



**STATEMENT OF VANITA GUPTA, PRESIDENT AND CEO
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**U.S. SENATE COMMITTEE ON THE JUDICIARY
OVERSIGHT HEARING ON POLICE USE OF FORCE AND COMMUNITY RELATIONS**

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

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

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

The outcry is a response to the other horrific killings of Black people by police in recent months. Breonna Taylor was shot and killed in her own home by police officers executing a no-knock drug warrant in a military-style raid. There were also the killings of Dreajon “Sean” Reed and Tony McDade, who join the all too long list of Black people who have died at the hands of police, including Michael Brown, Freddie Gray, Eric Garner, Alton Sterling, Philando Castile, Sandra Bland, Laquan McDonald, Tamir Rice, and too many more. Every day that people take to the streets, they do so to honor their lives.

The outcry is also a response to the countless incidents of heavy-handed enforcement of low-level offenses (as we recently saw on video from Put-In-Bay, Ohio, for example¹) and “broken windows” policing, and decades of inadequate reform efforts that undermine trust in law enforcement, especially in communities of color. Too often, the calls for *better* policing have been answered with simply *more* policing, such as “zero tolerance” laws, stop-and-frisk tactics, the use of military-style equipment and techniques, and the fueling of a school-to-prison pipeline for thousands of children through the deployment of police in schools. All too often, the experience of Black and Brown communities with ever-increased policing has only served to validate Abraham Maslow’s notion that “if all you have is a hammer, everything looks like a nail.”

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

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

The Justice Department’s Role in Constitutional Policing

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

My tenure as head of the Justice Department’s Civil Rights Division began just two months after 18-year-old Michael Brown was shot and killed by a police officer in Ferguson, Missouri. The Justice Department was not perfect, but we understood our mandate: to promote accountability and constitutional policing in

¹ Craig Shoup, “FBI Investigating Allegations of Racism in Put-In-Bay Arrests,” Akron Beacon-Journal, June 13, 2020, at <https://www.beaconjournal.com/news/20200613/fbi-investigating-allegations-of-racism-in-put-in-bay-arrests>.

order to build community trust. During the Obama administration, we opened 25 pattern or practice investigations practice investigations to help realize greater structural and community centered change. After making findings, we negotiated consent decrees with extensive engagement and input from community advocates who not only identified unjust and unlawful policing practices, but also helped develop sustainable mechanisms for accountability and systemic change.

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

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

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

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

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

The report, [*New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*](#), provides communities, police departments, and lawmakers with policy recommendations for best practices to enhance accountability, build trust, and improve public and officer safety. The recommendations are designed to be adaptable to every department, in every community across the nation. The goals are to

advance policing practices that respect and protect human life and ensure safety for all. It is critically important that police departments across the country implement policies and practices that are fair, equitable, procedurally just, and increase transparency and accountability — values that build community trust, improve confidence, and ultimately heal wounds. At the same time, state and local leaders must engage and work with communities to develop solutions to the social and public health problems that for so long have fallen to police to answer. While front-end systems changes are important, it is also critical for state and local leaders to heed calls from Black Lives Matter and Movement for Black Lives activists to decrease police budgets and the scope, role, and responsibility of police in our lives.

While many of these changes must be centered at the state and local levels, success will require the leadership, support, and commitment of the federal government, including Congress. Every year, Congress provides millions of dollars to law enforcement agencies through federal grant programs to support police. This moment requires Congress to conduct oversight and reexamine how those funding streams are supporting discriminatory policing practices and eroding community trust.

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

Recommendations

To enhance police accountability and restore public trust, we must transform the way that police interact with communities and emphasize their role as keepers of the peace. Two weeks ago, The Leadership Conference and more than 400 civil rights organizations sent a letter to Congress offering eight critical proposals that we believe would move us forward on the path to true transformation. The following recommendations to the Committee are areas where Congress can support local efforts through federal law.

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

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

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

Ban the Use of Chokeholds and Other Restraint Maneuvers: Prohibit all maneuvers that restrict the flow of blood or oxygen to the brain, including neck holds, chokeholds, and similar excessive force, deeming the use of such force a federal civil rights violation. Chokeholds are inherently dangerous, as we have seen in the horrific deaths of George Floyd and Eric Garner before. Recognizing the inherent danger of chokeholds and the threat they pose to human life, police departments in cities such as New York, Atlanta, and Miami prohibit them. Washington, D.C. also bans chokeholds but allows “strangleholds” in some situations.²

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

² See, e.g. D.C. Code §§ 5-125.01-125.03, <https://code.dccouncil.us/dc/council/code/titles/5/chapters/1/subchapters/XIII/>; 720 Ill. Comp. Stat. 5 § 7-5.5, <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=072000050K7-5.5>.

guide for police managing demonstrations. Congress should end federal programs that provide military equipment such as the U.S. Department of Defense 1033 program and pass the Stop Militarizing Law Enforcement Act.

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

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

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

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

Invest in Non-Police Responses to Crises and Community Needs: Many factors contribute to crises relating to disabilities and substance use disorders, such as inadequate social services and supports, high rates of poverty, income inequality, housing insecurity, and an ongoing opioid epidemic. Many of these

same issues are generally the basis for police encounters that often escalate to the use of force or turn deadly. Society should aim for the least “police-involved” responses to crises and other acts of survival. By providing adequate prevention, support, and referral services, communities and departments can divert people with disabilities from the criminal-legal system. Indeed, these crises should be handled by professionals with expertise in mental health, developmental disability, and substance use disorders — not police officers. Law enforcement officials will tell you that they cannot fill the role of medical health professional no matter how much training they receive. Moreover, investing in community-based services, education, health care, housing, and other services, will improve the health of communities and reduce the criminalization of Black and Brown and low-income people.

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

I am pleased that many of these accountability measures have been included in the newly introduced Justice in Policing Act of 2020, and I look forward to additional discussion about the ways in which we can improve upon the proposed legislation. I am more troubled, however, by a recent outline for legislation circulated by Sen. Tim Scott (R-SC). Data collection, training, commissions, and body cameras are woefully inadequate responses. In many places, we have tried these policies already — and yet here we are again, grappling with police officers continuing to kill African Americans with impunity. Significantly stronger police accountability must be the cornerstone of any meaningful reform.

Conclusion

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

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



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

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