deaths.²⁴ These numbers represent a failing of the criminal justice system and erodes public trust in law enforcement.

Substantial criminal justice reform must include holding police officers accountable for the crimes they commit. To do so, state officials should appoint special prosecutors to independently review allegations of police misconduct and excessive use of force incidents. Shifting the responsibility of prosecuting officers from local prosecutor's offices onto the shoulders of external parties would build trust between law enforcement and the communities they are entrusted to protect and serve.

Conclusion

As hundreds of thousands of protestors march the streets to denounce police violence, we must acknowledge the role of law enforcement in perpetuating systems of oppression against our most vulnerable people. Many of the policy changes outlined above are addressed by the Justice in Policing Act, but that is only one step. The modern-day criminal justice system's preservation of white supremacy and traditional power imbalances have had devastating impacts on communities of color and members of the LGBTQ community. It is not enough that we reform the system. We must also dismantle the systemic and structural racism that lingers throughout our society.

²⁴ Kimberly Kindy & Kimbriell Kelly, *Thousands Dead, Few Prosecuted*, WASH. POST (Apr. 11, 2015), https://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/?hpid=hp_interstitial_manual_13.

Written Testimony of the
National Council of the Churches of Christ in the USA

Submitted to the House Judiciary Committee
Oversight Hearing on Policing Practices and Law Enforcement Accountability

June 10, 2020

We would like to express our thanks to Chairman Nadler, Ranking Member Jordan, and the members of the committee for convening this important hearing examining the continuing plague of police violence and for the opportunity to submit written testimony expressing the position of the National Council of the Churches of Christ in the USA (NCC).

For 70 years the NCC has been the foremost expression of Christian unity in the United States. The NCC is a national organization of 38 member denominations from Protestant, Anglican, Orthodox, Evangelical, historically African American, and Living Peace Church traditions that represent 45 million Christians in over 100,000 congregations. We seek to model unity and work together to promote God's justice, peace, and healing for the world.

More recently, this unity has been expressed through our ACT NOW initiative to address issues of racism and white supremacy, both in personal and systemic terms. This includes addressing structural inequalities in both our churches and in societal institutions including in education, healthcare, the economy, and the criminal legal system. The current COVID-19 crisis has laid bare these structural inequalities and the intersectionality with systemic and systematic racism. The recent murders of George Floyd, Breonna Taylor, Ahmaud Arbery and others have also laid bare the pervasive abuse of power by police and their surrogates. The clashing of these two viruses has shined a spotlight on the impact of America's first and greatest sin, white supremacy.

The United States is in crisis. Racism has again driven people to the streets to demand an end to the destructive and deadly consequences of racial hatred, white supremacy and unconscious bias. As we consider events of the last few months, we know that our nation is in desperate need of healing, hope and justice for the senseless deaths of unarmed Black people at the hands of law enforcement. As citizens march and call for an end of police brutality we hear and see law enforcement armed with guns, rifles, tear gas, batons, mace, and some in full military gear using excessive force against non-violent protesters.

In the wake of these recent murders and the countless others that have not made the news or were not recorded, NCC calls upon Congress to heed the voices of the people and enact transformative, substantive legislation that prioritizes public safety and not brute control of people's movement and livelihood. We desire a system that acknowledges that Black Lives Matter.

Some first steps to begin to reverse the tide of violence should include:

1. Require a federal standard that use of force be reserved for only when necessary as a last resort after exhausting reasonable options, and incentivize states to implement this standard; require the use of de-escalation techniques, and the duty to intervene; ban the use of force as a punitive measure or means of retaliation against individuals who only verbally confront officers, or against individuals who pose a danger only to themselves; and require all officers to accurately report all uses of force;
2. Prohibit all maneuvers that restrict the flow of blood or oxygen to the brain, including neck holds, chokeholds, and similar excessive force, deeming the use of such force a federal civil rights violation;
3. Prohibit racial profiling with robust data collection on police-community encounters and law enforcement activities. Data should capture all demographic categories and be disaggregated;
4. Eliminate the 1033 program entirely;
5. Prohibit the use of no-knock and quick-knock warrants, especially for drug searches;
6. Change the 18 U.S.C. Sec. 242 mens rea requirement from willfulness to recklessness, permitting prosecutors to successfully hold law enforcement accountable for the deprivation of civil rights and civil liberties;
7. Develop a national public database of police actions that is accessible to all and would cover all police agencies in the United States and its territories; and,
8. End the qualified immunity doctrine that prevents police from being held legally accountable when they break the law.

These measures are essential to begin the hard work of dismantling the effects of centuries of racism in this country. We emphasize that these are but first steps, and additional structural reform will be necessary to continue to address the mass incarceration crisis, economic discrimination, and disparities in the availability of quality healthcare among the many inequalities that are fueled by systemic racism. We commit ourselves to continue to demand justice and work for an end to racism. We invite you to make this commitment as well to structural, transformative change. The people demand action. We pray that God may grant you the courage to take the bold action required at this time.

Testimony of Ayesha Delany-Brumsey, PhD
Division Director, Behavioral Health, Council of State Governments Justice Center
and
Terence Lynn, CAGS, LMHC
Deputy Division Director, Law Enforcement, Council of State Governments Justice Center

House Judiciary Committee
Oversight Hearing on Policing Practices and Law Enforcement
June 24, 2020

Introduction

Thank you for the opportunity to submit testimony to the House Judiciary Committee in support of the committee's Oversight Hearing on Policing Practices and Law Enforcement. The Council of State Governments (CSG) Justice Center is a national nonprofit, nonpartisan organization that combines the power of a membership association, representing state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities.

CSG Justice Center staff have decades of experience working closely with law enforcement agencies and their partners across the country to develop collaborative solutions to challenges at the intersection of law enforcement and behavioral health. Since 2009, the CSG Justice Center has been the lead training and technical assistance provider for the U.S. Department of Justice's Bureau of Justice Assistance's (BJA's) Justice and Mental Health Collaboration Program (JMHCP). In this role, we have supported over 120 law enforcement grantees to work in partnership with other systems—health, homeless services, and more—to improve their responses to people with mental health and substance use conditions. This includes helping communities launch co-responder programs where law enforcement and health workers respond together to people experiencing a mental health crisis, among other initiatives. This year, with the support of BJA, we are launching a national technical assistance center to offer free, practical training and education to communities looking to safely connect people who have behavioral health conditions or intellectual and developmental disabilities to community-based supports and services in lieu of arrest and incarceration. Drawing on this work and our conversations with partners across the country, we hope the following comments help to inform the committee's ongoing law enforcement reform efforts.

Communities across the country are reacting in anguish to George Floyd's death at the hands of Minneapolis Police Department Officer Derek Chauvin, while his fellow officers looked on. This widespread outcry is not solely due to George Floyd's killing; it is also in response to far too many other killings of people of color, both recent and throughout the long history of policing in America, in situations where neither the officer's safety nor public safety were at imminent risk. Communities are calling for significant changes in the way they are policed, and law enforcement and its partners have the opportunity, and the responsibility, to answer that call with improved approaches to fostering public safety.

Our experience in the many communities where we've worked has demonstrated that communities can significantly improve public safety outcomes by investing in alternative response models for people struggling with mental illnesses, substance use disorders, homelessness, and/or intellectual and developmental disabilities. In building such response models, communities can and should leverage systems and approaches outside of law enforcement.

Building Alternative Response Models

Law enforcement officers are too often called upon to serve as our first (and frequently only) responders to address socioeconomic and health needs, including mental health crises, substance use, and homelessness. The actual day-to-day job of law enforcement can be very different than officers imagine it to be when they apply, and many departments struggle to effectively recruit, train, and equip their police forces for the reality of the work.

At best, these are challenging situations for officers to respond to, which may result in less than optimal outcomes for those in need of help.¹ At worst, these interactions can lead to injury or tragic loss of life: of the nearly 5,500 people fatally shot by on-duty officers since 2015, approximately 22 percent were people with a mental illness.²

Conversations with our partners underscore that there is significant agreement between law enforcement and community activists that the status quo is not working for officers or the communities they serve. Both concur that the ideal response to these social challenges is not increased enforcement, but rather allocation of more significant investments in community supports and solutions that connect people to needed services. Given this agreement, now is the time to rethink how we can respond to these social service needs in ways that meaningfully engage other systems, such as health, housing, and social services. Ideally, these responses would be led by the health and social service systems, not law enforcement, and law enforcement may not need to be involved at all.

Communities know what resources they need to ensure their own safety. Therefore, community-based organizations and community members should be supported to work in partnership with local and state governments to design and operate alternative responses that meet the short-term acute needs of people in crisis, as well as support longer-term well-being. Community-based organizations are already the backbone of public safety in our communities,³ and the supports they are able to provide are key to fostering neighborhood cohesion, increasing trust among residents and between residents and government, reducing violence, and improving health. Further, community members will be able to offer guidance about the resources they know are needed to support public safety in their community, and their engagement will boost public trust and confidence in the initiatives they help design.⁴

¹The Council of State Governments Justice Center, *Police-Mental Health Collaborations: A Framework for Implementing Effective Law Enforcement Responses for People who have Mental Health Needs* (New York: The Council of State Governments Justice Center, 2019), <https://csgjusticecenter.org/wp-content/uploads/2020/02/Police-Mental-Health-Collaborations-Framework.pdf>.

²"Fatal Force: Police shootings database," *The Washington Post*, accessed June 24, 2020, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

³Patrick Sharkey, Gerard Torrats-Espinosa, and Delaram Takyar, "Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime," *American Sociological Review*, 82, no. 6 (2017): 1214–1240.

⁴Policing Project NYU Law School, *Beyond the Conversation: Ensuring Meaningful Police-Community Engagement* (New York: Policing Project NYU Law School, 2018), <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5b29056a758d460f539bc079/1529415022872/Policing+Project+Beyond+the+Conversation.pdf>.

We encourage Congress to create and fund programs that help communities build these types of alternative responses in lieu of deploying law enforcement to address socioeconomic and health challenges. Specific strategies could include:

- 1) Embedding clinicians in 911 call centers so that when a call is received involving a person in distress, the clinician can connect that individual to the appropriate supports.⁵
- 2) Creating rapid-response mobile teams of clinicians, community health workers, and peers who can be deployed by 911.⁶
- 3) Increasing access to low-barrier mental health supports, including same-day and walk-in appointments at behavioral health urgent care centers and crisis stabilization units.
- 4) Increasing access to rapid, low-barrier housing for people experiencing homelessness,⁷ including proactive outreach through homeless outreach teams to people who are living on the streets.
- 5) For calls that cannot be entirely diverted away from a law enforcement response, invest in mental health and substance use training and interventions such as co-responder teams so that law enforcement has the appropriate tools to respond.

Funding should be prioritized for jurisdictions that show community members are meaningfully engaged in the planning and implementation of these initiatives and could be provided through the Department of Health and Human Services and the Department of Urban Development. The Department of Justice, and other agencies as appropriate, such as the Department of Transportation, could provide additional support to jurisdictions to make changes to their 911 system to allow for embedding alternative responses within their operation.

Building these new models will not be easy. Doing so necessitates a steadfast commitment from communities' political and law enforcement leadership to engage in candid, critical self-reflection about why current approaches are not working. And given the harm that communities of color, in particular, have experienced, it will require each community and its law enforcement system to acknowledge the history of racial bias within policing. That said, we have seen a number of communities implement such approaches to public safety with early success,⁸ and we are confident that, with increased federal support, many more communities will be able to follow in their footsteps.

Thank you for considering this testimony and for your vital work to ensure the safety of our communities.

⁵ The Houston Crisis Call Diversion Program directs non-emergency calls for people experiencing a mental health crisis away from law enforcement and emergency medical services (EMS) and to mental health professionals co-located in the 911 call center. In 2017, the program responded to over 7,000 calls and is estimated to save the city \$860,218 annually. Houston Police Department Mental Health Division, *Crisis Call Diversion Program (CCD)*, <https://www.houstoncit.org/ccd/>.

⁶ Founded in 1989, the CAHOOTS program in Oregon deploys teams of health care workers to respond to 911 calls for a range of concerns, including mental health crises, threats of suicide, and conflict resolution. In 2017, the CAHOOTS team responded to 17 percent of the Eugene Police Department's total call volume and is estimated to have saved the city \$8.5 million annually. White Bird Clinic, *Crisis Assistance Helping out on the Streets Media Guide 2020* (Eugene, OR: White Bird Clinic, 2020), <https://whitebirdclinic.org/wp-content/uploads/2020/06/CAHOOTS-Media-Guide-20200622.pdf>.

⁷ Ann Elizabeth Montgomery, et al., "Housing Chronically Homeless Veterans: Evaluating the Efficacy of a Housing First Approach to HUD-VASH," *Journal of Community Psychology*, 41, No. 4 (2013): 505–514.

⁸ Phillip Atiba Goff, et al., *Re-imagining Public Safety: Prevent Harm and Lead with the Truth* (Justice Collaboratory Yale Law School and The Center for Policing Equity, 2019), <https://policingequity.org/what-we-do/a-policy-plan-for-policing-in-america>

QUESTIONS FOR THE RECORD

The Honorable Steve Cohen, *Chair*

**Subcommittee on the Constitution, Civil Rights, and Civil Liberties
House Committee on the Judiciary**

**Questions for the Record for the Oversight Hearing on Policing
Practices and Law Enforcement Accountability**

June 10, 2020

Question for Mr. Ben Crump

1. Mr. Crump, at the hearing I informed you that I planned to introduce a bill to amend 42 U.S.C. 1983 to allow individuals to bring claims against a law enforcement officer's employer based on a theory of *respondeat superior* liability. You agreed that, in addition to removing qualified immunity for law enforcement officers, such a change would improve police accountability.
 - a. Can you please further elaborate on why permitting claims based on *respondeat superior* under section 1983 will improve police accountability for unconstitutional misconduct?

