On behalf of the American Civil Liberties Union and its more than four million members, activists, and supporters throughout the country, we submit this written statement to invite federal intervention around police violence and brutality that has long plagued our nation. In the aftermath of the police killings of Breonna Taylor, Dreajson Reed, Tony McDade, George Floyd, Rayshard Brooks, and countless other Black people, the nation is yet again forced to examine the role of police in our communities. Nationwide protests evince a yearning for reform beyond the incremental and piecemeal demands offered to date. Accordingly, the ACLU is advocating for divestment from the police and reinvestment into communities that have been harmed by systemic police violence.

**Divestment and Reinvestment**

Modern police institutions are an outgrowth of slave patrols, which were designed to preserve slavery and control the Black community.\(^1\) Today, the origins of policing are evident and reflected in the over-policing of Black people and other people of color. According to the FBI'S 2018 Uniform Crime Report, out of the 10.3 million arrests made per year, only 5 percent are for the most serious offenses, including murder, rape, and aggravated assault. The other 95 percent of arrests are for things like traffic violations, marijuana possession, and unlawful assembly,\(^2\) with people of color disproportionately represented in these arrests. For example, a Black person is 3.64 times more likely to be arrested for marijuana possession than a white person, even though Black and white people use marijuana at similar rates.\(^3\) Furthermore, there is little evidence to suggest that an increased police presence results in fewer crimes and greater public safety.\(^4\) In spite of this, state and local governments spend upward of 100

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billion dollars on law enforcement each year, dramatically outpacing funding for housing, education, and violence prevention programs.  

Additionally, the federal government provides millions of dollars to law enforcement annually through grant programs, technical assistance, and other resources. The federal government also pads local budgets by annually providing millions of dollars in grants, equipment, and other resources to law enforcement. For fiscal year 2020, Congress appropriated over $500 million dollars for Byrne Justice Assistance Grants (Byrne JAG), which can be used to fund a range of activities related to the criminal legal system but primarily funds law enforcement. This same fiscal year, the federal government provided Community Oriented Policing Services (COPS) grants totaling almost $400 million dollars to hire almost 3,000 local police officers throughout the country. Furthermore, since 1990, the Department of Defense 1033 program has provided over $7 billion dollars in military weapons and equipment to state and local law enforcement.

Divestment from policing and reinvestment in community is a bold solution, and it is a necessary one. The primary shortcoming of many reforms offered to date is their reliance on procedural justice, which requires police practices to be rooted in fair and just processes. We have learned, however, that tinkering with policing processes is not enough. Attempts to remedy the harms of over policing and police violence have included implicit bias training, body worn cameras, and minor revisions to use of force policies. Many of these procedural justice reforms were implemented in Minneapolis in 2018, yet George Floyd was still killed at the hands of police. Divestment will reduce the likelihood of this harm because it will eliminate many of the unnecessary interactions between the police and community members that have led to police caused deaths. Reinvesting the savings that come from shrinking the footprint of police into the very communities that have suffered from systemic police abuses will keep people safe and allow them to thrive.

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Federal Divestment and Accountability Legislation

Divesting from law enforcement at this moment means that police intervention will be reserved for the most serious circumstances implicating the criminal legal system. As such, federal divestment means reining in the millions of dollars that the federal government provides to local law enforcement that instigate biased, militarized, and excessive policing. Additionally, in those limited situations in which police will intervene, the federal government must require police practices that promote and respect the sanctity of human life and ensure accountability when police have overstepped those bounds.

Therefore, the ACLU urges the House Judiciary Committee to respond to this national epidemic of police violence with legislative measures that: (1) impose a necessary use of force standard that deems force a last resort; (2) prohibits chokeholds and carotid holds; (3) prohibits racial profiling and implements a robust data collection program on police-community encounters; (4) eliminates federal programs that provide military equipment to law enforcement; (5) prohibits the use of no-knock and quick knock warrants; (6) changes the standard for federal civil rights violations in 18 U.S.C. Sec. 242 to reckless; (7) develops a public, national police misconduct registry; and (8) abolishes the qualified immunity doctrine.

1. **Require a necessary use of force standard that designates for a last resort.**

   Each year, approximately 1,000 people are killed by police. ¹¹ When law enforcement uses deadly force, there is a human toll that follows that decision, which contributes to the fear and mistrust that people and communities of color have of the police. Thus, legislation that requires federal law enforcement to use force only as a last resort to prevent imminent serious bodily injury, and incentivizes states to implement the same policy, is critical to ending police violence. The Police Exercising Absolute Care for Everyone (PEACE) Act, H.R. 4359, respects the sanctity of life by requiring that police use lethal force only when absolutely necessary. The PEACE Act promises to reduce police caused fatalities in communities throughout the country and ensure accountability when they do happen.

2. **Prohibit chokeholds, carotid holds, and similar uses of force**

   The police killing of George Floyd exposed another restraint tactic, the carotid hold, which was used to kill a Black man as he said, “I can’t breathe.”¹² Mr. Floyd’s death at the hands of law enforcement is similar to that of Eric Garner’s. Eric Garner was killed by a police officer using a

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chokehold on July 17, 2014. Police use of chokeholds and carotid holds is barbaric and unacceptable under any circumstances. Therefore, the appropriate federal response is H.R. 4408, S. 3895, the Eric Garner Excessive Force Prevention Act. This legislation would deem chokeholds, carotid holds, and other maneuvers that restrict oxygen intake or blood flow to the brain by law enforcement unlawful under federal civil rights law. While some local police departments have policies prohibiting or limiting the use of such police tactics, there is no federal ban on chokeholds or carotid holds, which is why a federal prohibition must be advanced.

3. **End biased policing and require robust data collection on police-community encounters**

Black people and other people of color are disproportionately targeted, arrested, brutalized, and killed by police. For example, in 2019, New York City police officers made 13,459 stops, and of the people stopped, 88 percent were Black and Latinx. Racial and religious profiling and other biased policing has created a system of law enforcement that casts entire communities as suspect. The End Racial and Religious Profiling Act, H.R. 1933, S. 1056, would prohibit 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 data collection, as a major impediment to eradicating profiling is the lack of data on police-community encounters and other law enforcement activities.

4. **Eliminate federal programs that provide military equipment to law enforcement**

American policing has become unnecessarily and dangerously militarized, in large part through the Department of Defense 1033 program that has armed law enforcement agencies with weapons of war for free. Often, law enforcement use these military arsenals to advance a failed drug war, police the southern border, and respond to protests and demonstrations. These arsenals, however, are by no means free of cost for communities. Instead, the use of hyper-aggressive tools and warrior tactics results in tragedy for both community and law enforcement, escalating the risk of needless, deadly violence, destroying property, and undermining civil liberties. The Department of Defense 1033 program must be ended, and H.R. 7143, the Demilitarizing Local Law Enforcement Act, does that.

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5. Prohibit the use of no-knock and quick-knock warrants

The police killing of Breonna Taylor on March 13, 2020, has elevated no-knock and quick-knock warrants into public discourse. These types of warrants are inherently dangerous because they authorize law enforcement to enter a person’s home without announcing themselves. Unsurprisingly, this tactic increases the risk to both community members and police, as people in their homes justifiably respond to the belief that intruders are invading their dwelling. In the case of Breonna Taylor, a Louisville Metropolitan Police officer entered Ms. Taylor’s residence to execute a no-knock warrant and search for illegal drugs. Ms. Taylor’s partner, Kenneth Walker, immediately called 911 to report an intruder and defended the home with a gun. Police then fired at Mr. Walker and Ms. Taylor, killing Ms. Taylor. The Congress must prohibit no-knock and quick-knock warrants at the federal level and incentive state and local law enforcement to do the same.

6. Change the standard for federal civil rights violations to “reckless”

The statutory construction of 18 U.S.C. § 242 makes it a crime when a person acting under color of law willfully deprives a person of a right or privilege protected by the Constitution or laws of the United States. Section 242 was enacted in 1870 to ensure legal protections for newly freed Blacks in the South, but in 1909 Congress added the “willful” standard, which has been interpreted by the Supreme Court to make it near impossible to prove deprivation of civil rights by police officers. This willfulness standard has prevented federal prosecutors from successfully holding law enforcement accountable for various police killings, including that of Eric Garner. Congress must change the standard in Section 242 to recklessness, which would ensure greater protection against police brutality by allowing cases of federal civil rights violations to proceed.

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7. Create a national police misconduct registry

There are few consequences for police officers who engage in violence and brutality because there is little transparency around their behavior. The Minneapolis officer who killed George Floyd was the subject of more than a dozen complaints throughout his career. The Cleveland officer who fatally shot Tamir Rice, a 12-year-old Black boy, on November 22, 2014, had been deemed unfit for duty at the police department that last employed him. The country needs a nationwide public database that compiles officer misconduct information to ensure that problem officers do not remain employed or are fired by one agency and then rehired by another. This database should compile the names of officers who have had their licenses revoked or been terminated due to excessive use of force, domestic violence, sexual violence, assault and harassment, criminal offenses against minors, deadly physical assault, violations of 18 U.S.C. § 242, among other misconduct and behavior. The registry should also disclose officers who have had their licenses revoked or been terminated due to perjury, falsifying a police report, or planting and destroying evidence.

8. Abolish qualified immunity

The qualified immunity doctrine contributes to the deep deficit in police accountability throughout our nation and should be abolished. This judge-made doctrine frustrates congressional intent to use the 14th Amendment to hold state actors, including law enforcement, accountable for their brutality against Black people. The Supreme Court has rewritten 42 U.S. Code § 1983 to give police officers sweeping immunity from suit, which amounts to a free pass for police when they violate peoples’ rights. The only way Congress can fix qualified immunity is by ending it. This will ensure government accountability and allow the legal system to rebuke wrongdoing by those sworn to uphold the law. Congress must advance H.R. 7085, the Ending Qualified Immunity Act, which would abolish qualified immunity for any person acting under color of law.

Conclusion

Policing institutions in our country are deeply entrenched in racism and brutality and we cannot allow these systems to continue. The senseless and perpetual killings of Black and Brown people by police require immediate and permanent solutions. The ACLU urges Congress to reimagine the role of

police in our society, a role that is limited, but more appropriate. Shrinking the police footprint will better protect communities of color and begin to repair decades of harm and violence inflicted onto those communities. The savings from a limited police role must be reinvested into non-police public safety measures, healthcare, housing, employment, and education. Policing in America is fractured beyond repair. Any decision to seek reform within a broken system will only perpetuate the police violence many communities of color experience. Ultimately, divesting from police and reinvesting into communities of color will safeguard civil rights and civil liberties and restore the ideals of our democracy.