

Priority Principles for Federal Legislation on Policing

Excerpts from the Statement of Vanita Gupta, President and CEO of the Leadership Conference on Civil and Human Rights, to U.S. House Committee on the Judiciary Oversight Hearing on Policing Practices and Law Enforcement Accountability

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This moment calls for a reckoning with how we have addressed public safety over the last several decades. [...] 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.

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 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. [...] 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.

The Leadership Conference on Civil and Human Rights and more than 400 civil rights organizations [including JCPA] 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.

- 1. 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 deescalation 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.
- 2. 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.*

3. **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.
4. **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 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.

5. **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 pass legislation prohibiting their use no-knock warrants. Indeed, two states already outlaw no-knock warrants. Congress should likewise pass legislation prohibiting their use.*

6. **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.*

7. **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.

8. **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.

The Need for Investment 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 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.

A New Policing Paradigm

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.