



**Statement by the
NAACP Legal Defense and Educational Fund, Inc.**

**Submitted to the United States House of Representatives
Committee on the Judiciary**

**Hearing on
“Policing Strategies for the 21st Century”**

**Rayburn House Office Building
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I. Introduction

The NAACP Legal Defense and Educational Fund, Inc. (LDF) welcomes the opportunity to submit this statement for today's timely hearing before the House Judiciary Committee on Policing Strategies for the 21st Century. LDF is the nation's oldest civil rights legal organization. Founded by Thurgood Marshall in 1940, it has relied on the Constitution, and federal and state civil rights laws to pursue equality and justice for African Americans and other people of color. Since its inception, LDF has used litigation and policy advocacy to eliminate racial bias at every stage of the criminal justice system – from police stops¹ to jury selection² to sentencing.³

LDF applauds the leadership of Chairman Bob Goodlatte and Ranking Member John Conyers in convening this important hearing at a time when public trust in police has plummeted within segments of the population. In December 2014, a Gallup poll found that Americans' opinion of the honesty and ethics of police officers dropped six percentage points, giving law enforcement its worst rating since 1995.⁴ This decrease reflects a 22 percent drop in the integrity ratings given by African Americans and Latinos; in this same time period, the ratings provided by White Americans remained static.⁵ Gallup pollsters opined that the drastic drop in police integrity ratings by persons of color was because of this country's history of racial discrimination and the decisions of two grand juries not to indict white police officers in the shooting death of Michael Brown, Jr., an unarmed African-American teenager in Ferguson, Missouri, and in the videotaped choking death of Eric Garner, an unarmed African-American father in Staten Island, New York.

As President Barack Obama recently commented, police violence against persons of color "is not new, and we shouldn't pretend that it's new. The good news is that perhaps there's some newfound awareness ... that there are problems and challenges when it comes to how policing and our laws are applied in certain communities ..."⁶ LDF has long held that racial discrimination infects our criminal justice system at every level. The now highly publicized

¹ See, e.g., Complaint, *Davis, et al. v. City of New York, et al.*, Case No. 1:10-cv-00699-SAS-HBP (S.D.N.Y. Jan. 28 2010) (alleging that the New York City Police Department's policy and practice of pedestrian stops and arrests at public housing developments were carried out in a racially discriminatory manner and without evidence of wrongdoing), <http://www.naacpldf.org/update/court-approves-final-settlement-federal-class-action-lawsuit-challenging-police-practices-nyc>. See also, *Tolan v. Cotton*, No. 13-5551 Motion for Leave to File U.S. Supreme Court Amicus Brief (alleging excessive use of force by the Bellaire, Texas Police Department) <http://www.naacpldf.org/case-issue/tolan-v-cotton>.

² See, *Rosales v. Quarterman*, <http://www.naacpldf.org/case-issue/rosales-v-quarterman>.

³ See, e.g., Case of Duane Bucks, <http://www.naacpldf.org/case-issue/duane-buck-sentenced-death-because-he-black>. See also, *United States v. Blewett*, <http://www.naacpldf.org/case-issue/united-states-v-blewett>.

⁴ Jeffrey Jones, *Drop Among Nonwhites Drives U.S. Police Honesty Ratings Down*, Gallup, Inc., Dec. 18, 2014, <http://www.gallup.com/poll/180230/drop-among-nonwhites-drives-police-honesty-ratings-down.aspx>.

⁵ *Id.*

⁶ Tanya Somanader, *President Obama on Freddie Gray's Death: "This is Not New, and We Shouldn't Pretend that It's New"*, The White House Blog, April 28, 2015, <https://www.whitehouse.gov/blog/2015/04/28/president-obama-freddie-gray-s-death-not-new-and-we-shouldn-t-pretend-it-s-new>.

crisis of police violence in communities of color reflects pervasive and long-standing deficiencies in police strategies and supervision, as well as a systemic failure to acknowledge, address, or remedy implicit and explicit racial bias in policing. The events of the past year lay bare the urgency with which elected officials at all levels of government must act to create and implement laws and policies that will ensure that all communities receive fair and responsible policing. It is incumbent upon Congress to respond to this national crisis with prompt, deliberate and effective measures. Today's hearing represents an important step toward that ambitious and necessary goal.

II. The National Policing Crisis in Communities of Color

While there is no official record of police violence against civilians,⁷ history demonstrates that the problem is longstanding and ubiquitous. This year's commemoration of the 50th anniversary of the march from Selma to Montgomery, Alabama, recalls for our nation the murder of Jimmie Lee Jackson, an unarmed African-American civil rights activist, during a peaceful march for voting rights, at the hands of an Alabama state trooper.⁸ It was not until some forty years later that the trooper was charged with a crime. He ultimately pled guilty to misdemeanor manslaughter and received a stunning sentence of a mere six months in jail for this homicide.⁹ Still, fifty years later, incidents of police use of excessive and fatal force against persons of color that resulted in little or no consequence to the offending officer abound. The following is a partial list of incidents in recent history:

- On December 31, 2008, a Bellaire, Texas police officer shot and injured Robbie Tolan, an unarmed African-American minor league baseball player, in his parent's driveway. Although a grand jury indicted the officer for first-degree aggravated assault, the officer was acquitted at trial.¹⁰
- On May 16, 2010, a Detroit, Michigan police officer fatally shot Aiyana Stanley-Jones, an unarmed 7-year-old African-American girl as she slept on her grandmother's couch – the officer was charged with involuntary manslaughter and after several mistrials, the prosecutor dismissed the case.¹¹

⁷ Kami Chavis Simmons, *No Way to Tell Without a National Database*, The New York Times, April 9, 2015, <http://www.nytimes.com/roomfordebate/2015/04/09/are-police-too-quick-to-use-force/no-way-to-tell-without-a-national-database>.

⁸ Robbie Brown, *45 Years Later, An Apology and 6 months*, The New York Times, Nov. 15, 2010, http://www.nytimes.com/2010/11/16/us/16fowler.html?_r=2&hpw.

⁹ *Id.*

¹⁰ Tony Freemantle, Judge dismisses lawsuit against Bellaire officers in shooting of unarmed man, Houston Chronicle, April 2, 2012, <http://www.chron.com/news/houston-texas/article/Judge-dismisses-lawsuit-against-Bellaire-officers-3454006.php>.

¹¹ Kate Abbey-Lambertz, *Charges Dismissed Against Joseph Weekley, Cop Who Fatally Shot Sleeping 7-year-old*, Huffington Post, Jan. 30, 2015, http://www.huffingtonpost.com/2015/01/28/joseph-weekley-charges-dismissed-aiyana-stanley-jones_n_6566032.html.

- In March 2012, an off-duty Chicago, Illinois police officer fatally shot Rekia Boyd, an unarmed African-American woman, in the head as she innocently stood with a group in a park. A judge acquitted the officer of involuntary manslaughter charges.¹²
- On February 3, 2015, an Alexandria, Virginia, sheriff's deputy struck Natasha McKenna, an unarmed African-American woman with mental illness, multiple times with a stun gun causing her death. A recent autopsy report ruled her death an accident.¹³
- On March 6, 2015, a Madison, Wisconsin police officer shot and killed Tony Robinson, an unarmed biracial teenager. The local prosecutor did not file criminal charges against the officer.¹⁴

The absence or inadequacy of penalties imposed on police officers who use excessive or lethal force against African Americans has caused individuals and entire communities across the country to lose confidence in the criminal justice system. While policing is foremost a function of state and local government, it is imperative that the federal government exert its oversight and funding authority to ensure that law enforcement agencies and their officers are held accountable for their unlawful acts of violence and misconduct. Through its funding powers and lawmaking authority, Congress should play a critical role in bringing about changes in the culture of policing in this country.

II. Federal Reforms to Ensure Police Accountability and Transparency

Federal financial support for state and local police departments through various federal grant programs, such as the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, and federal statutes prohibiting race discrimination in policing, such as Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968, can and should serve as effective vehicles for federal oversight of local law enforcement. In particular, Title VI prohibits racial discrimination by law enforcement agencies that receive federal funds.¹⁵

¹² Editorial Board, *Rekia Boyd shooting was beyond reckless, so cop got a pass*, Chicago Tribune, April 22, 2015, <http://www.chicagotribune.com/news/opinion/editorials/ct-cop-verdict-servin-edit-0423-20150422-story.html>. See also, The Associated Press, *Chicago Police Officer Cleared of Manslaughter in Shooting Death*, The New York Times, April 20, 2015, http://www.nytimes.com/2015/04/21/us/chicago-police-detective-cleared-of-manslaughter-in-shooting-death.html?_r=1.

¹³ Tom Jackman and Justin Jouvenal, *Fairfax jail inmate in Taser death was shackled*, Washington Post, April 11, 2015, http://www.washingtonpost.com/local/crime/fairfax-jail-inmate-who-died-was-fully-restrained-when-tasered-four-times/2015/04/11/ede0957c-decd-11e4-be40-566e2653afe5_story.html. See also, Martin Weil, *Death of woman shocked by stun gun in Fairfax jail is ruled an accident*, April 28, 2015, http://www.washingtonpost.com/local/crime/fairfax-jail-inmate-who-died-was-fully-restrained-when-tasered-four-times/2015/04/11/ede0957c-decd-11e4-be40-566e2653afe5_story.html.

¹⁴ Alex Johnson, *Tony Robinson Shooting: No Charges for Wisconsin Police*, NBC News, May, 12, 2015, <http://www.nbcnews.com/news/us-news/tony-robinson-shooting-no-charges-lawful-use-force-n357876>.

¹⁵ See, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-7, states that “[n]o person in the United States shall, on the ground of race, color, or national origin, be . . . subjected to discrimination under any program . . . receiving Federal financial assistance.” Accordingly, 28 C.F.R. § 42.105-09 places an affirmative obligation on DOJ to ensure that recipients of federal funding are not engaged in discrimination and to conduct periodic reviews to ensure compliance with Title VI antidiscrimination mandate. A failure to comply with these provisions may result in the suspension or termination of federal funding. *Id.* at § 42.108.

The U.S. Department of Justice, which is responsible for enforcing these laws, must properly assess, through thorough and uniform data collection and monitoring for compliance with relevant civil rights statutes, and ultimately ensure that any and all law enforcement agencies that receive federal funding do not discriminate. To the extent evidence of racial bias is uncovered, the government must demand that the relevant law enforcement agencies take prompt and meaningful steps to eliminate any bias in policing.¹⁶

Congress must ensure that every lever possible is utilized to ensure that local police agencies that receive federal funding are not discriminating. Congress should modify all of its funding programs to include more precise conditions relating to police accountability, training, and supervision. Congress should authorize additional resources for the Justice Department to enable more robust oversight and compliance monitoring to determine whether recipients of federal funding are meeting their civil right obligations. Specifically, federal funding—and the process used to distribute funding—should be used as a mechanism to encourage or discourage certain police practices or behaviors in the following ways:

1. Accountability in Policing through Adequately-Funded Special Prosecutor Offices

The apparent lack of accountability for police violence and misconduct against civilians fosters the perception that the police are above the law. This deepens the already significant gulf of mistrust that exists between law enforcement agencies and the communities they are required to protect and serve.

Consequently, new models of police accountability are necessary to meet this challenge. Thus, when there is a police-involved killing or use of excessive force, the prosecutorial authorities charged with investigating such incidents must be independent and free of the parochial interests that undermine efforts to ensure accountability. To this end, the President’s Task Force on 21st Century Policing recommended that law enforcement agencies require external and independent prosecutors to investigate police involved cases of excessive or deadly use of force.¹⁷ The Task Force noted that independent prosecutors “can lead to mutual trust between community and law enforcement.”¹⁸

LDF recommends that Congress provide financial support, training, and monitoring, for special prosecutor offices or prosecutorial units focused solely on incidents of police misconduct and excessive or lethal use of force. Several states, such as Connecticut, and Wisconsin, have laws that call for the appointment of special prosecutors or independent investigators in officer-

¹⁶ Pursuant to 28 C.F.R § 42.101, no program or activity receiving financial assistance from the DOJ may engage in racial discrimination. It follows, therefore, that law enforcement agencies receiving federal funds through the JAG program may not subject any person to discrimination based on race, color, or national origin.

¹⁷ See, U.S. Department of Justice Office of Community Oriented Policing Services, *Final Report of The President’s Task Force on 21st Century Policing*, at 21 (May 2015), http://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

¹⁸ *Id.*

involved death cases.¹⁹ Federal funding could serve as an incentive to support and expand these efforts nationwide.

2. Mandatory Data Collection of Use of Force, and Pedestrian and Traffic Stops by Law Enforcement Recipients of Federal Funds

Policing strategies, such as “zero tolerance” and the “broken windows theory,” which require police officers to aggressively enforce petty crimes, have resulted in racially-biased pedestrian and traffic stops by police in communities of color.²⁰ Yet, unreliable, piecemeal collection and analysis of data about these stops - which, like in the Eric Garner case, can lead to police-involved use of force incidents - wholly undermine any effort to hold police accountable and to document the scope of police misconduct.²¹

Data collection of police use of force is similarly necessary to ensure accountability of officer misconduct. Indeed, then-Attorney General Eric Holder recently lamented the lack of reliable data: “The troubling reality is that we lack the ability right now to comprehensively track the number of incidents of *either* uses of force directed at police officers *or* uses of force by police. This strikes many – including me – as unacceptable. Fixing this is an idea that we should all be able to unite behind.”²²

Last year, Congress passed and President Obama signed the Death in Custody Reporting Act of 2013, which requires law enforcement agencies that receive federal funding to report to

¹⁹ See, Conn. Gen. Stat. §51-277a (2015)(requiring the Division of Criminal Justice to investigate officer-involved deaths and allowing the Chief State’s Attorney to appoint a special assistant state’s attorney to investigate such cases); Yamiche Aleindor, *Wis. Bill mandates rules for officer-involved deaths*, USA Today, April 30, 2014 (discussing the passage of Assembly Bill 409 (now Wis. Stat. Ann. §175.47), which requires law enforcement agencies to develop a policy mandating the investigation of police-involved shootings by at least two independent investigators).

²⁰ See, e.g., Joseph Goldstein, *Judge Rejects New York’s Stop and Frisk Policy*, The New York Times, August 12, 2013, <http://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html>. See also, Christopher Mathias, *Calls to End ‘Broken Windows’ Policing in NYC Get Louder After Garner Decision*, Huffington Post, Dec. 11, 2014, http://www.huffingtonpost.com/2014/12/11/broken-windows-eric-garner-protests_n_6311434.html; Jeremy Diamond, *Ferguson police report: Most shocking parts*, CNN, March 5, 2015, <http://www.cnn.com/2015/03/04/politics/ferguson-justice-report-shocking/index.html>.

²¹ See Wesley Lowery, *How many police shootings a year? No one knows*, The Washington Post, Sept. 8, 2014, <http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/>; Naomi Shavin, *Our Government Has No Idea How Often Police Get Violent With Civilians*, New Republic, Aug. 25, 2014, <http://www.newrepublic.com/article/119192/police-use-force-stats-us-are-incomplete-and-unreliable>; Radley Balko, *Why Are There No Good Data On Police Use of Force?*, Huffington Post, Feb. 10 2013, http://www.huffingtonpost.com/radley-balko/why-is-there-no-good-data_b_2278013.html.

²² Press Release, United States Department of Justice, *Attorney General Holder Urges Improved Data Reporting on Both Shootings of Police Officers and Use of Force by the Police*, Jan. 15, 2015, available at <http://www.justice.gov/opa/pr/attorney-general-holder-urges-improved-data-reporting-both-shootings-police-officers-and-use>. See also, James Comey, Director, Federal Bureau of Investigation, *Remarks Delivered to Georgetown University about the Hard Truths of Law Enforcement and Race*, Feb. 12, 2015, (stating that “[d]emographic data regarding officer-involved shootings is not consistently reported... Because reporting is voluntary, our data is incomplete and therefore, in the aggregate, unreliable.”) available at <http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.

the U.S. Attorney General, on a quarterly basis, any and all in-custody deaths of persons who were arrested, detained or incarcerated.²³ The Attorney General is required to analyze this data and report on ways to reduce the number of such deaths.

While this is an important first step, Congress should also mandate that law enforcement recipients of federal funds, particularly funds used to hire new police officers, collect, analyze and publicly report pedestrian and traffic stops and overall use of force data, disaggregated by the race, ethnicity, and sex of the civilian and location of the incident. To the extent that police departments find racial disparities in the data, they should be required to take steps to eliminate these disparities, such as implicit-bias training, officer discipline, or changes in policing strategies.

3. Training on Bias-Free Policing, Use of Force, and De-escalation to Improve Police-Community Relations

This year, Federal Bureau of Investigation Director James Comey courageously acknowledged that police have “enforced the status quo, a status quo that was often brutally unfair to disfavored groups.”²⁴ He added that “[m]any people in our white-majority culture have unconscious racial biases and react differently to a white face than a black face. In fact, we all, white and black, carry various biases around with us.”²⁵

Improving the relationships between law enforcement and communities is absolutely critical. But doing so requires ensuring that police officers are appropriately and properly trained, and this training must address explicit and implicit racial bias,²⁶ the use of force, and de-escalation techniques. At a minimum, officers must be trained in the following ways: (1) taught to acknowledge and confront the attitudes and biases that shape their behavior; (2) given clear guidance on the appropriate use of force; and (3) trained to de-escalate encounters and engage in respectful policing, including identifying and addressing mental health conditions in civilians. Such training will effect a change in the culture of policing, which will in turn help to bridge the gulf of mistrust that has formed as a result of a seemingly growing number of tragic police-citizen encounters.

²³ See, Public Law No. 113-242 (2014); See also, Hunter Schwarz, *Congress decides to get serious about tracking police shootings*, Washington Post, December 11, 2014, available at <http://www.washingtonpost.com/blogs/post-politics/wp/2014/12/11/congress-decides-to-get-serious-about-tracking-police-shootings/>.

²⁴ James Comey, Director, Federal Bureau of Investigation, Remarks Delivered to Georgetown University about the Hard Truths of Law Enforcement and Race, Feb. 12, 2015, available at <http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.

²⁵ *Id.*

²⁶ Implicit bias is defined as “the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner...Everyone is susceptible to implicit biases...The implicit associations we harbor in our subconscious cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age and appearance. These associations are generally believed to develop over the course of a lifetime beginning at a very early age through exposure to direct and indirect messages.” Cheryl Staats, *State of the Science: Implicit Bias Review 2014*, Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University, <http://www.kirwaninstitute.osu.edu/wp-content/uploads/2014/03/2014-implicit-bias.pdf>.

Accordingly, LDF urges Congress to require law enforcement agencies that receive federal funding to implement the training described above, and require these agencies to monitor and enforce training protocols.

4. Responsible Funding and Monitoring of Police Body-Worn Cameras

Since the police-involved killing of Michael Brown, Jr. in Ferguson, Missouri, LDF has called for the use of police body-worn cameras with appropriate policies, procedures, and supervision.²⁷ Although there is limited research detailing the long-term impact of this fairly new technology, preliminary studies suggest that body-worn cameras have several potential benefits, including: a “civilizing effect, resulting in improved behavior among both police and citizens;” fewer use-of-force incidents and civilian complaints; opportunities to train or retrain police on best practices; and objective and accurate evidence collection for the resolution of citizen complaints or lawsuits.²⁸ The need for accurate accounts of police officers’ use of excessive or deadly force against civilians was powerfully underscored most recently in April 2015, when North Charleston Police Officer Michael Slager shot and killed unarmed Walter Scott, a 50-year old African American, and appeared to place a Taser gun near the victim—all of which was recorded on the cell phone of a civilian bystander.

According to the police department’s initial statement, Officer Slager shot Mr. Scott after the latter gained control of the officer’s Taser and attempted to use it against Officer Slager.²⁹ But days later, the cell phone video of the shooting told a completely different story. The video graphically depicted Officer Slager shooting Mr. Scott in the back multiple times as Mr. Scott ran away. Officer Slager then picked up what appeared to be the Taser and dropped it next to the fatally injured Mr. Scott. The police department fired Officer Slager, who was subsequently charged with murder; and, the Mayor of North Charleston promptly signed an executive order requiring police officers to wear body cameras.³⁰ But for the video footage of the incident, the police department’s initial account of the interaction may have remained unchallenged.

²⁷ See, Sherrilyn Ifill, Letter to Attorney General Eric Holder, August 14, 2015, http://www.naacpldf.org/files/case_issue/8-14-2014%20Letter%20to%20AG%20Holder%20re%20use%20of%20excessive%20force%20by%20police.pdf. See also, The Leadership Conference on Civil and Human Rights, *Civil Rights, Privacy, and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras*, Press Release, May 15, 2015, <http://www.civilrights.org/press/2015/body-camera-principles.html>.

²⁸ Michael White, *Police Officer Body-Worn Cameras: Assessing the Evidence*, 6-7, U.S. Department of Justice Office of Community Oriented Policing Services (2014), <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>; See also, Lindsay Miller, Jessica Toliver and Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendation and Lessons Learned*, 5-6, U.S. Department of Justice Office of Community Oriented Policing Services (2014), <http://ric-zai-inc.com/Publications/cops-p296-pub.pdf>.

²⁹ See, Christina Elmore and David MacDougall, *Man shot and killed by North Charleston police officer after traffic stop; SLED investigating*, The Post and Courier, April 4, 2015, <http://www.postandcourier.com/article/20150404/PC16/150409635>.

³⁰ See, Alan Blinder and Marc Santora, *Officer Who Killed Walter Scott Is Fired, and Police Chief Denounces Shooting*, The New York Times, April 8, 2015, <http://www.nytimes.com/2015/04/09/us/walter-scott-shooting-video-stopped-case-from-being-swept-under-rug-family-says.html? r=0>.

Similarly, city surveillance video footage revealed a Baltimore, Maryland police officer beating Kollin Truss, an unarmed African-American man, at a bus stop in June 2014. The video contradicted the officer's claim that Truss assaulted his girlfriend.³¹ As a direct result of the fact that this encounter was videotaped, the officer pled guilty to assault and was sentenced to six months in prison.³²

Even though there are clear benefits to police body-worn cameras, LDF is aware that the cameras, in and of themselves, will not end police violence against civilians or ensure police accountability. The Eric Garner case makes that all too clear. Although Mr. Garner was videotaped being choked to death by a New York City police officer, that officer was cleared of any wrongdoing by a grand jury.

In addition, there are many unanswered questions about the proper and most effective implementation of any body-worn camera program, such as: what types of police civilian encounters should be recorded; when must officers request consent to record (some state laws require "two-party consent"); and how the data should be stored, retained and disclosed to the public.³³

Finally, LDF is concerned that increased video surveillance through the use of body cameras, may have unintended consequences, such as an increase in racial disparities in arrests and law enforcement because of the disproportionate police presence in African American, Latino, and other communities of color as compared to White neighborhoods.³⁴

In an effort to balance the benefits of and concerns raised by police body-worn cameras, LDF urges Congress to support the implementation of matching grant programs for police body-worn cameras. But, as a condition of funding, Congress should require law enforcement agencies to develop protocols on the proper implementation of the cameras in partnership with members of the communities they serve based on national best practices. These protocols should be made available to the public on police department websites, community forums, and through other means of public education.

Additionally, law enforcement agencies receiving federal funding for a police body-worn camera program, should be required to collect, analyze and report on pedestrian and traffic stops and use-of-force incidents, disaggregated by the race, ethnicity, and sex of the civilian and location of the incident. Indeed, it would be difficult to test the effectiveness of a camera

³¹ See, Ian Duncan and Mark Puente, *Baltimore officer is suspended after video of beating is released*, Baltimore Sun, Sept. 16, 2014, <http://www.baltimoresun.com/news/maryland/crime/blog/bs-md-ci-beating-video-investigation-20140916-story.html#page=1>.

³² See, Ian Duncan and Justin Fenton, *Baltimore man who beats man at bus stop pleads guilty*, Baltimore Sun, April 15, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bal-officer-who-beat-man-at-bus-stop-pleads-guilty-sentenced-to-six-months-jail-20150515-story.html>.

³³ Lindsay Miller, Jessica Toliver and Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendation and Lessons Learned*, 11-19, U.S. Department of Justice Office of Community Oriented Policing Services (2014), <http://ric-zai-inc.com/Publications/cops-p296-pub.pdf>.

³⁴ Alexander Mateescu, *et al.*, *Police Body-Worn Cameras*, 2, Data&Society Research Institute (February 2015), <http://www.datasociety.net/pubs/dcr/PoliceBodyWornCameras.pdf>.

program without the collection of these data. The U.S. Department of Justice has already expressed its commitment to data collection when it launched its Body-Worn Camera Pilot Program earlier this month.³⁵

Finally, Congress should require a national study of the effectiveness of any federally-funded grant program that supports the purchase of police body-worn cameras, detailing lessons learned.

5. Demilitarization of Police in Communities and Public Schools

The disturbing images of the military-style response by local police to the public protests following the police killing of Michael Brown, Jr. in Ferguson, Missouri shocked the world.³⁶ In response to lawful protests, law enforcement officers appeared in military fatigues, rode in armored trucks, threw tear gas and fired rubber bullets into peacefully gathered crowds. This outsized, combat-style policing has been taught in police academies nationwide since the 1960's and particularly after the 9/11 attacks on American soils.³⁷ But, according to law enforcement expert Sue Rahr, this 'boot-camp' style of training has no place in a democratic society where police are expected to serve as guardians, not warriors.³⁸

Equally troubling are reports of the U.S. Department of Defense's transfer and/or lending of military weapons for use at K-12 public schools through its 1033 Excess Property Program ("1033 Program"). A number of school districts have participated in the 1033 program, and received military equipment.³⁹ For example, the Granite School District in Utah reportedly received M-16s through the 1033 program.⁴⁰ Other school districts purportedly participating in the 1033 program, including those in California, Florida, Georgia, Kansas, Michigan, Nevada,

³⁵ U.S. Department of Justice Office of Public Affairs, *Justice Department Announces \$20 Million in Funding to Support Body-Worn Camera Pilot Program*, Office of the Attorney General, May 1, 2015, <http://www.justice.gov/opa/pr/justice-department-announces-20-million-funding-support-body-worn-camera-pilot-program>. (stating that the Office of Justice Programs Bureau of Justice Statistics "will receive \$1 million to collect data on body-worn camera usage through surveys of law enforcement agencies.").

³⁶ Josh Levs, *Ferguson violence: Critics rip police tactics, use of military equipment*, CNN, Aug. 15, 2014, <http://www.cnn.com/2014/08/14/us/missouri-ferguson-police-tactics/index.html>

³⁷ See, Sue Rahr and Stephen Rice, *From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals*, *New Perspectives in Policing*, April 2015, <http://www.hks.harvard.edu/news-events/news/articles/pcjpm-report-from-warriors-to-guardians>.

³⁸ *Id.*

³⁹ Districts and states reported to have received equipment through the 1033 Program include: California (Baldwin Park; Oakland Unified; Los Angeles; Stockton Unified); Florida (Washington; Bay District; Palm Beach County); Georgia (Fulton County; Dooly County); Kansas (Auburn); Michigan (Detroit; Schoolcraft); Nevada (Washoe); Texas (Ector; Ennis; Spring Branch); Texas (Frenship; Aledo; Edinburg; San Antonio; Trinity; Beaumont); and Utah (Granite). For a list of all agencies participating in the 1033 program, see Arezou Rezvani, Jessica Pupovac, David Eads and Tyler Fisher, *MRAPs and Bayonets: What We Know About the Pentagon's 1033 Program, List of Agencies Receiving Equipment*, National Public Radio, Sept. 2, 2014, available at <http://www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program>

⁴⁰ Natalie Carlisle, *Granite district using M-16s to defend schools*, The Salt Lake Tribune, Feb. 23, 2014, <http://www.sltrib.com/sltrib/mobilemobileopinion/57563036-82/police-johnson-rifles-granite.html.csp>.

and Texas, have documented histories of racial disparities involving the discipline of students of color.⁴¹

Militarization of the nation's public schools negatively impacts the educational environment for all students. However, the greatest potential impact is on students of color. These students are already disproportionately impacted by the criminalization of student conduct. For example, while African-American students make up 16 percent of student enrollment nationally, they comprise 27 percent of students referred to law enforcement and 31 percent of students arrested, often for minor "discretionary" offenses, such as "disrespect."⁴² Increasingly, African-American girls are disproportionately impacted by out-of-school suspensions for minor behavior.⁴³

A significant contributor to school-based arrests is the presence of law enforcement officers on school grounds, often known as "school resource officers." These officers are extensively involved in school discipline and often arrest, issue tickets, or refer students to the juvenile justice system for routine infractions. Also, reports of excessive use of force against students by school resource officers have surfaced. For example, the recent U.S. Department of Justice investigative report of the Ferguson Police Department revealed that school resource officers struck students with their hands or electronic control weapons for minor acts of disobedience, and subsequently arrested them for failure to comply or peace disturbance.⁴⁴ Adding military weaponry only exacerbates tenuous climates and further intimidates and alienates students.

LDF and other civil rights groups highlighted these concerns, in a letter to then-Defense Logistics Agency (DLA) Director Mark Harnitchek,⁴⁵ and to the Law Enforcement Equipment Working Group created by President Obama's Executive Order 13688,⁴⁶ asking the Obama

⁴¹ See, Office for Civil Rights Data, *supra* note 12. See also, NAACP Legal Defense and Educational Fund, Inc. *et al*, *Arresting Development: Addressing the School Discipline Crisis in Florida* (2006) available at http://b.3cdn.net/advancement/e36d17097615e7c612_bbm6vub0w.pdf.

⁴² U.S. Department of Education-Office for Civil Rights, *Data Snapshot: School Discipline*, March 21, 2014, available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

⁴³ For example, in Ohio, African American girls received 16.3 out-of-school suspensions per 100 African American girls enrolled for disobedience, while white girls received 1.5 out of school suspensions per 100 white females enrolled for the same infraction. See, NAACP Legal Defense and Educational Fund and National Women's Law Center, *Unlocking Opportunity for African American Girls*, 16-17 (2014), available at http://www.naacpldf.org/files/publications/Unlocking%20Opportunity%20for%20African%20American%20Girls_0.pdf.

⁴⁴ United States Department of Justice Civil Rights Division, *Investigation of Ferguson Police Department*, at 37-38 (March 4, 2015), http://www.justice.gov/crt/about/spl/documents/ferguson_findings_3-4-15.pdf.

⁴⁵ LDF/Texas Applesed letter to then-Director of the Defense Logistics Agency (DLA) Mark Harnitchek, September 15, 2014, available at www.naacpldf.org/files/case_issue/LDF-Texas%20Appleseed-1033%20Letter.pdf or http://www.naacpldf.org/files/case_issue/LDF-Texas%20Appleseed-1033%20Letter.pdf.

⁴⁶ See, Executive Office of the President, *Executive Order 13688 of January 16, 2015 - Federal Support for Law Enforcement Equipment Acquisition*, Federal Register, <https://www.federalregister.gov/articles/2015/01/22/2015-01255/federal-support-for-local-law-enforcement-equipment-acquisition>. See also, NAACP Legal Defense and Educational Fund Letter to Aaron Schuham, Chief, U.S. Department of Justice, Policy Section, *Recommendations to the Law Enforcement Equipment Working Group*, Feb. 27, 2015 (on file at the NAACP Legal Defense Fund).

Administration to end the transfer of military weapons, vehicles and aircraft to law enforcement agencies that serve K-12 public schools. This week, the President’s Law Enforcement Equipment Working Group released a report that included recommendations to prohibit the transfer of certain military equipment, such as tracked armored vehicles, bayonets, grenade launchers, to *all* state, local and tribal law enforcement agencies (LEAs).⁴⁷ It reasoned that “a prohibition on acquisition of such equipment by LEAs ... is appropriate because the substantial risk of misusing or overusing these items, which are seen as militaristic in nature, could significantly undermine community trust ...”⁴⁸ LDF supports this prohibition.

The Working Group added that LEAs, “other than those *solely* serving schools with grades ranging from kindergarten through grade 12,” could acquire a controlled list of military equipment, such as riot gear, after they comply with new requirements for training and data collection.⁴⁹ Two hundred and fifty school districts have police departments that *solely* serve the schools within the district, and therefore would be prohibited from acquiring any military equipment.⁵⁰ But, school districts that receive policing services from their city or county police departments⁵¹ would still have access to military equipment on the controlled list.

LDF maintains that military-equipment has no place in public schools and urges Congress to prohibit *all* law enforcement agencies serving K-12 public schools from using federal resources to access military equipment.

IV. Conclusion

This is a pivotal time for our nation in terms of criminal justice. Policing is the doorway to the criminal justice system. Racial injustice during interaction with police, arrest, prosecution and sentencing compromises the integrity of the entire system. LDF firmly believes comprehensive reform of the criminal justice system is vital to the healthy functioning of our democracy. The policies of mass incarceration that have disproportionately harmed communities of color for decades were adopted, funded, and operationalized largely by Congress. It is now incumbent upon Congress to exercise its federal oversight and funding responsibilities to undertake needed structural reforms that promote transparency, training, reporting, review, and ultimately accountability of law enforcement agencies at the federal, state, and local levels. Additionally, there are numerous proposals pending before Congress to ensure fairness in the criminal justice system, to reform sentencing, to support re-entry, and to re-enfranchise persons who have been released from incarceration. LDF looks forward to working with Congress on these critically important issues.

⁴⁷ Law Enforcement Equipment Working Group, *Recommendations Pursuant to Executive Order 13688 Federal Support for Local Law Enforcement Equipment Acquisition*, 11-13, May 2015, https://www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf.

⁴⁸ *Id.* at 13.

⁴⁹ *Id.* at 14-25.

⁵⁰ Brian A. Reaves, *Census of State and Local Law Enforcement Agencies, 2008*, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, 9, July 2011, <http://www.bjs.gov/content/pub/pdf/cslllea08.pdf>.

⁵¹ *Id.*; *See also supra* note 38.