



February 5, 2015

President's Task Force on 21st Century Policing
Office of Community Oriented Policing Services
U.S. Department of Justice
145 N Street, N.E. 11th Floor
Washington, DC 20530
Comment@taskforceonpolicing.us

Submitted via e-mail

Dear Members of the Task Force:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we appreciate this opportunity to submit “written comments including proposed recommendations” relating to the importance of reforming current police practices and developing comprehensive measures for law enforcement accountability.ⁱ The Leadership Conference provides a powerful unified voice for the various constituencies of the coalition: persons of color, women, children, individuals with disabilities, gays and lesbians, older Americans, labor unions, major religious groups, civil libertarians, and human rights organizations. As discussed below, we believe that thoughtful policies, developed in public with the input of civil rights advocates and the local community, are essential to ensuring that state and local law enforcement practices enhance, rather than threaten, civil rights.

The Leadership Conference is deeply invested in promoting fair and lawful policies that further the goal of equality under law. For the past several decades, our laws have largely failed to ensure the justice that we all seek. Recent tragic events, such as the deaths of Michael Brown in Ferguson, Missouri, Eric Garner in New York City, and Tamir Rice in Cleveland, Ohio, highlight the systemic issues of police militarization and racial discrimination that persist at every stage of our justice system.

Moving forward, we must rebuild police-community trust and seek accountability for officers and departments that engage in civil and human rights violations. The Task Force’s listening session on “Policy and Oversight” is an important step toward meeting this goal. Our comments offer recommendations for enacting policies aimed at improving the system by revolutionizing police culture in ways that enhance accountability and community collaboration with law enforcement efforts, dispel racial biases, and combat excessive police militarization. In brief, in order to promote lawful, fair, and effective police practices and accountability measures, we urge the Task Force to:

- Eliminate “broken windows” policing and promote community-based policing;
- Implement a comprehensive federal review and reporting of police departments’ racial profiling and racially bias practices, as well as any related policies and trainings;
- Require racial bias training and guidance against the use of force for state and local law enforcement agencies that receive federal grants;

- Require police officer body-worn cameras to record every police-civilian encounter in accordance with appropriate protocols and policy requiring civilian notification and applicable laws, including during SWAT deployments;
- Take concrete steps to ensure that federal military weapons do not end up in the hands of local law enforcement and, if they do, to prevent the misuse of those weapons in communities of color;
- Promote greater and more effective community oversight over local law enforcement and policing tactics; and
- End discriminatory profiling among federal, state, and local law enforcement agencies.

I. Modern Police Culture Influences Law Enforcement Practices.

Traditionally, police culture is founded upon a collective set of attitudes and values shared by officers and their superiors to manage the unique circumstances of their work environment.ⁱⁱ However, recent perceptions of police culture have created an “Us versus Them” mentality between law enforcement and communities they serve and protect.ⁱⁱⁱ When police culture—or perceptions of police culture—perpetuate officer misconduct, law enforcement accountability is jeopardized.^{iv} This can spur suspicion of community members and fuel officer mistrust.

An example of this cycle involves the officer “Code of Silence.” This “Code” refers to an understood pact between officers and supervisors that results in concealing instances of wrongdoing.^v A recent report by the University of Illinois at Chicago found that police corruption is enabled by the perception of a “blue code of silence,” entrenched in a department culture where officers avoid reporting misconduct and criminal behavior by their colleagues.^{vi} The report notes that drug-law enforcement operations often blur the line between corruption and upstanding investigation, thus reinforcing a need for greater supervision and supervisor training.^{vii} A culture that succumbs to hiding individual misconduct inevitably fuels mistrust within communities and leads to law enforcement methods that are aimed at punishing community members, rather than enhancing public safety.

An example of an enforcement method that is fueled by a discriminatory police culture is the concept of “broken windows” policing. This theory hypothesizes that vigorous enforcement of low-level petty offenses leads to a reduction in more serious crime.^{viii} Despite a lack of evidence that this approach has contributed to declining crime rates, it has been accepted by many law enforcement departments.^{ix} However, broken windows policing is plagued by the use of discriminatory police practices, such as racially biased stop and frisks.^x These policies have isolated officers from community members and imposed tremendous costs on police-community relations.

Discriminatory police practices - like the Code of Silence and broken windows policing - work together to fuel officer misconduct and breed insecurity in surrounding communities.^{xi} Changes to police practices and department policies must be made to combat the “Us versus Them” mentality that has influenced society’s understanding of modern police culture. We encourage law enforcement officers and police departments to conduct thorough ethics training and implement consistent accountability measures. For example, departments can engage in on-the-ground community training to educate residents of their rights when dealing with law enforcement.^{xii}

In addition, state and local departments should establish civilian review boards to monitor local policing tactics. These review boards should include leaders from civil rights advocacy groups and civilians who

represent impacted communities.^{xiii} There should also be incentives for state and local law enforcement agencies to use federal funding streams to implement best practices in policing, including training for officers on implicit and explicit racial bias, implementing body and dash camera policies^{xiv}, and substituting “broken windows” policing practices with community-based policing models.^{xv}

Moreover, previously proposed legislation, like the Law Enforcement Trust and Integrity Act, are essential to ensuring uniform police practices throughout the United States. The Law Enforcement Trust and Integrity Act would require state and local law enforcement agencies to be certified through associations like The Commission on Accreditation for Law Enforcement Agencies (CALEA) and thus mandate compliance with requisite standards and policies.^{xvi} Currently, there are more than 18,000 state and local law enforcement agencies in the United States that may be accredited through a variety of programs, including state and local associations.^{xvii} We support the establishment of a federal mandate for uniform accreditation procedures and standards that could enforce and maintain a uniform body of standards for every agency.

Finally, departments across the country should work to develop quality engagement programs that deconstruct the racial and ethnic stereotypes that are pervasive throughout the United States. Specifically, state and local law enforcement should cultivate relationships with key community leaders in order to communicate information in a timely manner.^{xviii} Establishing a rapport between law enforcement officials and community members is a significant step toward reforming the state of police culture and rebuilding trust and collaboration in communities.

II. Racial Profiling is an Ineffective Law Enforcement Tool.

Modern policing is often plagued by discriminatory practices, like profiling. Racial or discriminatory profiling involves the unwarranted screening of certain groups of people assumed by the police and other law enforcement agents to be predisposed to criminal behavior.^{xix} More than a decade after President George W. Bush announced racial profiling is “wrong and we will end it in America,” communities of color across the country are still subjected to profiling in a variety of contexts.

Profiling is antithetical to the principles upon which our nation was founded, namely that “all men are created equal” and should be treated equally under the law, regardless of race, ethnicity, religion, national origin, gender, sexual orientation, or gender identity. Biased law enforcement practices primarily designed to impact certain groups are ineffective and often result in the destruction of civil liberties for everyone. Racial profiling makes us all less safe, by distracting law enforcement from the pursuit of individuals who pose serious threats to security.

Racial profiling also violates international standards against non-discrimination and undermines U.S. human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights. Multiple international human rights bodies, including the United Nations Committee on the Elimination of Racial Discrimination, have raised concerns about the persistence of racial and ethnic profiling by U.S. law enforcement. In its 2014 concluding observations to the United States, the Committee stated “it remains concerned at the practice of racial profiling of racial or ethnic minorities by law enforcement officials.”^{xx}

Discrimination and racial disparities persist at every stage of the U.S. justice system, from policing to trial to sentencing. Police officers, whether federal, state, or local, exercise substantial discretion when

determining whether an individual's behavior is suspicious enough to warrant further investigation.^{xxi} Tragedies like the death of Michael Brown highlight the reality that military-style response by the local police to demonstrators, and allegations of racially biased law enforcement, are the result of longstanding and corrosive limitations on our nation's law enforcement policies that allow unlawful profiling to persist across the country.

Moreover, racial profiling is consistently shown to be an ineffective law enforcement tactic. It diverts police attention away from proven, more effective, evidence-based law enforcement techniques, thereby wasting police resources. For example, across the United States, traffic stops and "stops and frisks" are often used as a pretext for determining whether minority individuals are engaged in criminal activity. In 2011, the most recent year for which there is "stop and frisk" data, Black drivers were more likely than white drivers and Hispanic drivers to be searched by police during a traffic stop.^{xxii} Moreover, the data indicated that people of color, including African Americans and Latinos, are *no more likely*, and very often *less* likely, to have drugs or weapons than whites.^{xxiii} By relying on stereotypes rather than lawful investigative procedures, the lives of innocent people are needlessly harmed by law enforcement agencies and officials.

While there are several omissions and missed opportunities in the Department of Justice's 2014 Guidance for Federal Law Enforcement Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity,^{xxiv} the Guidance provides an example for state and local law enforcement agencies of unbiased law enforcement practices. In addition to utilizing this federal guidance, we believe state and local law enforcement, particularly agencies that receive grants, must be willing to undergo racial bias training against the use of force.^{xxv}

In addition, we applaud and support federal legislative efforts to prohibit profiling, such as the End Racial Profiling Act (ERPA). ERPA would prohibit profiling and mandate training for federal law enforcement officials on these issues. As a condition of receiving federal funding, state, local, and Indian tribal law enforcement agencies would be required to collect data on both routine and spontaneous investigatory activities. The Department of Justice would be authorized to provide grants to state and local law enforcement agencies for the development and implementation of best policing practices, such as technology integration, and other management protocols that discourage profiling.

The Task Force should encourage the administration to use its funding authority to require state and local police departments to report racially disproportionate policing, specifically by examining rates of stops, frisks, searches, and arrests by race.^{xxvi} This should also include timely federal review of police departments' data collection practices and capabilities. Establishing more comprehensive accountability mechanisms, like these data collection systems, can reduce the use of discriminatory policing tactics by state and local law enforcement, and inevitably enhance police-community relations and promote greater public safety.

III. Excessive Use of Force and Police Militarization.

The excessive use of force and militarization of law enforcement agencies are issues of grave concern to communities of color. Policing in the United States has become dangerously militarized, largely through federal programs that arm state and local agencies with weapons for use in law enforcement activities. The police response in Ferguson in the aftermath of the shooting death of Michael Brown brought national attention to the issue. The nation watched as peaceful protestors took to the streets to express

their sorrow over Michael Brown's death and police responded with armored vehicles, assault rifles, tear gas, and other military weapons and equipment. The country soon learned that such highly militarized responses were not limited to Ferguson. In fact, Special Weapons and Tactics (SWAT) teams have long been carrying out the so-called War on Drugs, though most often for low level drug offenses, in militarized fashion, which disproportionately affects minority communities.^{xxvii} Indeed, for drug investigations involving minorities, SWAT teams were twice as likely to force entry into an individual's home using violent tactics and equipment.^{xxviii}

The Department of Defense's excess property program, known as DoD 1033, provides surplus DoD military equipment to state and local civilian law enforcement agencies for use in counter-narcotics and counter-terrorism operations, and to enhance officer safety.^{xxix} Since the 1990s, DoD 1033 has provided more than \$5 billion of surplus military equipment to state and local agencies.^{xxx} During a September 9, 2014 Senate hearing, we learned that one-third of the equipment being transferred through the program is new.^{xxxi} Hearing witnesses also revealed a lack of communication and coordination between the Department of Defense and the other agencies providing funding to local agencies for military equipment.^{xxxii} Ultimately, the hearing raised more questions than it provided answers.

The shooting death of Michael Brown is but one instance in a long list of unexplained deaths that has raised significant questions about misconduct and excessive use of force by police officers. Federal, state, and local police continue to use force, and in particular, more deadly force, disproportionately against individuals and communities of color.^{xxxiii} Current available data indicates in 2012, an African American was shot and killed by police officers or security guards every 28 hours.^{xxxiv} Moreover, the National Police Misconduct Statistics and Reporting Project, run by the Cato Institute, reports that there were 4,861 unique reports of police misconduct that involved 6,613 sworn law enforcement officers and 6,826 alleged victims in 2010, the most recent year for which there are data.^{xxxv}

Though telling, these data are limited and do not provide a full picture of the scope of the problem. Currently, there is no federal requirement to collect data disaggregated by race on use of force or deaths of individuals not in the custody of law enforcement, illustrating the crucial need for systemic reform at the federal level to address these issues. It is imperative that state and local law enforcement officials be willing to correct this information gap by collecting reliable and comprehensive use of force data disaggregated by race.

Moreover, the Task Force should encourage the administration to use its federal funding authority to require state and local police departments to take necessary steps to reduce the use of deadly force and decrease instances of police misconduct. The administration recently announced several new initiatives to study these issues and provide recommendations for solutions, including the purchasing of body worn cameras for police in the field and the provision of more than \$200 million for better training of law enforcement officials.

Though a step in the right direction, there is more to be done to restore the confidence that so many have lost in our justice system and to address issues of police misconduct. Rather than relying on military-style weaponry, police departments should look at how officers can become adept at being responsive to community needs, and achieve consistency and continuity in the community, while simultaneously enforcing the law in more diplomatic ways.

IV. Conclusion.

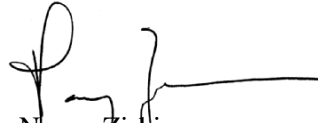
We remain committed to working with the Task Force to ensure greater accountability and transparency, particularly for state and local police agencies receiving federal funds. It is more critical now than ever to implement practices that end the ability of state and local agencies to engage in civil and human rights violations and to continue to reward those agencies that adopt best practices.

We believe that the important protections described above represent a step toward establishing fair and effective law enforcement policies and oversight mechanisms, which are vital to rebuilding police-community trust and ensuring the effective administration of our country's justice system. We stand ready to work with you to ensure that the voices of the civil and human rights community are heard in this important, ongoing national conversation. If you have any questions about these comments, please contact Sakira Cook, Counsel, at 202-466-3311.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President

ⁱ COPS Office, *Listening Session: Technology and Social Media*, <http://www.cops.usdoj.gov/Default.asp?Item=2768> (last visited Jan. 25, 2015).

ⁱⁱ William Terrill, Eugene A. Paoline III, & Peter K. Manning, *Police Culture and Coercion*, 41 *Northeastern Univ. Criminology L.J.* 1003, 1005 (2006).

ⁱⁱⁱ *Id.* at 1006.

^{iv} *Id.*

^v John Hagedorn et al, *Crime, Corruption and Cover-Ups in the Chicago Police Department*, UNIV. OF ILLINOIS ANTI-CORRUPTION REPORT, (Jan. 22, 2013), <http://pols.uic.edu/political-science/chicago-politics>.

^{vi} *Id.*

^{vii} *Id.*

^{viii} George L. Kelling & James Q. Wilson, *Broken Windows: The police and neighborhood safety*, THE ATLANTIC, Mar. 1, 1982.

^{ix} Taylor Pendergrass, *In New York, A Rogue Wave of Criminal Injustice*, ACLU, June 23, 2011, <https://www.aclu.org/blog/criminal-law-reform-racial-justice/new-york-rogue-wave-criminal-injustice>.

^x *Id.*

^{xi} *Id.*

^{xii} ACLU, *Joint Statement of Action to Promote Reform and Stop Police Abuse*, Aug. 18, 2014, <https://www.aclu.org/criminal-law-reform-racial-justice/joint-statement-action-promote-reform-and-stop-police-abuse>.

^{xiii} *Id.*

^{xiv} The Leadership Conference on Civil and Human Rights, Letter to the President's Task Force on 21st Century Policing, Jan 30, 2015, <http://www.civilrights.org/advocacy/letters/2015/21st-century-policing.html>.

^{xv} ACLU, *Joint Statement of Action to Promote Reform and Stop Police Abuse*, Aug. 18, 2014, <https://www.aclu.org/criminal-law-reform-racial-justice/joint-statement-action-promote-reform-and-stop-police-abuse>.

^{xvi} Law Enforcement Trust and Integrity Act of 2000, H.R. 3927, 106th Cong. § 1 (2000).

^{xvii} Brian A. Reaves, *Census of State and Local Law Enforcement Agencies 2008*, BUREAU OF JUSTICE STATISTICS, (July 26, 2011), <http://www.bjs.gov/index.cfm?ty=tp&tid=71>.

xviii *Id.*

xix *Id.*

xx Wade Henderson, Testimony on “21st Century Law Enforcement: How Smart Policing Targets Criminal Behavior,” The Leadership Conference on Civil and Human Rights (Nov. 4, 2011), <http://www.civilrights.org/advocacy/testimony/racial-profiling-henderson.html>.

xxi *Id.*

xxii Kara McCarthy, *Study Finds Some Racial Differences in Perceptions of Police Behavior During Contact with the Public*, BUREAU OF JUSTICE STATISTICS, (Sept. 24, 2013), <http://www.bjs.gov/content/pub/press/pbtss11rpal1pr.cfm>.

xxiii *Id.*

xxiv Dep’t of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity*, Aug. 2014, <http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>.

xxv ACLU, *Joint Statement of Action to Promote Reform and Stop Police Abuse*, Aug. 18, 2014, <https://www.aclu.org/criminal-law-reform-racial-justice/joint-statement-action-promote-reform-and-stop-police-abuse>.

xxvi *Id.*

xxvii Wade Henderson, Testimony on “21st Century Law Enforcement: How Smart Policing Targets Criminal Behavior,” The Leadership Conference on Civil and Human Rights (Nov. 4, 2011), <http://www.civilrights.org/advocacy/testimony/racial-profiling-henderson.html>.

xxviii ACLU, *War Comes Home: The Excessive Militarization of American Policing*, June 23, 2014, available at <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>.

xxix Def. Logistics Agency, *About the 1033 Program*, <http://www.dispositionservices.dla.mil/leso/Pages/default.aspx> (last accessed Feb. 2, 2015).

xxx *Id.*

xxxi Tim Devaney, *Senators blast DOD program that ‘militarized police,’* THE HILL, Sept. 9, 2014.

xxxii *Id.*

xxxiii Wade Henderson, Testimony on “21st Century Law Enforcement: How Smart Policing Targets Criminal Behavior,” The Leadership Conference on Civil and Human Rights (Nov. 4, 2011), <http://www.civilrights.org/advocacy/testimony/racial-profiling-henderson.html>.

xxxiv Kali Akuno, *Operation Ghetto Storm: 2012 Annual Report on the Extrajudicial Killings of 313 Black People by Police, Security Guards, and Vigilantes*, MALCOM X GRASSROOTS MOVEMENT, (April 2013), <https://mxgm.org/wp-content/uploads/2013/04/Operation-Ghetto-Storm.pdf>.

xxxv Nat’l Police Misconduct Reporting Project, *2010 Annual Report*, available at <http://www.policemisconduct.net/statistics/2010-annual-report/> (last accessed Feb. 2, 2015).