



June 18, 2020

Coalition Letter on H.R. 7120 “George Floyd Justice in Policing Act”

Dear Representatives,

On behalf of The Leadership Conference on Civil and Human Rights (The Leadership Conference), a coalition charged by its diverse membership of more than 220 national organizations to promote and protect civil and human rights in the United States, and the 81 undersigned organizations, we write to urge you to strengthen The George Floyd Justice in Policing Act of 2020 (JPA). The JPA takes important steps forward in achieving meaningful police accountability, however, we believe we can, and must, rise to this moment and put forth the strongest bill possible by improving upon key areas within the bill.

On June 1, 2020, The Leadership Conference sent Congress a letter outlining accountability principles that must be adopted to address rampant, systemic, white supremacy in policing across America.¹ In less than 12 hours, more than 450 of this country’s most diverse civil rights, civil liberties and racial justice organizations signed on to that letter because what was asked of Congress aligned with what advocates, policing experts, and other stakeholders agree is needed. The priorities are not only reasonable but reflect a bare minimum of what *must* be in the JPA for systemic police reform to occur.

These priorities are: (1) the creation of a use of force standard that allows force when necessary and as a last resort; (2) a ban on chokeholds; (3) a ban on racial profiling; (4) the establishment of a police misconduct registry; (5) the inclusion of a “reckless” standard in 18 U.S.C. Section 242 that enables federal prosecutors to hold law enforcement accountable for criminal civil rights violations; (6) a prohibition on no-knock warrants, especially in drug cases; (7) the elimination of the judge-made doctrine of qualified immunity, which allows officers and other government actors to evade accountability when they violate individuals’ civil rights; and (8) the demilitarization of law enforcement agencies.²

Upon introduction of the JPA, The Leadership Conference and many partner organizations applauded the bill’s important provisions, particularly those sections that allow the use of deadly force only as a last resort, ban chokeholds, prohibit racial and religious profiling, and make it easier to hold police accountable for misconduct.³ And while many of the provisions in the JPA are vital and responsive to the priorities called for by our coalition, they must be

¹ Letter from The Leadership Conference on Civil and Human Rights, et al., to Congressional Leadership. (June 1, 2020).

http://civilrightsdocs.info/pdf/policy/letters/2020/Coalition_Letter_to_House_and_Senate_Leadership_on_Federal_Policing_Priorities_Final_6.1.20.pdf

² Ibid.

³ Civil Rights Leaders’ Statement on Justice in Policing Act. (June 6, 2020). The Leadership Conference on Civil and Human Rights. <https://civilrights.org/2020/06/08/civil-rights-leaders-statement-on-justice-in-policing-act/>

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perfected to ensure that the intent behind the reforms is fully realized. There are a number of critical adjustments that should be made to the JPA in order to strengthen it and ensure the comprehensive police transparency and accountability that it intends.

Accountability: Qualified Immunity, Bivens, Pattern or Practice & Color of Law Prosecutions

Qualified immunity is a judge-made doctrine that provides police officers and other government actors with a defense when they have committed constitutional violations, including brutal acts of violence. This doctrine renders it nearly impossible to hold government officials accountable, leaving those who have experienced violence and misconduct by state actors with no recourse or prospect for recovering damages. The current JPA language would codify this doctrine by adopting flawed Supreme Court precedent and limiting it to a subset of state actors. No government actor should be able to deny a person of their civil rights and civil liberties with impunity, which is why qualified immunity must be abolished.

Additionally, the language in the JPA does not go far enough to address federal level accountability. While the Supreme Court has recognized that there are circumstances in which the U.S. Constitution authorizes victims of federal law enforcement officials to recover damages, federal courts have significantly curtailed the availability of these so-called “*Bivens*” claims in recent years.⁴ The JPA does not create a federal cause of action, but merely removes qualified immunity for federal law enforcement in the *Bivens* context the Supreme Court currently recognizes. Congress must enact *Bivens* causes of action while completely eliminating the qualified immunity defense.

These changes must also apply retroactively, given the various cases before courts across this nation dealing with qualified immunity, *Bivens*, and accountability for federal law enforcement officials. Moreover, this week, the Supreme Court chose not to take up several qualified immunity cases, suggesting that the Court might not be likely to change the doctrine any time soon.⁵ Therefore, it is all the more imperative for Congress to act, as the Court will not, that the JPA needs to abolish qualified immunity for all government actors so that individuals have access to a neutral judge who may vindicate their civil and constitutional rights.

Further, we ask that the JPA make clear that the existing pattern or practice statute (34 U.S. C. Section 12601) covers the actions of prosecutors and juvenile courts. In addition, in the authority given to states attorneys general, we would appreciate an explicit authorization of the use of grants for the creation of a special pattern and practice office that independently investigates potential abuses.

Finally, with respect to holding law enforcement officers criminally accountable for violating a person’s civil rights, we recommend adding a new section of the statute, Section 242(A), which specifically criminalizes the reckless use of excessive force and the intentional use of excessive force. These changes would address many of the current barriers to securing a conviction under 18 U.S.C. Section 242 that

⁴ See, e.g., Hemenway, A. (Dec. 15, 2017). Civil Rights Litigation: The Supreme Court Further Restricts Bivens Actions. The Lawletter Blog. *National Legal Research Group, Inc.* <http://www.nlrg.com/legal-content/the-lawletter/civil-rights-litigation-the-supreme-court-further-restricts-bivens-actions>

⁵ Supreme Court of the United States. Certiorari – Summary Dispositions (June 15, 2020). https://www.supremecourt.gov/orders/courtorders/061520zor_f2bh.pdf



have prevented accountability and securing justice for victims, while preserving existing authority under Section 242.

Transparency: Police Misconduct Registry and Robust Data Collection

Police transparency and data accessibility are vital for progress to occur in our society. We welcome sections of the JPA that are responsive to our coalition's call for increased data collection and reporting, ending racial profiling, and the establishment of a national registry of all federal, state, and local law enforcement officials.⁶ We welcome the mandatory reporting provisions that would require law enforcement agencies to submit data to the U.S. Attorney General, including information about officer certifications, to remain eligible for Byrne grant funds.

However, to ensure public transparency, we also request that the JPA bill not obstruct public access to relevant records in the registry. The JPA bill currently contains a privacy provision, Section 201(e)(2) that may restrict public disclosure of important information in the police registry. For years, people of this nation have faced tremendous obstacles in accessing police records, which are critical for public oversight. The public interest in ensuring police transparency and accountability far outweighs the privacy concerns of police officers in their role as public servants. The public has a right to know when and which law enforcement officers have engaged in practices that are harmful to communities.

Furthermore, while we are pleased with the inclusion of misconduct records related to use of force and racial profiling, the bill does not include the collection of other pertinent information related to sexual assault, domestic violence, harassment, violence toward a minor, perjury, tampering with or destroying evidence, bias or other civil rights violations and other misconduct. These omissions limit the ability of the public and law enforcement executives to measure the extent of the officer misconduct.

Finally, the bill needs strong enforcement mechanisms to end racial profiling and must also strengthen data collection and publication on all police enforcement activities, including demographic information. Law enforcement should be required to report the legal justifications for investigatory activities; reporting requirements must mandate quarterly reporting cycles; all data should be publicly reported and subjected to the Freedom of Information Act (FOIA); and the data collection demonstration project section 333 of the bill is duplicative and thus should be eliminated.

Demilitarization: 1033 Program and No-Knock & Quick-Knock Warrants

The militarization of policing in America, and the rise of the warrior cop mentality against Black and other marginalized communities, is made possible in part through the federal government's transfer of weapons and vehicles of war to state and local police.⁷ Data has shown that the increased transfer of

⁶ Letter from The Leadership Conference on Civil and Human Rights, et al., to Congressional Leadership. (June 1, 2020). http://civilrightsdocs.info/pdf/policy/letters/2020/Coalition_Letter_to_House_and_Senate_Leadership_on_Federal_Policing_Priorities_Final_6.1.20.pdf

⁷ American Civil Liberties Union. (June 2014). *War Comes Home: The Excessive Militarization of American Policing*. <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>.



equipment through the Department of Defense 1033 program increases the number of police killings in communities,⁸ particularly in the context of SWAT drug raids.⁹

While the JPA takes a good first step in limiting the transfer of military equipment, the bill keeps intact the 1033 program, which has been notoriously mismanaged through the years.¹⁰ Our coalition calls for complete elimination of all surplus, military grade weapons and equipment to federal, state, and local law enforcement agencies.¹¹ As for non-military equipment, such as desks and other office equipment, we call on Congress to transfer those items through a new agency and program that makes this equipment available to community organizations and state and local institutions beyond law enforcement.

Moreover, while a complete end to all no-knock warrants in all drug cases is also a welcome first step, Congress can and should go further to ban quick-knock raids, which carry the same risks involved in the execution of no-knock warrants.¹² Militarized police responses to drug investigations, where either a no-knock warrant or quick-knock raid is executed, are disproportionately used against people of color and lead to loss of life.¹³ The JPA must disallow these practices from continuing.

Funding: Additional Federal Dollars

As it currently stands, the JPA provides hundreds of millions of *additional* federal dollars to state and local law enforcement agencies, including prosecutors' offices, without significant guardrails in place to ensure those resources are used in the manner in which they are intended. Providing more dollars to the criminal-legal system expressly contradicts what our coalition has reasonably requested – to condition existing federal dollars received by states on the adoption of the critical policies outlined in the bill.¹⁴ The bill also allocates new resources to the Department of Justice to study and implement best practices in training and accreditation, among other things. These resources could be better spent supporting community-led solutions to reimagining public safety. The nearly \$1 billion allocated in the JPA continues to pour federal money into systems that may not reflect community demands, when millions of people in the United States are calling for direct investments into communities during this critical moment. All funding amounts outlined in the bill should be removed and recaptured in a new general appropriations authorization provision, allowing stakeholders to work with Congress to determine

⁸ Ibid.

⁹ Sack, K. (Mar. 18, 2018). Door-Busting Drug Raids Leave a Trail of Blood, *The New York Times*. <https://www.nytimes.com/interactive/2017/03/18/us/forced-entry-warrant-drug-raid.html>.

¹⁰ John, A. (Sept. 2, 2014). Police Departments Keep Losing Their Military Humvees and Assault Rifles. *The Atlantic*. <https://www.theatlantic.com/politics/archive/2014/09/police-departments-keep-losing-their-military-humvees-and-assault-rifles/379470/>

¹¹ Letter from The Leadership Conference on Civil and Human Rights, et al., to Congressional Leadership. (June 1, 2020). [http://civilrightsdocs.info/pdf/policy/letters/2020/Coalition Letter to House and Senate Leadership on Federal Policing Practices Final 6.1.20.pdf](http://civilrightsdocs.info/pdf/policy/letters/2020/Coalition%20Letter%20to%20House%20and%20Senate%20Leadership%20on%20Federal%20Policing%20Practices%20Final%206.1.20.pdf)

¹² Ibid.

¹³ DPA Urges Congress to Strengthen Police Reform. (June 9, 2020). *Drug Policy Alliance*. <https://www.drugpolicy.org/press-release/2020/06/dpa-urges-congress-strengthen-police-reform-bill>

¹⁴ *Testimony of Vanita Gupta, President and CEO, The Leadership Conference on Civil and Human Rights, Policing Practices and Law Enforcement Accountability: Hearing Before the United States House of Representatives Committee on the Judiciary, 116th Cong.* (2020). http://civilrightsdocs.info/VG%20Policing%20Testimony%202006-10-20_final.pdf



through the appropriations process where money is most needed to increase accountability and transparency in policing.

Additionally, provisions in the bill allowing for grant funds to develop uniform standards on school safety — including with respect to use of lethal and nonlethal force — raise concerns about reinforcing the role of law enforcement in schools through the use of school resource officers. The coalition has previously taken the position in its *Civil Rights Principles for Safe, Healthy, and Inclusive School Climates* that school-based law enforcement should be eliminated and instead resources should be used to support students through evidence-based programs that are proven to create positive and safe school climates.¹⁵ We urge Congress to ensure that relevant provisions of JPA are consistent with these principles.

Finally, the bill allocates grant dollars for body worn cameras, without restrictions to prevent them from contributing to our already bloated surveillance infrastructure. Specifically, the bill does not fully prohibit use of biometric and facial surveillance on footage obtained from these cameras. This omission is particularly striking, given that many jurisdictions already prohibit such actions and that a multitude of private companies, including Amazon, IBM, Microsoft, and Google, halted sales of face recognition to the police due to concerns that it can exacerbate existing police abuses.¹⁶

Conclusion

A vast and diverse collection of people, from coast to coast, and from streets across our nation, are calling on lawmakers to prioritize Black communities. It is time to change our laws to make “Black Lives Matter” more than a slogan. Congress has begun the process of heeding those calls with the historic introduction of The George Floyd Justice in Policing Act, but we can, and should go, further. We urge Congress to include the policy changes our coalition offers in order to perfect this bill and rectify the systemic racism that has taken the lives of countless Black and Brown people.

Ultimately, however, we must note that while the JPA takes important steps to address police violence and accountability, these changes will only take us so far. Congress must also reexamine federal spending priorities and shrink the footprint of the police and criminal legal system in this country. This means shifting billions of federal, taxpayer dollars away from criminalization, including policing, toward rebuilding communities of color, especially Black communities, which have been historically underfunded, under resourced and decimated by systemic racism.¹⁷

Thank you for your leadership in advancing these important policy recommendations. We look forward to continuing to work with members of this body as the legislation moves through Congress. If you have

¹⁵ The Leadership Conference on Civil and Human Rights, *Civil Rights Principles for Safe, Healthy, and Inclusive School Climates*. (Sept. 4, 2019). <http://civilrightsdocs.info/pdf/education/School-Climate-Principles.pdf>

¹⁶ See, e.g., Hamilton, I. (June 13, 2020). Outrage over police brutality has finally convinced Amazon, Microsoft, and IBM to rule out selling facial recognition tech to law enforcement. Here’s what’s going on. *Business Insider*. <https://www.businessinsider.com/amazon-microsoft-ibm-halt-selling-facial-recognition-to-police-2020-6>

¹⁷ *Testimony of Vanita Gupta, President and CEO, The Leadership Conference on Civil and Human Rights, Policing Practices and Law Enforcement Accountability: Hearing Before the United States House of Representatives Committee on the Judiciary, 116th Cong.* (2020). http://civilrightsdocs.info/VG%20Policing%20Testimony%2006-10-20_final.pdf



any questions or concerns follow-up, please contact Sakira Cook of The Leadership Conference at cook@civilrights.org or Kanya Bennett of the ACLU at kbennett@aclu.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Civil Liberties Union
ActionAid USA
Agroecology Research-Action Collective
Alabama Rivers Alliance
Alabama State Association of Cooperatives
Alianza Nacional de Campesinas
American Atheists
Amnesty International USA
Asian Americans Advancing Justice | AAJC
Autistic Self Advocacy Network
Autistic Women and Nonbinary Network
Bend the Arc: Jewish Action
Beyond Rosies
Black Farmers & Ranchers New Mexico
Bread for the World
Center for Disability Rights
Center for the Study of Hate & Extremism, California State University, San Bernardino
Church of Scientology National Affairs Office
Coalition to Stop Gun Violence
Concerned Citizens of Tillery
Congregation of Our Lady of Charity of Good Shepherd, U.S. Provinces
Constitutional Accountability Center
Defending Rights & Dissent
Demand Progress
Drug Policy Alliance
Farmworker Association of Florida
Friends Committee on National Legislation
Government Information Watch
Health in Justice Action Lab, Northeastern University School of Law
Human Rights Campaign
Human Rights for Kids
Innocence Project
Institute for Agriculture and Trade Policy
Interfaith Action for Human Rights
Iowa Citizens for Community Improvement
Jewish Council for Public Affairs
The Justice Roundtable



Justice for Women Covid-19 Task Force
Kansas Black Farmers Association
King Bishop's Entertainment LLC
Lambda Legal
Land Stewardship Project
League of Women Voters of the United States
March For Our Lives
Muslim Advocates
NAACP
National Advocacy Center of the Sisters of the Good Shepherd
National Coalition Against Domestic Violence
National Council of Churches
National Employment Law Project
National Hmong American Farmers
National Immigrant Farming Initiative, Inc.
National Latino Farmers and Ranchers Trade Association
National Organization for Women
National Urban League
NETWORK Lobby for Catholic Social Justice
Newtown Action Alliance
North Carolina Association of Black Lawyers Land Loss Prevention Project
Oklahoma Black Historical Research Project, Inc.
Open Society Policy Center
Operation Spring Plant, Inc.
OVEC-Ohio Valley Environmental Coalition
Pennsylvania Council of Churches
Release Aging People in Prison/RAPP
Results for America
Rural Advancement Fund of the National Sharecroppers Fund
Rural Coalition
Sisters of Mercy of the Americas Justice Team
States United to Prevent Gun Violence
Texas Mexico Border Coalition CBO
The Daniel Initiative
The Diversity Center
The Sikh Coalition
TN State Conference NAACP
Town of Atrisco (NM) Land Grant
UnidosUS
United Methodist Women
Voices for Progress
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Women's Community Justice Association

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