



**Officers**  
**Chair**  
Judith L. Lichtman  
National Partnership for  
Women & Families  
**Vice Chairs**  
Thomas A. Saenz  
Mexican American Legal  
Defense and Educational Fund  
Hillary Shelton  
NAACP  
**Secretary/Treasurer**  
Lee A. Saunders  
American Federation of State,  
County & Municipal Employees

**Board of Directors**  
Kevin Allis  
National Congress of American Indians  
Kimberly Churches  
AAUW  
Kristen Clarke  
Lawyers' Committee for  
Civil Rights Under Law  
Alphonso B. David  
Human Rights Campaign  
Lily Eskelsen Garcia  
National Education Association  
Fatima Goss Graves  
National Women's Law Center  
Mary Kay Henry  
Service Employees International Union  
Sherrilyn Ifill  
NAACP Legal Defense and  
Educational Fund, Inc.  
David H. Inoue  
Japanese American Citizens League  
Gary Jones  
International Union, UAW  
Derrick Johnson  
NAACP  
Virginia Kase  
League of Women Voters of the  
United States  
Michael B. Keegan  
People for the American Way  
Samer E. Khalaf  
American-Arab  
Anti-Discrimination Committee  
Marc Morial  
National Urban League  
Janet Murguía  
UnidosUS  
Debra L. Ness  
National Partnership for  
Women & Families  
Rabbi Jonah Pesner  
Religious Action Center  
Of Reform Judaism  
Lisa Rice  
National Fair Housing Alliance  
Anthony Romero  
American Civil Liberties Union  
Maria Town  
American Association of  
People with Disabilities  
Richard L. Trumka  
AFL-CIO  
Toni Van Pelt  
National Organization for Women  
Randi Weingarten  
American Federation of Teachers  
John C. Yang  
Asian Americans Advancing Justice |  
AAJC

**Policy and Enforcement  
Committee Chair**  
Michael Lieberman  
Anti-Defamation League  
**President & CEO**  
Vanita Gupta

June 12, 2020

Hon. William P. Barr  
Attorney General of the United States U.S. Department of Justice  
950 Pennsylvania Avenue, NW Washington, DC 20530

Phil Keith, Director  
Office of Community Oriented Policing Services U.S. Department of Justice  
145 N. Street, NE  
Washington, DC 20530

Katherine Sullivan, Principal Deputy Assistant Attorney General Office of Justice Programs  
U.S. Department of Justice  
810 Seventh Street NW  
Washington, DC 20531

**Via Electronic Mail** (LE.Commission@usdoj.gov)

**RE: Written Testimony from Vanita Gupta, President and CEO  
The Leadership Conference On Civil and Human Rights on the President's  
Commission on Law Enforcement and the Administration of Justice**

Dear Attorney General Barr, Director Keith, and Principal Deputy AAG Sullivan:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations working to build an America as good as its ideals, we appreciate the opportunity to submit our views regarding the need for transformative reform of policing at both the federal and state levels, and ask that this statement, which focuses on the President's Commission on Law Enforcement and the Administration of Justice ("Commission") composition, general purpose and public notice, and the stated focus of the Respect for Law Enforcement working group, be entered into the record of this proceeding.

While the Leadership Conference was founded in 1950 as the legislative arm of the civil rights movement, our mission has since expanded so that today we are meeting the new challenges of the 21st century, which include guaranteeing quality education for children, ensuring economic opportunity and justice for all workers, preserving the right to vote and other democratic institutions for marginalized communities, and transforming the criminal legal system in America.

The Commission is operating at a critical moment in our nation's history. As COVID-19 continues to spread across the nation and threaten the lives of so many Americans, racism is continuing to spread across the nation and especially within local police departments, which also threatens the lives of so many. We are mourning yet another death of an unarmed Black man at the hands of those who were sworn to protect our communities. Below, we describe the current landscape of the criminal justice system and offer several recommendations highlighting issues that would increase transparency, accountability, and trust between law enforcement and the communities they serve.

### **I. Commission Composition, General Purpose, and Public Notice Concerns**

The Leadership Conference shares Attorney General Barr's view that many social issues currently being addressed by law enforcement and incarceration demand solutions beyond the use of police<sup>i</sup>. We are concerned that the Presidential Commission on Law Enforcement and the Administration of Justice ("Commission") is made up exclusively of individuals engaged in law enforcement.<sup>ii</sup> Neither community members nor representatives from civil rights organizations, defense bar associations, or community organizations with a depth of knowledge and expertise about current law enforcement practices have been appointed to the Commission, limiting its perspective and focus. While the first-hand experience of police officials is critical to understanding the challenges they face, the first-hand experience of the communities they serve is equally important to understanding the impact of unconstitutional or harmful policing practices. Because community members know and understand their public safety needs and are best positioned to help police departments develop policies and practices to meet those needs, their omission raises serious concerns.

The lack of notice and transparency surrounding the Commission's process for conducting its study of law enforcement impedes meaningful public participation. This is particularly problematic because the changes have occurred during the COVID-19 pandemic while stakeholders are adjusting to states of emergency and otherwise responding to the global pandemic. Thus, we also urge the Commission to adhere to public notice requirements when holding hearings and opening comment periods to ensure that all stakeholders are meaningfully able to engage in the process.

We ask that the Commission incorporate a more community-centered approach to exploring the modern issues affecting law enforcement in the United States, as well as expanding the scope of the Commission's work, we ask that the Commission adopt the recommendations promulgated by the Presidential Task Force on 21<sup>st</sup> Century Policing, which reflect comprehensive deliberation and stakeholder engagement in modern law enforcement practice. Finally, the Respect for Law Enforcement Working Group must shift its scope and focus to the use of excessive force and discriminatory policing to gain a complete understanding of the dynamics affecting police-community relations, and trust and respect all around. It should also evaluate the Department of Justice's abdication of its responsibility for ensuring accountability of law enforcement agencies for systemic civil rights violations.

To that end, we are asking the Commission to follow the recommendations set forth in this testimony. We call on the Commission to address the following issues: transparency of this very Commission, law

enforcement accountability, racial injustice across our justice system, prosecutorial and sentencing reform and lastly, public health concerns in correctional facilities related to COVID-19.

## **II. The Commission Must Acknowledge Racial Disparities in the Current Landscape of the American Criminal Legal System**

It is imperative that the Commission take steps to hold law enforcement agencies accountable, acknowledge and address the current landscape of racism in our justice system, and recommend bold solutions to end the nation's mass incarceration rate that has plagued our country's health and safety. The American criminal legal system is a stain on our democracy. This system replicates and reinforces patterns of racial and economic oppression that can be traced from slavery — and the result is a criminal-legal bureaucracy that denies millions of people the opportunities, legal equality, and human rights they deserve, while at the same time fueling the world's highest incarceration rate. Our overreliance on incarceration and criminalization as the primary mechanism to advance public safety has had a devastating impact on our communities. Today, the United States leads the world in imprisoning or supervising more than 6.6 million people while ripping parents and loved ones from their families every day. Research shows that nearly one in two adults in America — approximately 113 million people — has an immediate family member who is currently or formerly incarcerated. This crisis of over-criminalization and incarceration is fueled by the policy choices the nation has made since the start of the “War on Drugs” more than 40 years ago. Since then, there has been a growing movement to reverse course. But while there has been some progress at the state and federal level to address drivers of mass incarceration and criminalization, and to decrease prison populations and address racial inequity, these reforms have largely overlooked the crisis we face within our jail systems — a crisis that is largely fueled by our massive over-use of pretrial detention.

## **III. Pretrial Detention Significantly Impacts Individuals and Communities**

Each year, there are 12 million admissions to jails<sup>iii</sup> and each night, nearly half a million people sit in jail not because they have been convicted of a crime, but because they are detained prior to trial,<sup>iv</sup> often because they cannot afford money bail. Nationally, 62 percent of people in jail are there because they are awaiting trial, usually for misdemeanors or lesser offenses.<sup>v</sup> These are mostly cash-poor individuals arrested for very minor offenses who cannot afford to post bail and are more often than not dealing with mental health or substance use problems.<sup>vi</sup> Research shows that this pervasive system of pretrial detention has devastating effects on individuals, their families, and the community. Stories like those of Sandra Bland<sup>vii</sup> and Kalief Browder<sup>viii</sup> show the shocking effects of detention on individuals who, whether for a couple of days or three years, have been detained for very minor offenses and have not been convicted of a crime.

The impact of prolonged pretrial detention, however, reaches further than the detention itself. While in jail, people are at risk of losing employment, falling behind in school, not getting needed medication, losing their housing and losing custody of their children.<sup>ix</sup> Not only does pretrial detention significantly impact access to counsel and opportunities for dismissal, diversion, and plea bargaining,<sup>x</sup> detention has a coercive effect that has been shown to induce individuals to plead guilty out of a desire to go home.<sup>xi</sup>

People detained prior to trial are three to four times more likely to receive a sentence to jail or prison, and their sentences are two to three times longer.<sup>xiii</sup> Just three days in jail increases the risk that some people will be arrested on new charges. Pretrial detention further bleeds resources from communities that can least afford it, sucking away billions of dollars<sup>xiii</sup> from families and communities that will never get it back. Ultimately, we cannot end mass incarceration and criminalization without significant changes to our pretrial systems. The Commission must acknowledge the impact that pretrial detention has on the criminal legal system and address ways to improve it as it is a key aspect of justice reform.

#### **IV. Prosecutorial Reform is Needed Nationwide**

We have serious concerns regarding the President’s November 1, 2019 Executive Order which states that the Commission shall review relevant research and expertise and make recommendations regarding a number of issues, including, “refusals by State and local prosecutors to enforce laws or prosecute categories of crimes.”<sup>xiv</sup> Our laws and policies have not provided sufficient transparency, standardization, or accountability over prosecutorial decisions and prosecutorial misconduct.<sup>xv</sup> This hurts not only the people affected, but also their families and communities. We must create a system that is fair, transparent, and accountable. The Commission must mandate “open file” discovery and ensure that it occurs before a plea agreement takes place. As part of this reform, the Commission must create robust systems for disclosing police and prosecutor misconduct and introduce new requirements to ensure the quality of, retention of, and access to evidence. Appointing judges with a wide variety of backgrounds, including histories as civil rights and defense attorneys, can also assist with this reform. The establishment of an independent, publicly accountable statewide agency — with meaningful mechanisms of community oversight — that is tasked with investigating prosecutorial misconduct and prosecutorial over-charging will help shape this reform.

At the federal level, increasing Department of Justice investigations into prosecutor and police misconduct will add to prosecutorial reform. The Department of Justice’s responsibility for clemency must be transferred to independent experts. Another way to reform prosecutorial reform is to end “absolute immunity” for prosecutors. Policy makers must also enact legislation requiring that the Justice Department’s Office of Professional Responsibility, which oversees department lawyers, answer to the Office of the Inspector General rather than the Office of the Attorney General. Moreover, requiring the inspector general to investigate and act on any credible allegation of prosecutorial misconduct will help in this effort. Further, requiring annual reporting of all findings to the U.S. Congress can make progress in regards to reform. Lastly, the Department of Justice’s Civil Rights Division has authority to investigate local and state prosecutors’ offices for systemic violations of federal and constitutional law will greatly improve prosecutorial reform but does not use this authority as much as it should. The Department of Justice must fulfill its obligation to enforce these civil rights protections against local and state prosecutors’ offices, and clearly and publicly announce its intention to hold these offices accountable under its existing authority.

#### **V. Eliminate Mandatory Minimums and Support Overall Sentencing Reform**

The United States has the highest incarceration rate in the world. Mass incarceration is a huge problem within the United States. Reform of the federal criminal justice system is urgently needed to restore balance to a system in crisis. More than 30 years ago, the United States started the “war on drugs” and adopted “tough on crime” policies such as mandatory minimum sentencing laws. As a result, prison populations skyrocketed. In fact, over the last two decades alone, the federal prison population increased by almost 790 percent. For each year between 1980 and 2013, federal prisons added almost 6,000 more inmates than the year prior. Currently, the Federal Bureau of Prisons (BOP) has custody of more than 185,000 people.

Several research reports have suggested that mandatory minimum sentences are a major contributor to the growing federal prison population.<sup>xvi</sup> Research by the Urban Institute found that increases in expected time served, specifically for drug offenses, contributed to half of the prison population growth between 1998 and 2010.<sup>xvii</sup> A 2013 report by the Congressional Research Service (CRS) concluded that the increase in the amount of time people were expected to serve was the result of people receiving longer sentences and being required to serve approximately 85 percent of their sentences after Congress eliminated parole for federal prisoners.<sup>xviii</sup> The increased time served by people convicted of drug offenses accounted for almost one-third of the total federal prison population growth between 1998 and 2010.<sup>xix</sup> Currently, people convicted of drug offenses make up 46.3 percent of the BOP population.<sup>xx</sup> These statistics illustrate the need to move away from the “tough on crime” laws and focus more on “smart on crime” policies.

Mandatory minimum sentencing reform is crucial to slowing the overwhelming growth of our prison population and addressing its disproportionate impact on minority communities. Moreover, there is a need to shorten the length of terms of supervision and of supervised release, and a need to end lifetime probation. The nation can no longer afford to ignore the societal and budgetary costs of our growing federal prison population.

## **VI. Prison Conditions: Standards of Treatment Must Change Amid COVID-19**

In jails, prisons, immigration detention centers, and juvenile detention facilities, many individuals suffer from physical mistreatment, excessive disciplinary sanctions, abhorrent physical conditions, and inadequate medical and mental health care. Moreover, overcrowding, violence, sexual abuse, and other conditions pose grave risks to the health and safety of those incarcerated. Recently, we asked Attorney General Barr <sup>xxi</sup>to decarcerate as many people as possible and to stop relying on the PATTERN risk assessment tool to identify people for home confinement because we are concerned that people of color will be disproportionately excluded for such release. We also asked the BOP <sup>xxii</sup>to include certain demographic information in its daily reporting of COVID-19 cases within federal facilities — because with 70 percent of the BOP population being Black and Latinx, we are concerned that people of color will bear the brunt of COVID-19 outbreaks in federal facilities. With reports indicating that COVID-19 is disproportionately impacting Black and Latinx people, elected officials have called for health agencies to collect and report demographic data on COVID-19. We need the Presidential Commission to ensure that BOP does the same. In the age of COVID-19, this enormous prison population and the enclosed nature of jails and prisons as well as the difficulties of maintaining proper hygiene inside facilities, provide a

breeding ground for the deadly virus. Many jails are extremely overcrowded. Access to clean water and showers is limited. Hand sanitizer is often banned. Moreover, the jail population is more likely to be older and have chronic health conditions that render them particularly vulnerable to both infection and serious medical complications. All of these conditions effectively create a virus tinderbox that threatens not only incarcerated people, but also their families and communities at large.<sup>xxiii</sup> Unfortunately, not enough has been done to decrease prison and jail populations.

Nearly half of the federal prison population is detained for a drug offense. They are mothers, fathers, daughters, sons, sisters, brothers, aunts, uncles, and cousins. They are real people with families — and they deserve dignity and access to care and safety during this frightening time. This administration must use the discretion it has under current law, including the CARES Act, to immediately release as many people as possible. Other officials across the country who have the authority must do the same. In addition, as Congress works on its next legislative response to COVID-19, we recommend that as many people as possible be released, especially the most vulnerable, from prisons and pre-trial detention and increase testing and provide adequate health care and communications<sup>xxiv</sup> for all people who remain in custody. We also recommend that states be incentivized to drastically reduce their jail and prison populations and law enforcement to reduce arrests and end jail bookings.

Not only should this Commission reckon with the obligations of DOJ to step in and protect the health and safety of the men and women in custody at BOP, but it also must recognize and highlight the obligation of the Department of Homeland Security, Immigration and Customs Enforcement (ICE) to ensure that immigration detention does not become a death sentence during this pandemic. Tens of thousands of immigrants detained and taken into civilian custody by ICE are also at significant risk as the result of overcrowding, inadequate testing, insufficient medical care, and the infeasibility of social distancing in detention. Urgent changes must be made to the way that immigration detention and enforcement occur during this unprecedented national public health emergency, and we as a nation must take action before more people die.

## **VII. Conclusion**

Bringing fairness, equity, and dignity to our legal system is one of the most profound civil and human rights issues of our time. The unequal treatment of people of color and people who are low-income undermines the progress the nation has made over the past five decades toward equality under the law. Ultimately, we have to remember that nearly half of the federal prison population is there for a drug offense. Just as law enforcement agencies must seek community engagement and embrace the principles of transparency and accountability to achieve legitimacy, so too must this Commission. The validity of its work rests on true representation of all groups affected by law enforcement — police officials and community members alike. Transparency and accountability also require that the Commission make participation accessible through public notice and open meetings. The purpose of the Commission is to conduct a system-wide, comprehensive review of the criminal justice system, identifying gaps, needs and opportunities, and developing a strategic plan that will guide federal, state, and local efforts in the long term.

The Commission should work to develop recommendations, as provided herein, that promote transparency and accountability and to guide police departments large and small, urban and rural, to move toward a policing model that puts communities first and offers a transformative vision for fair, safe, and effective policing. This includes rethinking the use of prosecutorial discretion to help address systemic bias, discrimination, and inequity throughout the criminal legal system. Finally, the Respect for Law Enforcement Working Group should evaluate the Department of Justice's abdication of its responsibility for ensuring accountability of law enforcement agencies for systemic civil rights violations.

We urge the Commission to pursue the measures outlined above to reform the federal legal system, and to assist and incentivize states to engage in their own reform initiatives. We urge the Commission to exercise its oversight powers accordingly and take this opportunity to consider our recommendations to review the overarching criminal justice systems comprehensively. We also urge members of this Commission to end mass incarceration. By working together, communities and police departments can articulate a vision for a new era of policing that respects the dignity and humanity of all people -- and can ultimately ensure that all people, of all backgrounds, are truly safe in America.

Thank you for considering our comments and recommendations. We have also attached the executive summary of the New Era of Public Safety report for your consideration. Please do not hesitate to contact Sakira Cook, Justice Reform Program Director, at [cook@civilrights.org](mailto:cook@civilrights.org), and Lynda Garcia, Policing Campaign Director, at [garcia@civilrights.org](mailto:garcia@civilrights.org), with any questions.

Sincerely,



Vanita Gupta  
President and CEO

---

<sup>i</sup> Department of Justice, Attorney General William P. Barr Announces the Establishment of the Presidential Commission on Law Enforcement and the Administration of Justice (January 22, 2020), <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-presidential-commission-law-enforcement>.

<sup>ii</sup> Department of Justice, Office of Public Affairs, Attorney General William P. Barr Announces the Establishment of the Presidential Commission on Law Enforcement and the Administration of Justice (January 22, 2020), <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-establishment-presidential-commission-law>.

<sup>iii</sup> Digard, Léon & Swavola, Elizabeth. "Justice Denied: The Harmful and Lasting Effects of Pretrial Detention." *Vera Institute of Justice*, April 2019. Pg. 1. <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>.

<sup>iv</sup> Sawyer, Wendy. "How does unaffordable money bail affect families?" *Prison Policy Initiative*. August 15, 2018. <https://www.prisonpolicy.org/blog/2018/08/15/pretrial/>.

<sup>v</sup> Mathew, Teresa. "Bail Reform Takes Flight in Philly." *Citylab*. February 2, 2018. <https://www.citylab.com/equity/2018/02/bail-reform-takes-flight-in-philly/552212/>.

<sup>vi</sup> Digard, Léon & Swavola, Elizabeth. "Justice Denied: The Harmful and Lasting Effects of Pretrial Detention." *Vera Institute of Justice*, April 2019. Pg. 1. <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>.

<sup>vii</sup> Stafford, Zach. "Foul play suspicions raised in Illinois woman's alleged suicide in Texas jail." *The Guardian*. July 16, 2015. <https://www.theguardian.com/us-news/2015/jul/16/women-suicide-texas-jail-sandra-bland-foul-play>.

<sup>viii</sup> Gonnerman, Jennifer. "Before the Law." *The New Yorker*. September 29, 2014. <https://www.newyorker.com/magazine/2014/10/06/before-the-law>.

- 
- <sup>ix</sup> Pretrial Justice Institute. “Why We Need Pretrial Reform.” <https://www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform/>.
- <sup>x</sup> Digard, Léon & Swavola, Elizabeth. “Justice Denied: The Harmful and Lasting Effects of Pretrial Detention.” *Vera Institute of Justice*, April 2019. Pg. 1. <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>.
- <sup>xi</sup> In Harris County, Texas, for instance, a study found that pretrial detainees were 25% more likely to plead guilty than similarly situated defendants who were released prior to trial. Heaton, Paul. “The Downstream Consequences of Misdemeanor Pretrial Detention.” *Stanford Law Review*. 2017. Pg. 711.
- <sup>xii</sup> Lowenkamp, Christopher T, VanNostrand, Marie, & Holsinger, Alexander. “Investigating the Impact of Pretrial Detention on Sentencing Outcomes.” *Laura and John Arnold Foundation*, November 2013. <https://csgjusticecenter.org/wp-content/uploads/2013/12/Investigating-the-Impact-of-Pretrial-Detention-on-Sentencing-Outcomes.pdf>.
- <sup>xiii</sup> Justice Policy Institute, “For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice.” September 2012. Pgs. 12-15. [http://www.justicepolicy.org/uploads/justicepolicy/documents/for\\_better\\_or\\_for\\_profit.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/for_better_or_for_profit.pdf).
- <sup>xiv</sup> Exec. Order. No. 13896, 72 Fed. Reg. 58595 (October 28, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-11-01/pdf/2019-24040.pdf>.
- <sup>xv</sup> Vision for Justice, Leadership Conference on Civil and Human Rights, <http://civilrightsdocs.info/pdf/reports/Vision-For-Justice-2020-SHORT.pdf>
- <sup>xvi</sup> See LaVigne, Nancy & Samuels, Julie. “The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions” Urban Institute. December 11, 2012. Pgs. 1-2. <https://www.urban.org/research/publication/growth-increasing-cost-federal-prison-system-drivers-and-potential-solutions>.
- <sup>xvii</sup> *Id.*
- <sup>xviii</sup> See James, Nathan. “The Federal Prison Population Buildup: Options for Congress.” Congressional Research Service. May 20, 2016. Pg. 13. <https://fas.org/sgp/crs/misc/R42937.pdf>.
- <sup>xix</sup> See Mallik-Kane, Kamala & Parthasarathy, Barbara & Adams, William. “Examining Growth in the Federal Prison Population, 1998 to 2010.” Urban Institute. 2012. Pg. 3. <https://www.urban.org/sites/default/files/publication/26311/412720-Examining-Growth-in-the-Federal-Prison-Population-to-PDF>.
- <sup>xx</sup> See “Offenses.” Federal Bureau of Prisons. Last Updated September 23, 2017. [https://www.bop.gov/about/statistics/statistics\\_inmate\\_offenses.jsp](https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp).
- <sup>xxi</sup> Letter to Attorney General Barr RE: The use of the PATTERN risk assessment in prioritizing release in response to the COVID-19 pandemic, The Leadership Conference, <https://civilrights.org/resource/letter-to-attorney-general-barr-re-the-use-of-the-pattern-risk-assessment-in-prioritizing-release-in-response-to-the-covid-19-pandemic/>
- <sup>xxii</sup> Coalition Letter to Federal Bureau of Prisons RE Demographic Data, The Leadership Conference, <https://civilrights.org/resource/29034/>
- <sup>xxiii</sup> New Model Shows Reducing Jail Population will Lower COVID-19 Death Toll for All of Us, ACLU, <https://www.aclu.org/news/smart-justice/new-model-shows-reducing-jail-population-will-lower-covid-19-death-toll-for-all-of-us/>
- <sup>xxiv</sup> Protect Incarcerated People And Their Families During The Covid-19 Crisis, <https://mediajustice.org/wp-content/uploads/2020/04/FCC-Protect-Incarcerated-People-Letter-final-4-7-20.pdf>