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STATEMENT OF SAKIRA COOK, DIRECTOR, JUSTICE REFORM PROGRAM, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

HEARING ON THE ADMINISTRATION OF BAIL BY STATE AND FEDERAL COURTS: A CALL FOR REFORM

HOUSE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

November 14, 2019

Chair Bass, Ranking Member Ratcliffe, and members of the Committee: Thank you for the opportunity to testify about the need for meaningful bail reform in state and federal court systems, including the need to eliminate cash bail and reduce pretrial incarceration, without the use of algorithmic-based risk assessment tools.

We commend the Subcommittee for focusing on the failures of our current state and federal pretrial systems. These systems are not serving their original purpose: to ensure that people appear for their court dates. Instead, they fly in the face of a foundational constitutional principle — one is innocent until proven guilty. They also rely heavily on money bail for determining who can and cannot be temporarily released while awaiting trial. This has created a two-tiered legal system — one where poor people are detained pretrial because they can't afford to make bail and wealthier people can walk free.

Pretrial detention is the norm in too many communities. Each year, 12 million people are admitted to jail, and each night, nearly half a million

people sit in jail, awaiting trial. Sixty percent of our jail population is legally innocent and awaiting trial. This pervasive system of pretrial detention has devastating effects, especially on Black and Brown people. Stories like those of Sandra Bland and Kalief Browder show the sometimes-shocking effects of pretrial detention. Pretrial incarceration increases people's likelihood of conviction and their risk of recidivism and leads to overcrowded jails. Even a short period of pretrial detention can have cascading effects — people are at risk of losing jobs, housing, medical care, custody, and relationships.

There are more effective methods than money bail to ensure court appearances. Pretrial support systems can address the structural barriers that keep accused people from appearing at court. They can provide childcare, transportation services, and other non-punitive or for-pay supports. Even simple steps like providing reminder calls or text messages dramatically reduce rates of failed appearances.

Fortunately, places like Washington, D.C., Philadelphia, New York, and New Jersey are successfully moving away from money bail and safely reducing their pretrial populations. But in some instances, jurisdictions have adopted undesirable alternatives, namely the use of pretrial risk assessments.

Risk assessments are actuarial tools that use historical data, both from criminal legal databases and demographic factors, to attempt to "forecast' an individual's likelihood of appearance at trial and/or risk of rearrest for a new crime. Research has shown, however, that these algorithms reflect current biases within the criminal legal system because they have been created with flawed data — such as prior failures to appear and arrest rates — and, as a result, are profoundly limited.

Champions of these tools argue that they are evidence-based and can provide judges high-quality "objective" data that will help them make their jail populations smaller without putting public safety at risk. But independent studies have shown that many jurisdictions using risk assessments have actually increased pretrial incarceration, and none have reduced racial disparities in pretrial decision-making. A group of data scientists recently wrote in a letter to this committee. I quote, "[Pretrial risk assessment tools] suffer from serious methodological flaws that undermine their accuracy, validity, and effectiveness. Pretrial risk assessments do not guarantee or even increase the likelihood of better pretrial outcomes. The technical problems with these tools cannot be resolved, and their limitations disproportionately affect communities of color."

These concerns led The Leadership Conference to publish a statement of concern, signed by more than 100 civil rights, data science, and community-based organizations. The statement argued that risk assessment tools were deeply flawed, skewed based on race and socioeconomic status, and therefore should not be used when making detention decisions. We believe that jurisdictions can safely end money bail and release most accused people pretrial, without the use of risk assessment tools.

Members of Congress: we need a new pretrial framework, one that dramatically reduces detention, ends racial and other inequities, and abolishes wealth-based discrimination. Federal legislation can help by incentivizing states to end money bail, use alternatives to arrest and prosecution for minor offenses, and preserve the presumption of innocence by establishing robust due process protections, all

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without the use of risk assessment instruments. We look forward to working with the members of this subcommittee to meet these goals.

Thank you.