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Asian Americans Advancing Justice |
AAJC

President & CEO
Vanita Gupta

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William Barr, Attorney General
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

RE: Comments on the Work of the Presidential Commission on Law Enforcement and the Administration of Justice

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

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, hereby submits written comments on the President's Commission on Law Enforcement and the Administration of Justice composition, general purpose and public notice, and the stated focus of The Respect for Law Enforcement working group. Additionally, we 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 the many social issues currently being addressed by law enforcement and incarceration demand solutions beyond the use of police.¹ We are concerned that the Presidential Commission on Law Enforcement

¹ 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>.

and the Administration of Justice (“Commission”) is made up exclusively of representatives involved in the law enforcement profession.² Neither community members nor representatives from civil rights organizations, defense bar associations, and 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. This omission of community members raises serious concerns because they know and understand their public safety needs and are best positioned to help police departments develop policies and practices to meet those needs.

The Leadership Conference is also concerned that the Commission has several times changed the deadline for submitting comments. The original deadline was advertised as May 31, 2020 and was then changed to March 31, 2020, which was then moved to April 30, 2020. To our knowledge, the Commission has not provided public notice of the shortened deadline. 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 this crisis. Thus, we urge the Commission to extend the period for comments until *at least* the original date of May 31, 2020, to allow ample time for the public to provide feedback and suggestions relating to its work. 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.

When announcing the creation of the Commission, Attorney General Barr expressed the “need for a modern study of how law enforcement can best protect and serve American communities.”³ Indeed, it is time to rethink antiquated approaches to public safety that do *not* serve to protect communities, especially communities of color. This includes approaches that over-rely on arrests and incarceration, which disproportionately affect Black and Brown people and which fail to address the public health issues that contribute to crime. When police practices harm communities, they sow mistrust and hinder community engagement — which is critical for realizing public safety. To improve community-police relationships, enhance police accountability, and advance public and officer safety, we must transform the way that police interact with communities and emphasize their role as keepers of the peace.

² 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>.

³ 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>.

II. Concerns with the Focus of The Respect for Law Enforcement Working Group

We wish to express deep concern with the proposed work of the Respect for Law Enforcement Working Group (“Law Enforcement Working Group”). The working group is charged with studying what is described as the diminished respect for law enforcement and the effects of the under-enforcement of criminal law on public safety and perceptions of police.⁴ This framing implies the existence of a widespread, arbitrary lack of respect for law enforcement, echoing statements made by President Trump and Attorney General Barr.⁵ However, the framing fails to consider the long, fraught history of police-community relationships in our country, especially those between police and communities of color. The nexus between unconstitutional or harmful policing, community respect for and trust of law enforcement, and community confidence in our democratic systems are critical and urgent issues for exploration and study.

Data show that Black and Latinx people are [stopped](#) and [arrested](#) at disproportionate rates to White people. Black people also disproportionately represent deaths due to the [use of lethal force](#) by police. This reality has strained police-community relationships, leading law enforcement agencies across the country to embrace [community policing models](#) of law enforcement. The guiding philosophy of community policing is that police should work with communities to [co-produce public safety](#) by identifying problems and creating solutions together. Community-policing also calls for police transparency and accountability to build public trust and legitimacy.

Under this administration, the Department of Justice has halted its efforts to promote police accountability, hindering public trust and impeding public safety. The Department has severely curtailed its 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. This does a disservice both to communities suffering from systemic misconduct and 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 lack of 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.

⁴ President’s Commission on Law Enforcement and the Administration of Justice, Working Groups (last updated March 17, 2020), <https://www.justice.gov/ag/presidential-commissionlaw-enforcement-and-administration-justice/working-groups>.

⁵ Owen Daugherty, Barr Warns That Communities That Don’t Show Respect to Law Enforcement May Not Get Police Protection: Report, The Hill (Dec. 4, 2019), <https://thehill.com/homenews/news/472946-barr-warns-that-communities-that-dont-show-respect-to-law-enforcement-may-not> (“[I]f communities don’t give that support and respect, they might find themselves without the police protection they need.”); Zack Bubdryk, Barr Predicts Progressive Prosecutors Will Lead to “More Crime, More Victims”, The Hill (Aug. 12, 2019), <https://thehill.com/homenews/administration/457120-barr-predicts-progressive-prosecutors-will-lead-to-more-crime> (reporting that Attorney General Barr has also made troubling, derisive statements about progressive prosecutors, calling them “dangerous” and “anti-law-enforcement.”).

The Law Enforcement Working Group is also tasked with evaluating jurisdictions that allegedly engage in “under-enforcement” of criminal law. This assumes that prosecutors only exercise discretion properly if and when they prosecute people and ignores that they should decline to prosecute cases that are meritless or do not impede public safety. This particular view forms the foundation upon which the Law Enforcement Working Group launched its inquiries and suggests that the direction of the Commission’s examination of this topic has been skewed toward predetermined conclusions and recommendations. As a result, the Commission and the focus given to this working group will not create confidence in the process or the validity of any of its recommendations.

Furthermore, recent efforts at the local level to exercise prosecutorial discretion and redirect it towards reforming the criminal legal system have proven crucial to address bias, discrimination, and structural inequality and inequity that have plagued our criminal legal system — the harms of which have been disproportionately borne by communities of color for centuries. And reform minded prosecutors play a critical role in righting the wrongs of unlawful policing practices, unjust and excessive mandatory minimum sentencing, and countless wrongful convictions.

Therefore, we encourage the Department to re-envision how this Commission might expand and modify its work to engage in a more balanced, fact-bound analysis and review of the critical issues it purports to study. If the goal is truly to explore how to increase respect for police, the Commission must consider how unconstitutional or harmful law enforcement practices affect communities and erode the public trust. Without addressing the breakdown in police-community relationships, the Law Enforcement Working Group will not be able to craft recommendations that build trust and legitimacy.

III. The Commission Must Increase Accountability, Transparency, and Trust in Policing

In 2014, President Barack Obama convened a task force to identify best policing practices to increase trust between police and the communities they protect and serve while effectively addressing crime. Released in 2015, the [Final Report of the President’s Task Force on 21st Century Policing](#) (the President’s Task Force Report) makes recommendations to police departments to ensure fair, safe, and effective policing. It has inspired hope in the prospect of change, as police departments across America have wrestled with how to increase trust, fairness, justice, and mutual respect and put the Task Force’s recommendations into policy and practice. Any effort to improve and support law enforcement trust in communities must build on the critical work of the task force.

In March 2019, The Leadership Conference Education Fund, our sister organization that builds public will for laws and policies that promote and protect the civil and human rights of all people in America, launched the New Era of Public Safety initiative and report 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 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. To do so, they must engage and work with communities to collaboratively develop solutions to the public health problems that for so long have fallen to police to answer.

We highlight concerns with the use of excessive force, discriminatory policing, responses to people in crisis, data collection, and officer health and wellbeing. These issues pertain to the focus areas of several of the Commission’s working groups, including Social Problems Impacting Public Safety, Police Officer Health, Respect for Law Enforcement, Reduction of Crime, and Data and Reporting.

The Use of Excessive Force

Police officers are vested with the authority and power to use force, including lethal force, within constitutional bounds. Misusing this power undermines police legitimacy. Indeed, the use — and misuse — of police force is, and has long been, the source of distrust and discord between police and communities, especially communities of color. The breakdown in police-community relationships in turn hinders law enforcement’s ability to effectively address crime. People are less likely to cooperate with police, share information about crime, or serve as witnesses. Thus, force should not be used because it is more convenient or expedient, to punish or retaliate, or because it has traditionally been perceived as integral to maintaining public safety. It should only be used when community members or officers are in danger and no reasonable alternatives exist.

Discriminatory Policing

The equal treatment of all people, regardless of background, class, or characteristic, protects and preserves public safety and builds trust and confidence in policing. 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. Indeed, it fosters distrust and a lack of confidence in law enforcement. To build trust, engage communities, and improve public safety, police leaders should make clear that discriminatory and biased-based policing have no place in police departments.

Responses to People in Crisis

Health professionals — not police officers — should respond when people with mental health and developmental disabilities or with substance use disorders are in crisis. Yet officers increasingly respond to calls relating to people in crisis in communities that do not have adequate services or resources for this vulnerable population. Communities, police departments, service providers, and local and state governments should work together to provide a comprehensive continuum of crisis prevention and response services to people with mental health disabilities. Both service types (those focusing on prevention and treatment) offer alternatives to police-based responses and lessen involvement with the criminal justice system, which does not address the underlying health needs.

Data Collection

Data collection and reporting are vital to ensure transparency, allowing communities and departments to analyze the effects of policies and practices, and to change them if they are ineffective or disproportionately affect particular communities, especially communities of color. It is critical that police departments collect and report accurate data and monitor the efficacy and disparate impacts of their law enforcement activities. Agencies cannot measure what they do not know. Robust and accurate data collection also enables law enforcement leaders to address patterns of misconduct and to hold officers accountable.

Officer Health and Wellbeing

Police officers often respond to violent situations and crises and many work in communities with high levels of gun violence and regularly bear witness to human tragedy. This puts them under great physical and mental stress, which can undermine their health and wellbeing. These effects go beyond officers themselves; the Final Report of the President’s Task Force on 21st Century Policing notes that officer wellness has a direct impact on communities.⁶ Officers who are equipped to handle stress at work and at home are more likely to make better decisions on the job and have positive interactions with community members. To promote health and wellbeing and lessen stigma around treatment and care, leaders should integrate wellbeing principles into training, counseling, and intervention programs.

IV. Conclusion

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 Commission should work to develop recommendations 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. To this end, 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 relationships, and trust and respect on both sides. 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.

⁶ The President’s Task Force on 21st Century Policing, Final Report of the President’s Task Force on 21st Century Policing 4 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (“[t]he wellness and safety of law enforcement officers is critical not only for the officers, their colleagues, and their agencies but also to public safety”).

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 appended 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, and Lynda Garcia, Policing Campaign Director, at garcia@civilrights.org, with any questions.

Sincerely,



Vanita Gupta
President and CEO