



Testimony of

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Before the United States House Judiciary Committee

for

**Oversight Hearing on Policing Practices and Law Enforcement
Accountability**

June 10, 2020

I. Introduction

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I would like to thank Chairman Nadler and Ranking Member Jordan for convening this timely Oversight Hearing on Policing Practices and Law Enforcement Accountability. LDF is the nation's premiere civil rights legal organization working to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. For 80 years, LDF has consistently worked to promote unbiased and accountable policing policies and practices at the national, state, and local levels through litigation and policy reform advocacy. In 2015, LDF launched its Policing Reform Campaign to transform policing culture and practices, eliminate racial bias and profiling in policing, and end police violence against residents of this country.¹

For the past several months, the nation has grappled with incident after incident of violence against Black Americans by former and current law enforcement officers. In February 2020, Ahmaud Arbery, a 25-year-old Black man was taking his usual jog through a white suburb of Brunswick, Georgia when a former local police officer and his son chased him with their pick-up truck and savagely killed him with a shot gun.² On March 13, 26-year-old Breonna Taylor, a Black woman and devoted Emergency Medical Technician, was sleeping in her bed when six Louisville Metropolitan Police Department officers executed a no-knock warrant by bursting into her apartment and shooting Ms. Taylor multiple times killing her.³ In May, George Floyd, a 46-year-old Black father and brother, made a purchase at a local store where the owner accused him of using a counterfeit \$20 bill. Four Minneapolis Police Department officers approached Mr. Floyd to question him. Ultimately, one officer handcuffed Mr. Floyd, wrestled him to the ground and pinned him down by placing his knee on Mr. Floyd's neck for almost nine minutes as he pleaded for his life crying "I can't breathe" until he succumbed to the officer's brutal treatment. Two other officers kneeled on Mr. Floyd's handcuffed body and another watched and did nothing.⁴

For three weeks, sustained demonstrations have erupted worldwide after the release of graphic videos of Mr. Floyd's slow and excruciating death. Only after the protests began and these brutal killings received national attention, local law enforcement officials expedited their investigations and arrested the killers of Mr. Arbery and Mr. Floyd.⁵ Protesters demand an end to

¹ See, LDF Thurgood Marshall Institute, *Policing Reform Campaign*, <https://tminstituteldf.org/advocacy/campaigns/policing-reform/about/>.

² Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, The New York Times, June 4, 2020, <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html>.

³ AJ Willingham, *Breonna Taylor would have been 27 today. Here's where her case stands*, CNN, June 5, 2020, <https://www.cnn.com/2020/06/05/us/breonna-taylor-birthday-charges-arrests-case-trnd/index.html>.

⁴ Phil P. Murphy, *New video appears to show three police officers kneeling on George Floyd*, CNN, June 3, 2020, <https://www.cnn.com/2020/05/29/us/george-floyd-new-video-officers-kneel-trnd/index.html>

⁵ Meredith Deliso and Christina Carrega, *Man who filmed shooting of Ahmaud Arbery charged with murder*, ABC News, May 22, 2020, <https://abcnews.go.com/US/man-filmed-shooting-ahmaud-arbery-charged-murder/story?id=70820910>; See also, *Lorenzo Reyes, New charges in George Floyd's death: Derek Chauvin faces second-degree murder; 3 other officers charged*, USA Today, June 3, 2020, <https://www.usatoday.com/story/news/nation/2020/06/03/george-floyd-death-charges/5242110002/>.

police violence, accountability of the officers involved in the killings and police reforms. The response to activists' demands must be swift, decisive, and transformative. After years of focusing on training and supervision, it is time to demand action by the elected officials and policymakers who are responsible for funding police departments, managing police leadership, and making and implementing laws governing police misconduct and accountability.

While public safety is primarily the responsibility of state and local governments, the federal government influences this local function for better or for worse. For example, almost 30 years ago following the highly-publicized beating of Rodney King and after acknowledging that nationwide police violence against people of color was real, Congress passed the Violent Crime Control and Law Enforcement Act of 1994, which allows the U.S. Attorney General to investigate police departments suspected of engaging in a pattern or practice of unlawful policing.⁶ Since its enactment, various administrations have taken a measured approach to utilizing this authority opening about 69 investigations and resolving findings of civil rights violations with 40 agreements between 1994 and 2017.⁷

Yet, the Trump Administration has abdicated its authority to investigate police departments and instead has incited unlawful policing. Specifically, President Trump has encouraged police to abuse arrestees by allowing them to hit their heads as they are seated in police cars;⁸ and, U.S. Attorney General Barr warned that if people of color who protest police violence do not show respect from law enforcement, then they may not receive protection from officers.⁹ Even as demonstrators peacefully protested police violence in Washington, D.C. in the aftermath of George Floyd's death, President Trump and Attorney General Barr, ordered federal law enforcement to disperse crowds by throwing smoke canisters and pepper balls.¹⁰ It is in this climate that we find our country in a policing crisis; and you, Members of Congress, a coequal branch of the federal government are called upon to act through your oversight and legislative authority.

<https://www.usatoday.com/story/news/nation/2020/06/03/george-floyd-death-charges-derek-chauvin-police/3134766001/>

⁶ 34 U.S.C. § 12601.

⁷ Civil Rights Division, U.S. Dep't of Justice, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, 3, Jan. 2017, <https://www.justice.gov/crt/file/922421/download>.

⁸ Associate Press, *WATCH: Trump to police: Don't worry about people in custody hitting their heads on squad cars*, July 28, 2017, <https://www.pbs.org/newshour/politics/watch-trump-police-dont-worry-people-custody-hitting-heads-squad-cars>.

⁹ Owen Daugherty, *Barr warns that communities that don't show respect to law enforcement may not get police protection: report*, Dec. 4, 2019, The Hill, <https://thehill.com/homenews/news/472946-barr-warns-that-communities-that-dont-show-respect-to-law-enforcement-may-not>.

¹⁰ Ben Gittleston and Jordan Phelps, *Police use munitions to forcibly push back peaceful protesters for Trump church visit*, ABC News, <https://abcnews.go.com/Politics/national-guard-troops-deployed-white-house-trump-calls/story?id=71004151>.

We welcome the Justice in Policing Act of 2020 (the Act), a comprehensive policing reform bill introduced by House and Senate members this week.¹¹ The legislation includes policing reforms we have advocated for years to ensure greater accountability of police officers who engage in misconduct. Indeed, The Leadership Conference on Civil and Human Rights, LDF and over 400 organizations sent a letter to Congress presenting an eight-point reform platform calling for an end to the defense of qualified immunity that shields officers from accountability, creation of a national public police misconduct database, and an end to the transfer of military equipment, to name a few.¹² Members of Congress incorporated our proposed reforms in the Act, which is a step in the right direction toward ensuring police accountability nationwide. We offer recommendations below on how to strengthen several provisions. We also urge Congress to use its oversight authority to ensure that federal agencies providing funding to state and local law enforcement comply with civil rights laws, such as Title VI of the Civil Rights Act of 1964.

II. Limitations on qualified immunity should apply retroactively

Qualified immunity, a defense that shields officials from the unforeseeable consequences of their reasonable acts, has been interpreted by courts so expansively that it now provides near-impunity for police officers who engage in unconstitutional acts of violence. According to an investigative report by Reuters, from 2017 to 2019, appellate courts granted police qualified immunity in 57% of use of force civil cases.¹³

For example, in 2018, LDF filed a petition to the U.S. Supreme Court appealing a decision of the U.S. Court of Appeals for the Eleventh Circuit affirming summary judgment in favor of a law enforcement officer in an excessive use of force lawsuit.¹⁴ The case involved a 2013 fatal incident during which a Lee County, Alabama sheriff's deputy used excessive force by tasing our client, an unarmed Black man, Khari Illidge, with a taser 13 times for trespassing. Mr. Illidge died from cardiac arrest. His mother filed a civil rights law suit alleging that the deputy violated her son's constitutional right to be free from the unreasonable use of force.¹⁵ The deputy's use of the taser violated both taser guidelines and police training, yet the Eleventh Circuit Court of Appeals ruled that the trial court was correct to dismiss the case on qualified immunity grounds

¹¹ Claudia Grisales, *et al*, *Democrats Unveil Police Reform Legislation Amid Protests Nationwide*, June 8, 2020, <https://www.npr.org/2020/06/08/871625856/in-wake-of-protests-democrats-to-unveil-police-reform-legislation>

¹² NAACP LDF, *Diverse Coalition Sends Letter to Congressional Leaders Urging Swift Action in Response to Police Killings*, June 1, 2020, <https://www.naacpldf.org/press-release/diverse-coalition-sends-letter-to-congressional-leaders-urging-swift-action-in-response-to-police-killings/>.

¹³ Andrew Chung, *et al*, *Shielded*, Reuters Investigates, May 8, 2020, <https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus/>.

¹⁴ NAACP LDF, *LDF Files Supreme Court Petition in Alabama Police Excessive Force Case*, May 18, 2018 <https://www.naacpldf.org/files/our-work/Callwood%20Cert%20Petition%20FINAL.pdf>. See also, *Petition for Writ of Certiorari, Callwood v. Jones*, <https://www.naacpldf.org/files/our-work/Callwood%20Cert%20Petition%20FINAL.pdf>.

¹⁵ *Callwood v. Jones*, 727 Fed.Appx. 552 (11th Cir. 2018)

because the deputy did not violate clearly established law relating to the excessive use of force.¹⁶ The appellate court concluded that Mr. Illidge’s thrashing movements as he was being tased meant he was resisting arrest and the deputy’s use of over a dozen tases was not “so utterly disproportionate that any reasonable officer would have recognized that his actions were unlawful.”¹⁷ The U.S. Supreme Court denied LDF’s petition. This case was not a one-off. Every year cert petitions are filed in the Court seeking review of cases in which law enforcement officers have successfully eluded accountability for the most violent forms of brutality by raising the qualified immunity defense.

The Justice in Policing Act seeks to address the qualified immunity shield by amending the civil rights statute used in most police excessive use of force civil cases, 42 U.S.C. §1983, to state that a law enforcement or correctional officer cannot assert a defense that he was acting in good faith or reasonably believed his conduct was lawful at the time of an incident or that a person’s civil right was not clearly established when the defendant allegedly violated a victim’s legal rights. LDF welcomes this amendment and recommend that it apply to all civil suits that are pending or filed after enactment of the Act. We will continue to work toward the elimination of qualified immunity.

III. A national police misconduct database would prevent problem officers from moving from one police department to another

The law enforcement professionals, like other professionals, such as lawyers and doctors, must have access to a system that collects and reports the revocation of membership or licenses for violations of standards. Doing so would prevent officers fired for misconduct to leave one state and be hired in another without the receiving agency knowing about previous bad acts.¹⁸ The Justice in Policing Act creates a public national police misconduct registry that would collect use of force complaints and termination and certification records concerning federal and local law enforcement officers. We strongly urge this Committee to expand the categories of complaints that can be collected by this database to include other acts of misconduct such as discourtesy and bias, particularly racial bias.

Access to these records would allow members of the public and law enforcement executives to identify officers with problematic backgrounds. State Bar Associations often publish the names of attorneys who have been disbarred, so too must there be a public national registry of officers who have lost their licenses or have had multiple complaints filed against them due to misconduct. Indeed, former President Barack Obama’s Task Force on 21st Century Policing noted in its final report that “[a] national register would effectively treat “police professionals the way

¹⁶ *Id.* at 561.

¹⁷ *Id.*

¹⁸ See, e.g., Minyvonne Burke, *Officer who fatally shot Tamir Rice quits Ohio police department days after he was hired*, Oct. 11, 2018, <https://www.nbcnews.com/news/us-news/officer-who-fatally-shot-tamir-rice-quits-ohio-police-department-n919046>; Timothy Williams, *Cast-Out Police Officers Are Often Hired in Other Cities*, Sept. 11, 2016, <https://www.nytimes.com/2016/09/11/us/whereabouts-of-cast-out-police-officers-other-cities-often-hire-them.html>

states' licensing laws treat other professionals. If anything, the need for such a system is even more important for law enforcement, as officers have the power to make arrests, perform searches, and use deadly force."¹⁹

IV. Limitations to the transfer of military equipment is encouraging, but ending the transfer of this equipment is necessary

Without question, the images of the military-style response by local police to public demonstrations in the aftermath of George Floyd's death are jarring. Converting the streets of this nation into war zones only escalate already tense community-police relations.²⁰ Following a similar response to mass demonstrations after the police killings of Michael Brown in Ferguson, Missouri, former President Barack Obama adopted the recommendations of an interagency task force created by executive order, which banned the transfer of certain surplus federal military equipment to state and local law enforcement agencies through the U.S. Department of Defense's (DOD) 1033 Excess Property Program.²¹ This occurred after LDF and other advocates urged the Obama Administration to end the transfer of military equipment to all law enforcement agencies, including those that serve schools.²²

In 2017, despite a Government Accountability Office report detailing deficiencies in DOD's process for transferring equipment that resulted in the delivery of \$1.2 million of military weapons and equipment to a fake law enforcement agency,²³ President Trump ended Obama era restrictions allowing local police departments to access mine-resistant, ambush-protected vehicles, grenade launchers and bayonets among other equipment.²⁴

Congress has and must act to rid our nation's streets of military equipment. The Justice in Policing Act includes a provision that would limit the transfer of certain military equipment,

¹⁹ President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing, 30, Office of Community Oriented Policing Services (2015) https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf at 30.

²⁰ Michelle Nichols and Catherine Koppel, *Should U.S. police get free military equipment? Protests revive debate*, Reuters, June 5, 2020, <https://www.reuters.com/article/us-minneapolis-police-protests-militariz/should-us-police-get-free-military-equipment-protests-revive-debate-idUSKBN23C2IV>

²¹ Christi Parsons, *Obama bars some military equipment from going to local police*, May 18, 2015, <https://www.latimes.com/nation/la-na-obama-military-equipment-police-20150518-story.html>.

²² NAACP LDF, *Supplemental Statement by the NAACP Legal Defense and Educational Fund, Inc. To the President's Task Force on 21st Century Policing*, Feb. 17, 2015, <https://www.naacpldf.org/wp-content/uploads/NAACP-LDF-Supplemental-Statement-to-Presidents-Task-Force-on-21st-Century-Policing.pdf>.

²³ U.S. Gov't Accountability Office, *DOD Excess Property: Enhanced Controls Needed for Access to Excess Controlled Property*, Jul. 18, 2017, <https://www.gao.gov/mobile/products/GAO-17-532>.

²⁴ Dartunorro Clark, *Trump Makes It Easier for Police to Get Military Equipment*, Nov. 13, 2017, <https://www.nbcnews.com/politics/white-house/trump-makes-it-easier-police-get-military-equipment-n815766>.

similar to the Obama Administration’s ban. We urge Congress to do more by banning the transfer of all excess military vehicles and weapons.

V. Congress Must Use Its Oversight Authority to Ensure that Federal Agencies that Provide Financial Assistance to State and Local Police Departments Enforce Civil Rights Laws

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds from discriminating in their programs and activities based on race, color and national origin. Failure to comply with this requirement could result in the termination of funds.²⁵ Yet, despite providing billions in grant funding to police jurisdictions around the country, the U.S. Department of Justice (DOJ) has never fully enforced this provision through compliance reviews or pattern or practice investigations. For example, Minneapolis has received over \$7 million in federal grants since 2009,²⁶ yet claims of racially biased policing in that city abound.²⁷

There must be an immediate review of all DOJ and other federal agency grant funding to police departments to ensure compliance with Title VI. Federal funds should be withheld from departments that hire officers previously fired for misconduct or those with suspicious levels of in-custody deaths or assaults. The House and Senate Judiciary Committees have oversight power over the DOJ—and must hold it accountable.

VI. Conclusion

The recommendations for federal police reforms submitted by LDF and its coalition partners focus on police accountability because that is what this moment requires. Communities of color are weary of efforts that pour more funding into police departments to purchase equipment, such as body-worn cameras, and provide training to officers while Black and Brown Americans continue to suffer violence at the hands of police. It is critical that Congress change its approach to police department funding by using its legislative and oversight authority to require federal agencies that provide grants to law enforcement to aggressively enforce civil rights laws or risk termination of those funds.

Also, movements to drastically reduce police funding are at the core of a revised vision of public safety that prioritizes social services, youth development, mental health, reentry support, and meaningful provisions for homeless individuals that strengthen community resources to

²⁵ 42 U.S.C. § 2000d. *See also*, U.S. Dep’t of Justice Federal Coordination and Compliance Section, Title VI of the Civil Rights Act of 1964, <https://www.justice.gov/crt/fcs/TitleVI>.


²⁶ LDF Thurgood Marshall Institute National Police Funding Database, *Federal Grant Spotlight Minneapolis* (2009-2018), <https://policefundingdatabase.tminstitutldf.org/report>.

²⁷ Matt Furber, et al, *Minneapolis Police, Long Accused of Racism, Face Wrath of Wounded City*, The New York Times, May 27, 2020, <https://www.nytimes.com/2020/05/27/us/minneapolis-police.html>.

proactively address underlying factors that can contribute to public safety concerns.²⁸ Most public safety issues and community conflicts do not require the intervention of an armed officer. It is time to reimagine how we allocate our public safety dollars at the federal and local levels.

We look forward to working with this Committee and other Members of Congress to improve provisions of the Justice in Policing Act as it moves toward passage.

Sincerely yours,

A handwritten signature in black ink that reads "Sherrilyn A. Ifill". The signature is written in a cursive, flowing style.

Sherrilyn A. Ifill
President and Director Counsel

²⁸ Communities United for Police Reform, *More than 110 Organizations Call on Mayor De Blasio and Speaker Johnson to Cut the NYPD's Budget, Redirect Resources to City Agencies that Can Help Communities Hardest Hit by COVID-19*, April 30, 2020,

<https://www.changethenypd.org/releases/more-110-organizations-call-mayor-de-blasio-and-speaker-johnson-cut-nypd%E2%80%99s-budget-redirect>.