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May 17, 2017

The Honorable Trey Gowdy
Chairman, House Judiciary Subcommittee on
Crime, Terrorism, Homeland Security, and Investigations
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Sheila Jackson Lee
Ranking Member, House Judiciary Subcommittee on
Crime, Terrorism, Homeland Security, and Investigations
2141 Rayburn House Office Building
Washington, DC 20515

Re: Hearing on Challenges Facing Law Enforcement in the 21st Century

Dear Chairman Gowdy and Ranking Member Jackson Lee:

On behalf of the American Civil Liberties Union (ACLU), we urge you to consider the strained relationship between law enforcement and many of the communities they serve, as you consider challenges facing law enforcement in the 21st Century. We ask that you advance policies that respond to this strained relationship and serve the interests of both law enforcement and community. The ACLU represents 2.5 million members, activists, and supporters who are working to advance the ACLU's mission of defending the principles of liberty and equality embodied in our Constitution and our civil rights laws.

Congress Must Acknowledge the Greatest Challenge to 21st Century Policing is Strained Police-Community Relations

Over the past three years, incidents across the nation – from Balch Springs to Baltimore, Baton Rouge to Cleveland, Falcon Heights to Ferguson, Grapevine to Los Angeles, Milwaukee to Missoula, New York City to North Charleston, and Pasco to Puerto Rico – demand a change in the culture of policing. This culture reflects a deep mistrust between law enforcement and many of the communities they serve. Relationships are particularly troubled between police and communities of color, immigrant communities, LGBT communities, women, survivors of domestic violence and sexual assault, and youth.

According to *The Guardian* and the *Washington Post*, the number of people killed by police annually exceeds 1,000.¹ The Guardian's total for 2016 was 1,062.² People of color are disproportionately subjected to such force, with minorities constituting 47.2% of all persons killed by police in 2015.³ Additionally, fatal use of force by police surged in January 2017, exceeding the number of people killed by police in any one month since 2015.⁴

Congress Must Advance Legislation That Will Achieve Constitutional 21st Century Policing

The Congress – this Subcommittee and the House Policing Strategies Working Group in particular – cannot abandon its bipartisan efforts to respond to fatal police shootings. Both Republicans and Democrats have identified appropriate policy responses to this crisis, calling for data collection and reporting on police-community encounters, as well as training and best practices to address biased policing and excessive use of force, among other proposals.

Last Congress, the ACLU identified several bills⁵ that Members could take up as the first steps to repair the relationship between community and police. These bills include:

The Law Enforcement Trust and Integrity Act (LETIA),⁶ sponsored by Rep. John Conyers (D-Mich.) and Sen. Ben Cardin (D-Md.), which must be reintroduced this Congress. LETIA provides law enforcement with resources for accreditation, best practices, training, and other resources to increase trust between police and community. The bill also mandates data collection on use of force and other police-community encounters.

The End Racial Profiling Act,⁷ also introduced by Rep. Conyers and Sen. Cardin, prohibits federal, state, and local law enforcement from engaging in racial profiling and other biased policing. The bill would help law enforcement meet this mandate through training, funding, and data collection. As the Department of Justice acknowledged in

¹ Kimberly Kindy, Marc Fisher, Julie Tate & Jennifer Jenkins, *A Year of Reckoning: Police Fatally Shoot Nearly 1,000*, WASH. POST, Dec. 26, 2015, available at <http://www.washingtonpost.com/sf/investigative/2015/12/26/a-year-of-reckoning-police-fatally-shoot-nearly-1000/>.

² The Counted: People killed by police in the US, THE GUARDIAN, available at <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database>.

³ John Swaine, Oliver Laughland, Jamiles Lartey & Ciara McCarthy, *Young black men killed by US police at the highest rate in year of 1134 deaths*, THE GUARDIAN, Dec. 31, 2015, available at <http://www.theguardian.com/us-news/2015/dec/31/the-counted-police-killings-2015-young-black-men>.

⁴ Angela Bronner Helm, *More Americans killed by police in January than any one month since 2015*, NEWSONE, Feb. 2017, available at <https://newsone.com/3661666/donald-trump-and-police-killings-in-office/>.

⁵ ACLU Letter to Sen. Grassley, Sen. Leahy, Rep. Goodlatte, Rep. Conyers, *The ACLU implores Congress to consider taking up law enforcement reform legislation*, July 7, 2016, available at <https://www.aclu.org/letter/aclu-implores-congress-consider-taking-law-enforcement-reform-legislation>.

⁶ H.R. 2875, S. 2168 (114th Cong.).

⁷ H.R. 1498, S. 411 (S. 411 is titled the End Racial and Religious Profiling Act) (115th Cong.).

June 2016, “most people experience some degree of unconscious bias.”⁸ Implicit and explicit biases have no place in policing.⁹

The Preventing Tragedies Between Police and Communities Act,¹⁰ sponsored by Rep. Gwen Moore (D-Wis.), would require police to be trained on de-escalation techniques that focus on preserving life. The legislation builds upon Police Executive Research Forum guiding principles on use of force and its belief that “the preservation of life has always been at the heart of American policing.”¹¹

The Stop Militarizing Law Enforcement Act,¹² offered by Rep. Hank Johnson (D-Ga.) and Sen. Rand Paul (R-Ky.), would prohibit the transfer of some of the most dangerous military weapons from the federal government to state and local law enforcement. Tanks, grenades, bayonets, and other weapons of war have no business in our communities.¹³

Finally, the Police CAMERA Act,¹⁴ sponsored by Sen. Brian Schatz (D-Hawaii) which would provide federal resources to state and local law enforcement so they can develop safe and effective body-worn camera programs that also protect civilians’ privacy rights. Communities and law enforcement agree that cameras can be a part of the solution, but they must be implemented the right way.¹⁵

The federal government has an important role to play in restoring public safety and building trust between law enforcement and the communities they serve. Policy at the federal level should promote systemic police reform and a police culture that guarantees everyone’s civil liberties and civil rights

Congress Must Implement Recommendations from the President’s Task Force on 21st Century Policing

In addition to advancing policy, the Congress should conduct oversight on the implementation of recommendations from the President’s Task Force on 21st Century Policing. The Task Force made recommendations specific to federal, state, and local government in addition to police departments.

⁸ DOJ, *Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel*, June 27, 2016, available at <https://www.justice.gov/opa/pr/department-justice-announces-new-department-wide-implicit-bias-training-personnel>.

⁹ ACLU, *Racial Profiling*, available at <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/racial-profiling>.

¹⁰ H.R. 5221 (114th Cong.).

¹¹ Police Executive Research Forum, *Guiding Principles on Use of Force*, Mar. 2016, available at <http://www.policeforum.org/assets/guidingprinciples1.pdf>.

¹² H.R. 1556 (115th Cong.), S. 1441 (114th Cong.).

¹³ ACLU, *War Comes Home: The Excessive Militarization of American Police*, June 2014, available at <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>.

¹⁴ S. 877 (114th Cong.).

¹⁵ Jay Stanley, ACLU Senior Policy Analyst, *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All*, Mar. 2015, available at https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf.

The ACLU provided recommendations¹⁶ to the White House Task Force on 21st Century Policing that focused on data collection, profiling, use of force, and civilian review boards. We were pleased to see that the Task Force adopted recommendations consistent with what we put forward, including a recommendation to “collect, maintain, and report data to the Federal Government on all officer-involved shootings,” to “adopt and enforce policies prohibiting profiling,” that “training on use of force should emphasize de-escalation,” and that there be “some form of civilian oversight of law enforcement.”¹⁷

While state and local law enforcement can implement reforms unilaterally, the Congress should support these efforts through oversight that includes a “top to bottom review of all federal policies and laws and grant programs that incentivize disproportionate arrests and incarceration.”¹⁸ This review should include the Department of Justice’s (DOJ) Community Oriented Policing Services (COPS) programs, as well as the DOJ’s Edward Byrne Memorial Justice Assistant Grant program (Byrne JAG). The Congress should determine how current or new federal funding and programs can incentivize police reforms.¹⁹

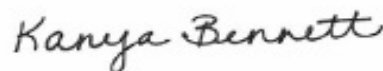
Congressional oversight and support are also needed on issues that were not directly or elaborately discussed in the Task Force report. These issues include police militarization, civil asset forfeiture, racial profiling, gender biased policing, policing persons with disabilities, and student resource officers.

Again, as Members of Congress consider 21st Century policing, the ACLU encourages you to examine and advance policies that build unity between police and the communities that they protect, serve, and rely upon. If you have any questions or comments, please feel free to contact Kanya Bennett, Legislative Counsel, phone: (202) 715-0808 or email: kbennett@aclu.org.

Sincerely,



Faiz Shakir
National Political Director



Kanya Bennett
Legislative Counsel

cc: Members of the U.S. House Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations

¹⁶ ACLU, *Testimony to the President’s Task Force on 21st Century Policing*, Jan. 13, 2015, available at <https://www.aclu.org/other/laura-murphy-testimony-presidents-task-force-21st-century-policing>.

¹⁷ COPS, *Final Report of the President’s Task Force on 21st Century Policing*, May 2015, available at https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

¹⁸ See *supra* note 16.

¹⁹ *Id.*